

This proposal to modify Chapter 607 of the Florida Statutes (the Florida Business Corporation Act), has been prepared by the Chapter 607 Drafting Subcommittee of the Corporations, Securities and Financial Services Committee of The Florida Bar Business Law Section. The proposal is expected to be presented to the Florida legislature for its consideration in the fall of 2018, with the hope that it will be considered for adoption by the Florida legislature during the 2019 legislative session.

**PROPOSAL TO MODIFY
CHAPTER 607
OF THE FLORIDA STATUTES
(WITH COMMENTARY)**

***(FLORIDA BUSINESS
CORPORATION ACT)***

Draft Dated September 25, 2018

**PROPOSAL TO MODIFY THE
FLORIDA BUSINESS CORPORATION ACT**

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ARTICLE 1

GENERAL PROVISIONS

607.0101 Short title.

This Chapter 607 ("chapter") may be cited as the "Florida Business Corporation Act." Part I of Chapter 607 ("act") contains provisions of general applicability to corporations, Part II of Chapter 607 applies to social purpose corporations, and Part III of Chapter 607 applies to benefit corporations.

10 **Commentary to Section 607.0101:**

11 This proposal is the work of the Chapter 607 Drafting Subcommittee (the "Subcommittee") of the
12 Corporations, Securities and Financial Services Committee of the Business Law Section of The
13 Florida Bar. The members of the Subcommittee who actively participated in the work of the
14 Subcommittee are listed on Exhibit "A" to this proposal.

15 Florida's corporate statute is modeled on the Revised Model Business Corporation Act (the "Model
16 Act"). The Model Act is promulgated by the Corporate Laws Committee (the "Corporate Laws
17 Committee") of the Business Law Section of the American Bar Association. In preparing this
18 proposal, the Subcommittee initially considered the version of the Model Act published through
19 the 2013 Supplement. It also reviewed and considered changes to the Model Act made in the 2016
20 version of the Model Act.

21 In the many years since Chapter 607 was comprehensively revised, the Florida legislature has
22 passed Part II applying to social corporations and Part III applying to benefit corporations. The
23 changes clarify that when reference is made to Chapter 607 or to this chapter, the reference intends
24 to include corporations organized under Parts II and III, as well as corporations organized under
25 Part I.

26 While many jurisdictions have recently overhauled their corporate acts, none appear to have
27 inserted the word "Revised" or any of its variations into the title of their act. From this perspective,
28 although inconsistent with the approach taken with respect to naming the most recent overhauls of
29 FRUPA, FRULPA and FRLCA, this revision follows the naming approach taken in the Model
30 Act by the Corporate Laws Committee.

31 In various places, this proposal contains references to and/or excerpts from the commentary in
32 "*Florida Business Laws Annotated*", a treatise on Florida business laws authored by Stuart R. Cohn
33 and Stuart D Ames, two well-known Florida corporate lawyers (the "Ames and Cohn Treatise").

34 This proposal uses the term "chapter" to refer to Chapter 607, Parts I, II and III, and "act" to refer
35 to Part I of Chapter 607. It also uses defined terms in lower case consistent with FRLCA.

36

37 607.0102 Reservation of power to amend or repeal.

38 The Legislature has power to amend or repeal all or part of this ~~aet~~chapter at any time, and
39 all domestic and foreign corporations subject to this ~~aet~~ chapter shall be governed by the
40 amendment or repeal.

41

42 **Commentary to Section 607.0102:**

43 No material changes have been made. Florida follows the Model Act almost identically, the only
44 difference being in the last part of the sentence, which is non-substantive (The Model Act states
45 that "all domestic and foreign corporations subject to this act are governed by the amendment or
46 repeal").

47

48 607.0120 Filing requirements; extrinsic facts.

49 (1) A document must satisfy the requirements of this section and of any other section that
50 adds to or varies these requirements to be entitled to filing by the department ~~of State~~.

51 (2) This ~~aet chapter~~ must require or permit filing the document in the office of the
52 department ~~of State~~.

53 (3) The document must contain the information required by this ~~aet chapter and it~~. It may
54 contain other information.

55 (4) The document must be typewritten or printed, or, if electronically transmitted, the
56 document must be in a format that can be retrieved or reproduced in typewritten or printed form,
57 and must be legible.

58 (5) The document must be in the English language. A corporate name need not be in English
59 if written in English letters or Arabic or Roman numerals, and the certificate of status required of
60 foreign corporations need not be in English if accompanied by a reasonably authenticated English
61 translation.

62 (6) The document must be signed ~~executed~~:

63 (a) By a director of a domestic or foreign corporation, or by its president or by another
64 of its officers;

65 (b) If directors or officers have not been selected or the corporation has not been
66 formed, by an incorporator; or

67 (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed
68 fiduciary, by that fiduciary.

69 (7) The person executing the document shall sign it and state beneath or opposite his or her
70 signature his or her name and the capacity in which he or she signs. The document may, but need
71 not, contain the corporate seal, an attestation, an acknowledgment, or a verification.

72 (8) If the department ~~of State~~ has prescribed a mandatory form for the document under s.
73 607.0121(1), the document must be in or on the prescribed form.

74 (9) The document must be delivered to the office of the department ~~of State~~ for filing.
75 Delivery may be made by electronic transmission if and to the extent permitted by the department
76 ~~of State~~. If it is filed in typewritten or printed form and not transmitted electronically, the
77 department ~~of State~~ may require one exact or conformed copy, to be delivered with the document.

78 (10) When the document is delivered to the ~~D~~department of ~~S~~State for filing, the correct filing
79 fee, and any other tax, license fee, or penalty required to be paid by this ~~a~~et chapter or other law to
80 be paid at the time of delivery for filing shall be paid or provision for payment made in a manner
81 permitted by the ~~D~~department of ~~S~~State.

82 (11) Whenever a provision of this chapter permits any of the terms of a plan or a filed
83 document to be dependent on facts objectively ascertainable outside the plan or filed document,
84 the following provisions apply:

85 (a) The manner in which the facts will operate upon the terms of the plan or filed
86 document shall be set forth in the plan or filed document.

87 (b) The facts may include, but are not limited to:

88 1. Any of the following that is available in a nationally recognized news or
89 information medium either in print or electronically: statistical or market indices, market
90 prices of any security or group of securities, interest rates, currency exchange rates, or
91 similar economic or financial data;

92 2. A determination or action by any person or body, including the corporation or
93 any other party to a plan or filed document; or

94 3. The terms of, or actions taken under, an agreement to which the corporation is a
95 party, or any other agreement or document.

96 (c) As used in this subsection:

97 1. "Filed document" means a document filed with the department under any
98 provision of this chapter, except for ss. 607.1501-607.1532.

99 2. "Plan" means a plan of merger, a plan of share exchange, a plan of conversion,
100 and a plan of share domestication.

101 (d) The following provisions of a plan or filed document may not be made dependent on
102 facts outside the plan or filed document:

103 1. The name and address of any person required in a filed document;

104 2. The registered office of any entity required in a filed document;

105 3. The registered agent of any entity required in a filed document;

106 4. The number of authorized shares and designation of each class or series of
107 shares;

108 5. The effective date of a filed document; and
109 6. Any required statement in a filed document of the date on which the underlying
110 transaction was approved or the manner in which that approval was given.

111 (e) If a provision of a filed document is made dependent on a fact ascertainable outside
112 of the filed document, and that fact is neither ascertainable by reference to a source described
113 in subsection (11)(b)(1) or a document that is a matter of public record, nor have the affected
114 shareholders received notice of the fact from the corporation, then the corporation shall file
115 with the department articles of amendment to the filed document setting forth the fact
116 promptly after the time when the fact referred to is first ascertainable or thereafter changes.
117 Articles of amendment under this subsection (11)(e) are deemed to be authorized by the
118 authorization of the original filed document to which they relate and may be filed by the
119 corporation without further action by the board of directors or the shareholders.

120

121 **Commentary to Section 607.0120:**

122 Section 607.0120 substantially follows the 1989 version of the Model Act except as otherwise
123 noted above.

124 The words "and must be legible" in subsection (4) were added to the FBCA in 1993. They are not
125 in the corollary Model Act provision. Since these words have been in the FBCA for more than 20
126 years, they have been retained.

127 The Model Act authorizes the "chairman of the board of directors" to sign a document; not any
128 officer. The wording "signed by a director was added in 2003 (prior to 2003, this provision in the
129 FBCA read "by the chair or any vice chair of the board of directors"). The 2003 changes were
130 made (according to the report of the Corporations, Securities and Financial Services Committee
131 when it made the proposal) at the request of the Department to minimize the burden on the
132 Department to interpret the statute and to liberalize the execution provisions to allow more
133 flexibility as to who can sign. The existing wording is retained in the statute.

134 New subsection (11) is derived from the Model Act. It permits any of the terms of a filed document
135 or a plan to be made dependent on facts outside the document or plan, except to the extent provided
136 in subsection (11)(d). The fact on which the filed document or plan is to be dependent need not
137 be within the control of the corporation, but must be objectively ascertainable and the filed
138 document or plan must state the manner in which the facts will operate. Subsection (11)(e)
139 establishes a procedure that assists shareholders in determining what facts are the underlying facts
140 on which a filed document or plan is dependent.

141

142 607.0121 Forms.

143 (1) The department of ~~State~~ may prescribe and furnish on request forms for:

144 (a) An application for certificate of status,

145 (b) A foreign corporation's application for certificate of authority to transact
146 business in the state,

147 (c) A foreign corporation's notice of withdrawal of application for certificate of
148 authority withdrawal, and

149 (d) The annual report, for which the department may prescribe the use of the uniform
150 business report, pursuant to s. 606.06.

151 (2) If the ~~D~~department of ~~State~~ so requires, the use of these forms shall be mandatory.

152 (3) The ~~D~~department of ~~State~~ may prescribe and furnish on request forms for other
153 documents required or permitted to be filed by this ~~aet~~ chapter, but their use shall not be mandatory.

154

155 **Commentary to Section 607.0121:**

156 Clean up changes have been made. Except for a few non-substantive language differences, and the
157 non-Model Act cross reference to s. 606.06 that is referred to below, this statute mirrors the Model
158 Act. Florida is one of thirteen jurisdictions to have adopted subsection (1) without substantive
159 change, and the vast majority of American jurisdictions have adopted subsection (2) without
160 substantive change.

161 The cross reference to s. 606.06 that is contained in subsection (1)(d) was added to the statute in
162 1999. It deals with the uniform annual report provision that is part of and intended to facilitate the
163 creation of a master business index under the Florida Business Coordination Act (Chapter 606).
164 Chapter 606 is intended to establish a master business index within the DOS and to facilitate a
165 reporting mechanism that consolidates and coordinates business entity licensing and reporting
166 requirements wherever possible. A similar provision is included in s. 605.0212(7) of FRLCA.

167

168 607.0122 Fees for filing documents and issuing certificates.

169 The Department of State shall collect the following fees when the documents described
170 in this section are delivered to the department for filing:

171 (1) Articles of incorporation: \$35.

172 (2) Notice of transfer of reserved name. \$35.

173 (32) Application for registered name: \$87.50.

174 (43) Application for renewal of registered name: \$87.50.

175 (54) Corporation's statement of change of registered agent or registered office or both if not
176 included on the annual report: \$35.

177 (65) Designation of and acceptance by registered agent: \$35.

178 (76) Agent's statement of resignation from active corporation: \$87.50.

179 (87) Agent's statement of resignation from an inactive corporation: \$35.

180 (98) Amendment of articles of incorporation: \$35.

181 (109) Restatement of articles of incorporation with amendment of articles: \$35.

182 (1140) Articles of merger or share exchange for each party thereto: \$35.

183 (1244) Articles of dissolution: \$35.

184 (1342) Articles of revocation of dissolution: \$35.

185 (1443) Application for reinstatement following administrative dissolution: \$600.

186 (1544) Application for certificate of authority to transact business in this state by a foreign
187 corporation: \$35.

188 (1645) Application for amended certificate of authority: \$35.

189 (1746) Application for certificate of withdrawal by a foreign corporation: \$35.

190 (1847) Annual report: \$61.25.

191 (1948) Articles of correction: \$35.

192 (2049) Application for certificate of status: \$8.75.

- 193 (~~2120~~) Certificate of domestication of a foreign corporation: \$50.
- 194 (~~2221~~) Certified copy of document: \$52.50.
- 195 (~~2322~~) Serving as agent for substitute service of process: \$87.50.
- 196 (~~2423~~) Supplemental corporate fee: \$88.75.
- 197 (~~2524~~) Any other document required or permitted to be filed by this act: \$35.
- 198

199 **Commentary to Section 607.0122:**

200 No changes have been made to the existing statute.

201

202 607.0123 Effective time and date of document.

203 Except as otherwise provided in s. 607.0124(5) and subject to s. 607.0124(4), any
204 document delivered to the department for filing under this chapter may specify an effective time
205 and a delayed effective date. In the case of initial articles of incorporation, a prior effective date
206 may be specified in the articles of incorporation if such date is within 5 business days before the
207 date of filing. Subject to s. 607.0124, a document accepted for filing is effective:

208 (1) If the filing does not specify an effective time and does not specify a prior or a
209 delayed effective date, on the date and at the time the filing is accepted, as evidenced by the
210 department’s endorsement of the date and time on the filing;

211 (2) If the filing specifies an effective time, but not a prior or delayed effective date, on
212 the date the filing is filed at the time specified in the filing;

213 (3) If the filing specifies a delayed effective date, but not an effective time, at 12:01 a.m.
214 on the earlier of:

215 (a) The specified date; or

216 (b) The 90th day after the date of the filing.

217 (4) If the filing specifies a delayed effective date and an effective time, at the specified
218 time on the earlier of:

219 (a) The specified date; or

220 (b) The 90th day after the date of the filing.

221 (5) If the filing is of initial articles of incorporation and specifies an effective date before
222 the date of the filing, but no effective time, at 12:01 a.m. on the later of:

223 (a) The specified date; or

224 (b) The 5th business day before the date of the filing.

225 (6) If the filing is of initial articles of incorporation and specifies an effective time and a
226 date before the date of the filing, at the specified time on the later of:

227 (a) The specified date; or

228 (b) The 5th business day before the date of the filing.

229 (7) If a filed document does not specify the time zone or place at which a date or time or
230 both is to be determined, the date or time or both at which it becomes effective shall be those
231 prevailing at the place of filing in this state.

232 ~~(1) Except as provided in subsections (2) and (4) and in s. 607.0124(3), a document~~
233 ~~accepted for filing is effective (a) on the date and at the time of filing, as evidenced by such means~~
234 ~~as the department of State may use for the purpose of recording the date and time of filing; or (b)~~
235 ~~on the date and at the time specified in the document as its effective time on the date it is filed.~~

236 ~~(2) A document may specify a delayed effective date and, if desired, a time on that date, and~~
237 ~~if it does the document shall become effective on the date and at the time, if any, specified. If a~~
238 ~~delayed effective date is specified without specifying a time on that date, the document shall~~
239 ~~become effective at the start of business on that date. Unless otherwise permitted by this chapter~~
240 ~~act, a delayed effective date for a document may not be later than the 90th day after the date on~~
241 ~~which it is filed.~~

242 (38) If a document is determined by the department of State to be incomplete and
243 inappropriate for filing, the department of State may return the document to the person or
244 corporation filing it, together with a brief written explanation of the reason for the refusal to file,
245 in accordance with s. 607.0125(3). If the applicant returns the document with corrections in
246 accordance with the rules of the department within 60 days after it was mailed to the applicant by
247 the department and if at the time of return the applicant so requests in writing, the filing date of
248 the document will be the filing date that would have been applied had the original document not
249 been deficient, except as to persons who relied on the record before correction and were adversely
250 affected thereby.

251 ~~(4) Corporate existence may predate the filing date, pursuant to s. 607.0203(1).~~

252

253 **Commentary to Section 607.0123:**

254 The changes harmonize this provision with s. 605.0207 of FRLUCA and are consistent with the
255 changes to the corollary provision in the Model Act.

256 While subsection (3) (renumbered as (8)), dealing with defective or incomplete filings, is not
257 derived from the Model Act, it has been in the FBCA in substantially this form since 1989 and is
258 retained.

259

260 607.0124 Correcting filed document; withdrawal of filed record before effectiveness.

261 (1) A domestic or foreign corporation may correct a document filed by the ~~D~~department of
262 State ~~within 30 days after filing~~ if:

263 (a) The document contains an inaccuracy;

264 (b) The document contains false, misleading, or fraudulent information;

265 (c) The document was defectively ~~executed~~ signed, attested, sealed, verified, or
266 acknowledged; or

267 (d) The electronic transmission of the document to the department was defective.

268 (2) A document is corrected:

269 (a) By preparing articles of correction that:

270 1. Describe the document (including its filing date) or attach a copy of it to the
271 articles of correction;

272 2. Specify the inaccuracy or defect to be corrected; and

273 3. Correct the inaccuracy or defect; and

274 (b) By delivering the articles of correction to the department ~~of State~~ for filing, signed
275 ~~executed~~ in accordance with s. 607.0120.

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

279 (4) Articles of correction may not contain a delayed effective date for the correction.

280 (5) Unless otherwise provided in ss. 607.1107(2), 607.11923(3) or 607.11934(3), a filing
281 delivered to the department may be withdrawn before it takes effect by delivering to the department
282 for filing a withdrawal statement.

283 (a) A withdrawal statement must:

284 1. Be signed by each person who signed the filing being withdrawn; and

285 2. Identify the filing to be withdrawn.

286 (b) On the filing by the department of a withdrawal statement, the action or transaction
287 evidenced by the original filing does not take effect.

288

289 **Commentary to Section 607.0124:**

290 With few exceptions, this section mirrors the Model Act.

291 The language contained in the existing statute in subsection (1) providing that a document can only
292 be corrected within 30 days of filing has been removed from the statute, thus allowing a correction
293 at any time. The Model Act does not provide a limited timeframe for correcting the record.
294 Similarly, section 605.0209 in FRLUCA (correcting filed record) does not provide a limited
295 timeframe for correcting a record with the DOS.

296 The change in subsection (1)(c) conforms this section with the wording on the same topic in s.
297 605.0209 of FRLUCA.

298 The addition of subsection (4) conforms this section with the wording on the same topic in s.
299 605.0209(3)(a) of FRLUCA.

300 New subsection (5) has been added to allow corporations to withdraw a filing before it becomes
301 effective. It is modeled after s. 605.0208 of FRLUCA and is consistent with the Department's
302 current position on this issue.

303

304 607.0125 Filing duties of Department of State.

305 (1) If a document delivered to the ~~Department of State~~ for filing satisfies the requirements
306 of s. 607.0120, the department ~~of State~~ shall file it.

307 (2) The ~~Department of State~~ files a document by stamping or otherwise endorsing the
308 document as "filed," together with the department's official title and recording it as filed on the
309 date and time of receipt. After filing a document, the ~~Department of State~~ shall send a notice of
310 the filing or a copy of the filing to the electronic mail address on file for the domestic or foreign
311 corporation or its authorized representative or a copy of the filed document to the mailing address
312 of such corporation or its authorized representative. If the record changes the electronic mail
313 address of the corporation, the ~~Department of State~~ must send such notice to the new electronic
314 mail address and to the most recent prior electronic mail address. If the record changes the mailing
315 address of the corporation, the ~~Department of State~~ must send such notice to the new mailing
316 address and to the most recent prior mailing address.

317 (3) If the ~~Department of State~~ refuses to file a document, the department # shall, within 15
318 days after the document is delivered, return the document # to the domestic or foreign corporation
319 or its authorized representative ~~within 15 days after the document was received for filing~~, together
320 with a brief, written explanation of the reason for the refusal.

321 (4) The ~~Department's of State's~~ duty to file documents under this section is ministerial. The
322 filing or refusing to file a document does not:

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

324 (b) Relate to the correctness or incorrectness of information contained in the
325 document; or

326 (c) Create a presumption that the document does or does not conform to the
327 requirements of this chapter or that the is valid or invalid or that information contained in the
328 document is correct or incorrect.

329 (5) If not otherwise provided by law and the provisions of this ~~act~~ chapter, the ~~Department~~
330 ~~of State~~ shall determine, by rule, the appropriate format for, number of copies of, manner of
331 execution of, method of electronic transmission of, and amount of and method of payment of fees
332 for, any document placed under its jurisdiction.

333

334 **Commentary to Section 607.0125:**

335 The Florida statute follows the Model Act, with some differences. Changes were made to conform
336 this section with the language contained in s. 605.0210(1) of FRLCA.

337 Subsection (3) has been modified to conform the language of this statute to s. 605.0210(3) of
338 FRLCA. The Florida statute allows 15 days for the return of a refused filing, while the Model
339 Act allows 5 days. The existing Florida time period is retained.

340 Subsection (5) is unique to Florida and is also contained in FRLCA. This provision was adopted
341 in 1989 at the request of the Department. However, according to the Ames and Cohn Treatise, the
342 Department has not adopted any such rules that remain in effect.

343

344 607.0126 Appeal from department's of State's refusal to file document.

345 If the ~~D~~department of State refuses to file a document delivered to its office for filing, ~~within~~
346 ~~30 days after return of the document by the department by mail, as evidenced by the postmark, the~~
347 ~~domestic or foreign corporation-~~ the person who submitted the document for filing may:

348 (1) ~~—Appeal the refusal pursuant to s. 120.68; or~~

349 (2) ~~—Appeal the refusal to petition the circuit court of the county in and for Leon County,~~
350 ~~Florida where the corporation's principal office (or, if none in this state, its registered office) is or~~
351 ~~will be located to compel filing of the document. The document and the explanation from the~~
352 ~~department of the refusal to file must be attached to the petition. The court may decide the matter~~
353 ~~in a summary proceeding. The appeal is commenced by petitioning the court to compel filing the~~
354 ~~document and by attaching to the petition the document and the department's of State's explanation~~
355 ~~of its refusal to file. The matter shall promptly be tried de novo by the court without a jury. and~~
356 ~~the court may summarily order the D~~department of State to file the document or take other action
357 the court considers appropriate. The court's final decision may be appealed as in other civil
358 proceedings.

359

360 **Commentary to Section 607.0126:**

361 This section harmonizes the FBCA with s. 605.0210(7) of FRLUCA on the same topic.

362 The 30-day statute of limitations contained in the current statute and the Model Act has been
363 eliminated. This statute of limitations provision is not contained in s. 605.0210(7) of FRLUCA and
364 has not been historically followed or enforced by the Department of State.

365

366 607.0127 Certificates to be received in evidence and evidentiary effect of certified copy
367 of filed document.

368 All certificates issued by the department in accordance with this chapter shall be taken and
369 received in all courts, public offices and official bodies as prima facie evidence of the facts stated.

370 A certificate ~~from the Department of State~~ delivered with a copy of a document filed by the
371 ~~Department, of State~~ bearing the signature of the secretary of state (which may be in facsimile),
372 and the seal of this state, is conclusive evidence that the original document is on file with the
373 department.

374

375 **Commentary to Section 607.0127:**

376 This section has been revised to harmonize with s. 605.0215 of FRLLCA on the same topic.
377 Further, language from s. 617.0127 to the effect that a document filed with the Department
378 attaching a copy of a document and "bearing the signature of the Secretary of State (which may be
379 in facsimile)" has been added. This language was previously in Chapter 607 and has been added
380 back to the statute for clarity at the request of the Department.

381

382 607.0128 Certificate of status.

383 (1) The department, upon request and payment of the requisite fee, shall issue a certificate
384 of status for a corporation if the records filed in the department show that the department has
385 accepted and filed the corporation’s articles of incorporation. A certificate of status must state the
386 following:

387 (a) The corporation’s name.

388 (b) That the corporation was organized under the laws of this state and the date of
389 organization.

390 (c) Whether all fees due to the department under this chapter have been paid.

391
392 (d) Whether the corporation’s most recent annual report required under s. 607.1622
393 has been filed by the department.

394
395 (e) Whether the department has administratively dissolved the corporation or received
396 a record notifying the department that the corporation has been dissolved by judicial action
397 pursuant to s. 607.1433.

398
399 (f) Whether the department has filed articles of dissolution for the corporation.

400
401 (2) The department, upon request and payment of the requisite fee, shall furnish a certificate
402 of status for a foreign corporation if the records filed show that the department has filed a certificate
403 of authority. A certificate of status for a foreign corporation must state the following:

404 (a) The foreign corporation’s name and any current alternate name adopted under s.
405 607.1506 for use in this state.

406
407 (b) That the foreign corporation is authorized to transact business in this state.

408
409 (c) Whether all fees and penalties due to the department under this chapter or other
410 law have been paid.

411
412 (d) Whether the foreign corporation’s most recent annual report required under s.
413 607.1622 has been filed by the department.

414
415 (e) Whether the department has:

416
417 1. Revoked the foreign corporation’s certificate of authority; or

418
419 2. Filed a notice of withdrawal of certificate of authority.

420

421 ~~(1) Anyone may apply to the department of State to furnish a certificate of status for a~~
422 ~~domestic corporation or a certificate of authorization for a foreign corporation.~~

423 ~~(2) A certificate of status or authorization sets forth:~~

424 ~~(a) The domestic corporation's corporate name or the foreign corporation's corporate~~
425 ~~name used in this state;~~

426
427 ~~(b) 1. That the domestic corporation is duly incorporated under the law of this state~~
428 ~~and the date of its incorporation, or~~

429
430 ~~2. That the foreign corporation is authorized to transact business in this state;~~

431
432 ~~(c) That all fees and penalties owed to the department have been paid, if:~~

433
434 ~~1. Payment is reflected in the records of the department, and~~

435 ~~2. Nonpayment affects the existence or authorization of the domestic or foreign~~
436 ~~corporation;~~

437 ~~(d) That its most recent annual report required by s. 607.1622 has been delivered to~~
438 ~~the department; and~~

439 ~~(e) That articles of dissolution have not been filed.~~

440 (3) Subject to any qualification stated in the certificate, a certificate of status ~~or authorization~~
441 issued by the department ~~is may be relied upon as~~ conclusive evidence that the domestic ~~or foreign~~
442 corporation is in existence and is of active status in this state or the foreign corporation is
443 authorized to transact business in this state and is of active status in this state.

444

445 **Commentary to Section 607.0128:**

446 This section of the FBCA harmonizes the language on this topic with s. 605.0211 of FRLCA on
447 the same topic.

448 The statute does not include subsection (2) of the corollary Model Act provision. In subsection
449 (2)(b)(1), the Model Act provides that the certificate of status will provide information as to
450 whether the corporation's existence is less than perpetual. The Model Act also adds an additional
451 subsection under (2) that allows "other facts of record in the office of the Secretary of State that
452 may be requested by the applicant". This does not seem necessary in Florida and would place an
453 undue burden on the Department of State.

454

455 Model Act s. 1.29 Penalty for Signing False Document.

456 This section, which provides for sanctions for signing a false document, was part of the FBCA as
457 adopted in 1989 (consistent with the predecessor Florida corporate statute). However, this section
458 was removed from the FBCA in 2005, effective January 1, 2006. The Subcommittee believes that
459 this section was removed from the FBCA in favor of the general statute that covers the same topic
460 (s. 817.155, FS).

461 Florida is one of only eleven jurisdictions (Arizona, District of Columbia, Louisiana, Minnesota,
462 Nevada, New Jersey, New Mexico, New York, North Carolina, and Pennsylvania) that do not have
463 a comparable section to Model Act Section 1.29 in their corporate statute.

464

465 607.0130 Powers of department of State.

466 The department has the authority reasonably necessary to administer this chapter
467 efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to carry
468 out its duties and functions under this chapter.

469 ~~(1) The department of State may propound to any corporation subject to the provisions
470 of this act, and to any officer or director thereof, such interrogatories as may be reasonably
471 necessary and proper to enable it to ascertain whether the corporation has complied with all
472 applicable provisions of this act. Such interrogatories must be answered within 30 days after
473 mailing or within such additional time as fixed by the department. Answers to interrogatories must
474 be full and complete, in writing, and under oath. Interrogatories directed to an individual must be
475 answered by the individual, and interrogatories directed to a corporation must be answered by the
476 president, vice president, secretary, or assistant secretary.~~

477 ~~—(2) The department of State is not required to file any document:~~

478 ~~—(a) To which interrogatories, as propounded pursuant to subsection (1), relate, until
479 the interrogatories are answered in full;~~

480 ~~—(b) When interrogatories or other relevant evidence discloses that such document is
481 not in conformity with the provisions of this Act; or~~

482 ~~(c) When the department has determined that the parties to such document have
483 not paid all fees, taxes, and penalties due and owing this state.~~

484 ~~(3) The department of State may, based upon its findings hereunder or as provided in s.
485 213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to
486 be due and owing the state and to compel any filing, qualification, or registration required by law.
487 In connection with such proceeding the department may, without prior approval by the court, file
488 a lis pendens against any property owned by the corporation and may further certify any findings
489 to the Department of Legal Affairs for the initiation of any action permitted pursuant to s. 607.0505
490 which the Department of Legal Affairs may deem appropriate.~~

491 ~~(4) The department of State shall have the power and authority reasonably necessary to
492 enable it to administer this chapter efficiently, to perform the duties herein imposed upon it, and
493 to promulgate reasonable rules necessary to carry out its duties and functions under this chapter.~~

494

495 **Commentary to Section 607.0130:**

496 This section harmonizes the FBCA with s. 605.0214 of FRLCA on the same topic.

497

498 607.01401 Definitions.

499 As used in this act, unless the context otherwise requires, the term:

500 (1) "Acquired eligible entity" means the domestic or foreign eligible entity that will have all
501 of one or more classes or series of its shares or eligible interests acquired in a share exchange.

502 (2) "Acquiring eligible entity" means the domestic or foreign eligible entity that will acquire
503 all of one or more classes or series of shares or eligible interests of the acquired eligible entity in
504 a share exchange.

505 (3) "Applicable county" means the county in this state in which the corporation's principal
506 office is located or was located at such time of such action; if the corporation has, and at the time
507 of such action had, no principal office in this state, then in the county in which the corporation has,
508 or at the time of such action had, an office in this state; or if none in this state, then in the county
509 in which the corporation's registered office is or was last located.

510 (14) "Articles of incorporation" includes original, amended and restated articles of
511 incorporation, articles of share exchange and articles of merger, and all amendments thereto. When
512 used with respect to a foreign corporation, the "articles of incorporation" means the document of
513 such entity that is equivalent to the articles of incorporation of a domestic corporation.

514 (5) "Authorized entity" means:

515 (a) A corporation for profit;

516 (b) A limited liability company;

517 (c) A limited liability partnership; or

518 (d) A limited partnership, including a limited liability limited partnership.

519 (26) "Authorized shares" means the shares of all classes a domestic or foreign corporation is
520 authorized to issue.

521 (7) "Beneficial shareholder" means a person who owns the beneficial interest in shares,
522 which may be a record shareholder or a person on whose behalf shares are registered in the name
523 of an intermediary or nominee.

524 (38) "Business day" means Monday through Friday, excluding any day a national banking
525 association is not open for normal business transactions.

526 (49) "Conspicuous" means so written, displayed or presented that a reasonable person against
527 whom the writing is to operate should have noticed it. For example, ~~printing~~ text in italics,
528 boldface, ~~or a~~ contrasting color, or capitals, or underlined text, is conspicuous.

529 (10) "Conversion" means a transaction pursuant to ss. 607.11930 through 607.11935.

530 (11) "Converted eligible entity" means the converting eligible entity as it continues in
531 existence after a conversion.

532 (12) "Converting eligible entity" means the domestic corporation that approves a plan of
533 conversion pursuant to s. 607.11932 or a foreign eligible entity that approves a conversion pursuant
534 to the organic law of the foreign eligible entity.

535 (513) "Corporation" or "domestic corporation" means a corporation for profit, which is not
536 a foreign corporation, incorporated under ~~or subject to the provisions of this act~~ chapter.

537 (614) "Day" means a calendar day.

538 (715) "Deliver" or "delivery" means any method of delivery used in conventional
539 commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in
540 accordance with s. 607.0141, by electronic transmission.

541 (16) "Department" means the Division of Corporations of the Florida Department of State.

542 (17) "Derivative proceeding" means a civil suit in the right of a domestic corporation or,
543 to the extent provided in s. 607.0747, in the right of a foreign corporation.

544 (818) "Distribution" means a direct or indirect transfer of money or other property (except
545 its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its
546 shareholders in respect of any of its shares. A distribution may be in the form of a declaration or
547 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of
548 indebtedness; a distribution in liquidation; or otherwise.

549 (19) "Document" means:

550 (a) Any tangible medium on which information is inscribed, and includes any writing
551 or written instrument, or

552 (b) An electronic record.

553 (20) "Domestic," with respect to an entity, means an entity governed as to its internal affairs
554 by the law of this state.

555 (21) "Domesticated corporation" means the domesticating corporation as it continues in
556 existence after a domestication.

557 (22) "Domesticating corporation" means the domestic corporation that approves a plan of
558 domestication pursuant to s. 607.11921 or the foreign corporation that approves a domestication
559 pursuant to the organic law of the foreign corporation.

560 (23) "Domestication" means a transaction pursuant to ss. 607.11920 through 607.11924.

561 (24) "Effective date," when referring to a document accepted for filing by the department,
562 means the date and time determined in accordance with s. 607.0123.

563 (25) "Electronic" means relating to technology having electrical, digital, magnetic,
564 wireless, optical, electromagnetic, or similar capabilities.

565 (26) "Electronic record" means information that is stored in an electronic or other medium
566 and is retrievable in paper form through an automated process used in conventional commercial
567 practice, unless otherwise authorized in accordance with s. 607.0141.

568 ~~(27)~~ "Electronic transmission" or "electronically transmitted" means any form or process
569 of communication not directly involving the physical transfer of paper or another tangible medium,
570 which:

571 (a) Is suitable for the retention, retrieval, and reproduction of information by the
572 recipient, and

573 (b) Is retrievable in paper form by the recipient through an automated process used
574 in conventional commercial practice, unless otherwise authorized in accordance with s.
575 607.0141.

576 For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term
577 includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions
578 through the Internet.

579 (28) "Eligible entity" means:

580 (a) A domestic corporation;

581 (b) A foreign corporation;

582 (c) A non-profit corporation;

583 (d) A general partnership, including a limited liability partnership;

584 (e) A limited partnership, including a limited liability limited partnership;

- 585 (f) A limited liability company;
586 (g) A real estate investment trust; or
587 (h) Any other foreign or domestic entity that is organized under an organic law.

588 "Eligible Entity" does not include:

- 589 (v) An individual;
590 (w) A trust with a predominantly donative purpose or a charitable trust;
591 (x) An association or relationship that is not a partnership solely by reason of s.
592 620.8202(2) or a similar provision of the law of another jurisdiction;
593 (y) A decedent's estate; or
594 (z) A government or a governmental subdivision, agency or instrumentality.

595 "Eligible Entities" means more than one eligible entity.

596 (29) "Eligible interests" means interests or memberships.

597 ~~(4030)~~ "Employee" includes an officer but not a director. A director may accept duties that
598 make him or her also an employee.

599 ~~(4131)~~ "Entity" includes corporation and foreign corporation; unincorporated association;
600 business trust, estate, limited liability company, partnership, trust, and two or more persons having
601 a joint or common economic interest; and state, United States, and foreign governments. Entities
602 means more than one entity.

603 (32) "Expenses" means reasonable expenses of any kind that are incurred in connection
604 with a matter.

605 (33) The phrase "facts objectively ascertainable" outside of a plan or filed document is defined
606 in s. 607.0120(11).

607 (34) "Filing entity" means an entity, other than a limited liability partnership, that is of a type
608 that is created by filing a public organic record or is required to file a public organic record that
609 evidences its creation.

610 (35) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by
611 the organic law of a jurisdiction other than this state.

612 (1236) "Foreign corporation" means an entity a corporation for profit incorporated or
613 organized under laws other than the laws a law other than the law of this state which would be a
614 corporation for profit if incorporated under the law of this state.

615 (37) "Foreign nonprofit corporation" means an entity incorporated or organized under a law
616 other than the law of this state that would be a nonprofit corporation if incorporated under the law
617 of this state.

618 (1338) "Governmental subdivision" includes authority, county, district, and municipality.

619 (39) "Governor" means:

620 (a) A director of a corporation for profit;

621 (b) A director or trustee of a nonprofit corporation;

622 (c) A general partner of a general partnership;

623 (d) A general partner of a limited partnership;

624 (e) A manager of a manager-managed limited liability company;

625 (f) A member of a member-managed limited liability company;

626 (g) A director or a trustee of a real estate investment trust; or

627 (h) Any other person under whose authority the powers of an entity are exercised and
628 under whose direction the activities and affairs of the entity are managed pursuant to the
629 organic law and organic rules of the entity.

630 (1440) "Includes" denotes a partial definition or a non-exclusive list.

631 (1541) "Individual" includes the estate of an incompetent or deceased individual.

632 (1642) "Insolvent" means either:

633 (a) The inability of a corporation to pay its debts as they become due in the usual
634 course of its business, or

635 (b) The value of the corporation's total assets would be less than the sum of its total
636 liabilities.

637 (43) "Interest" means:

638 (a) A share in a corporation for profit;

639 (b) A membership in a nonprofit corporation;

640 (c) A partnership interest in a general partnership, including a limited liability
641 partnership;

642 (d) A partnership interest in a limited partnership, including a limited liability limited
643 partnership;

644 (e) A membership interest in a limited liability company;

645 (f) A share or beneficial interest in a real estate investment trust;

646 (g) A member's interest in a limited cooperative association;

647 (h) A beneficial interest in a statutory trust, business trust, or common law business
648 trust; or

649 (i) A governance interest or distributional interest in another entity.

650 (44) "Interest holder" means:

651 (a) A shareholder of a corporation for profit;

652 (b) A member of a nonprofit corporation;

653 (c) A general partner of a general partnership;

654 (d) A general partner of a limited partnership;

655 (e) A limited partner of a limited partnership;

656 (f) A member of a limited liability company;

657 (g) A shareholder or beneficial owner of a real estate investment trust;

658 (h) A beneficiary or beneficial owner of a statutory trust, business trust, or common
659 law business trust; or

660 (i) Another direct holder of an interest.

661 (45) "Interest holder liability" means:

662 (a) Personal liability for a liability of an entity which is imposed on a person:

663 1. Solely by reason of the status of the person as an interest holder; or

664 2. By the organic rules of the entity which make one or more specified interest
665 holders or categories of interest holders liable in their capacity as interest holders for all
666 or specified liabilities of the entity.

667 (b) An obligation of an interest holder under the organic rules of an entity to contribute
668 to the entity.

669
670 (c) For purposes of this subsection (45), except as otherwise provided in the articles of
671 incorporation of a domestic corporation or the organic law or organic rules of an entity,
672 interest holder liability arises under subsection (a) when the corporation or entity, as
673 applicable, incurs the liability.

674
675 (46) "Jurisdiction of formation" means, with respect to an entity:

676
677 (a) The jurisdiction under whose organic law the entity is formed, incorporated, or created
678 or otherwise comes into being; however, for these purposes, if an entity exists under the law
679 of a jurisdiction different from the jurisdiction under which the entity originally was formed,
680 incorporated, or created or otherwise came into being, then the jurisdiction under which the
681 entity then exists is treated as the jurisdiction of formation; or

682
683 (b) In the case of a limited liability partnership or foreign limited liability partnership, the
684 jurisdiction in which the partnership's statement of qualification or equivalent document is
685 filed.

686
687 ~~(1747)~~ "Mail" means the United States mail, facsimile transmissions, and private mail
688 carriers handling nationwide mail services.

689 ~~(1848)~~ "Means" denotes an exhaustive definition.

690 (49) "Membership" means the rights of a member in a domestic or foreign nonprofit
691 corporation.

692 (50) "Merger" means a transaction pursuant to s. 607.1101.

693 (51) "New interest holder liability" means interest holder liability of a person, resulting from
694 a merger or share exchange that is:

695 (a) In respect of an eligible entity which is different from the eligible entity and not the
696 same eligible entity in which the person held shares or eligible interests immediately before
697 the merger or share exchange became effective; or

698 (b) In respect of the same eligible entity as the one in which the person held shares or
699 eligible interests immediately before the merger or share exchange became effective if:

700 1. The person did not have interest holder liability immediately before the merger
701 or share exchange became effective, or

702 2. The person had interest holder liability immediately before the merger or share
703 exchange became effective, the terms and conditions of which were changed when the
704 merger or share exchange became effective.

705 (52) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation
706 incorporated under the laws of this state and subject to the provisions of Chapter 617 of the Florida
707 Statutes.

708 (53) "Organic law" means the law of the jurisdiction in which the entity was formed.

709 (54) "Organic rules" means the public organic record and private organic rules of an entity.

710 (55) "Party to a merger" means any domestic or foreign entity that will merge under a plan of
711 merger, but does not include a survivor created by the merger.

712
713 ~~(4956)~~ "Person" includes an individual and an entity.

714 ~~(2057)~~ "Principal office" means the office (in or out of this state) where the principal
715 executive offices of a domestic or foreign corporation are located as designated in the articles of
716 incorporation or other initial filing until an annual report has been filed, and thereafter as
717 designated in the annual report.

718 (58) "Private organic rules" means the rules, whether or not in a record, which govern the
719 internal affairs of an entity, are binding on all its interest holders, and are not part of its public
720 organic record, if any. Where private organic rules have been amended or restated, the term means
721 the private organic rules as last amended or restated. The term includes:

722
723 (a) The bylaws of a corporation for profit;

724
725 (b) The bylaws of a nonprofit corporation;

726
727 (c) The partnership agreement of a general partnership;

728
729 (d) The partnership agreement of a limited partnership;

730
731 (e) The operating agreement, limited liability company agreement or similar agreement
732 of a limited liability company;

733
734 (f) The bylaws, trust instrument, or similar rules of a real estate investment trust; and

735
736 (g) The trust instrument of a statutory trust or similar rules of a business trust or common
737 law business trust.

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~~(2159)~~ "Proceeding" includes a civil suit, a criminal action, an administrative action, and an investigatory action.

(60) "Protected agreement" means:

(a) A record evidencing indebtedness and any related agreement in effect on _____, 20__ ;

(b) An agreement that is binding on an entity on _____, 20__ ;

(c) The organic rules of an entity in effect on _____ 20__ ; or

(d) An agreement that is binding on any of the governors or interest holders of an entity on _____, 20__.¹

(61) "Public organic record" means a record, the filing of which by a governmental body is required to form an entity, and an amendment to or restatement of that record. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated. The term includes the following:

(a) The articles of incorporation of a corporation for profit;

(b) The articles of incorporation of a nonprofit corporation;

(c) The certificate of limited partnership of a limited partnership;

(d) The articles of organization, certificate of organization, or certificate of formation of a limited liability company;

(e) The articles of incorporation of a general cooperative association or a limited cooperative association;

(f) The certificate of trust of a statutory trust or similar record of a business trust; or

(g) The articles of incorporation of a real estate investment trust.

¹ In all cases, the date to be inserted will be the effective date of the new act.

775 (62) "Record," if used as a noun, means information that is inscribed on a tangible
776 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

777 ~~(2263)~~ "Record date" means the date fixed for determining on which a corporation
778 determines the identity of the corporation's its shareholders and their share holdings for purposes
779 of this act chapter. Unless another time is specified when the record date is fixed, the The
780 determination shall be made as of the close of the business at the principal office of the corporation
781 on the date so on the record date unless another time is fixed.

782 (64) "Record shareholder" means:

783 (a) The person in whose name shares are registered in the records of the corporation; or

784 (b) The person identified as a beneficial owner of shares in the beneficial ownership
785 certificate pursuant to s. 607.0723 on file with the corporation to the extent of the rights
786 granted by such certificate.

787 ~~(2365)~~ "Secretary" means the corporate officer to whom the board of directors has delegated
788 responsibility under s. 607.08401 to maintain for custody of the minutes of the meetings of the
789 board of directors and of the shareholders and for authenticating records of the corporation.

790 (66) "Secretary of State" means the Secretary of State of the State of Florida.

791 ~~(2467)~~ "Shareholder" or "stockholder" means a record shareholder one who is a holder of
792 record of shares in a corporation or the beneficial owner of shares to the extent of the rights granted
793 by a nominee certificate on file with a corporation. If used in this chapter, the term "stockholder"
794 means a "shareholder."

795 ~~(2568)~~ "Shares" means the units into which the proprietary interests in a corporation are
796 divided.

797 (69) "Share exchange" means a transaction pursuant to s. 607.1102.

798 ~~(2670)~~ "Sign" or "signature" means, with present intent to authenticate or adopt a document:

799 (a) To execute or adopt a tangible symbol to a document, and includes any manual,
800 facsimile, or conformed signature; or

801 (b) To attach or to logically associate with an electronic transmission an electronic sound,
802 symbol, or process, and includes an electronic signature in an electronic transmission any
803 symbol, manual, facsimile, conformed, or electronic signature adopted by a person with the
804 intent to authenticate a document.

805 ~~(2771)~~ "State," when referring to a part of the United States, includes a state and
806 commonwealth (and their agencies and governmental subdivisions) and a territory and insular
807 possession (and their agencies and governmental subdivisions) of the United States.

808 ~~(2872)~~ "Subscriber" means a person who subscribes for shares in a corporation, whether
809 before or after incorporation.

810 (73) "Survivor" in a merger means the domestic or foreign eligible entity into which one or
811 more other eligible entities are merged.

812 ~~(2974)~~ "Treasury shares" means shares of a corporation that belong to the corporation,
813 which shares are authorized and issued shares that are not outstanding, are not canceled, and have
814 not been restored to the status of authorized but unissued shares.

815 (75) "Type of entity" means a generic form of entity:

816 (a) Recognized at common law; or

817 (b) Formed under an organic law, regardless of whether some entities formed under
818 that organic law are subject to provisions of that law that create different categories of the
819 form of entity.

820 ~~(3076)~~ "United States" includes district, authority, bureau, commission, department, and any
821 other agency of the United States.

822 (77) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder
823 rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in
824 question is not inconsistent with the voting trust agreement.

825 ~~(3178)~~ "Voting group" means all shares of one or more classes or series that under the
826 articles of incorporation or this ~~aet~~ chapter are entitled to vote and be counted together collectively
827 on a matter at ~~a~~ the meeting of shareholders. All shares entitled by the articles of incorporation or
828 this ~~aet~~ chapter to vote generally on the matter are for that purpose a single voting group.

829 (79) "Voting trust beneficial owner" means an owner of a beneficial interest in shares of
830 the corporation held in a voting trust established pursuant to s. 607.0730(1).

831 (80) "Writing" or "written" means any information in the form of a document.

832

833 **Commentary to Section 607.01401:**

834 The changes above reflect numerous changes that have been made in the Model Act since the last
835 revisions to this section in Florida.

836 The definitions in subsections (19), (25), (26) and (62) were added and the definitions in
837 subsections (15), (19), and (70) [new subsection numbering] relate to 2010 changes to the Model
838 Act to facilitate electronic transmission and e-signatures. Corresponding changes have been made
839 to Section 607.0120 and 607.0141.

840 The definition of "expenses" in subsection (32) adds a global definition of "expenses" for purposes
841 of the provisions in Articles 7, 8, 13, 14, and 16.

842 The definition of eligible entity (s. 607.01401(28)) is derived from the definition of entity in s.
843 605.0102(23) of FRLUCA. The definition of eligible entity also excludes certain categories of
844 persons and entities, based on what is in the corollary section of FRLUCA. For reference, s.
845 620.8202(3) deals with sharing of profits from a business where the profits are received in payment
846 (i) of a debt by installments or otherwise, (ii) for services as an independent contractor or of wages
847 or other compensation to an employee, (iii) of rent, (iv) of an annuity or other retirement benefit
848 to a beneficiary, representative, or designee of a deceased or retired partner, (v) of interest or other
849 charges on a loan, even if the amount of payment varies with the profits of the business, or (vi) for
850 the sale of the goodwill of a business or other property by installments or otherwise.

851 The Model Act and the existing statute include governmental entities as entities. Section
852 605.0102(23) of FRLUCA considers them non-entities. This statute following the definition in
853 FRLUCA and excludes governmental entities from the definition of eligible entity.

854 The definition of "applicable county" (s. 607.01401(1)) has been added to make clear where
855 actions can be brought by a corporation or against a corporation under certain circumstances.

856 The definition of "insolvent in subsection (42) has been modified to add a balance sheet test to
857 the definition. This makes the definition consistent with s. 607.06401 and s. 736.103 (Florida's
858 fraudulent transfer law).

859 A definition of "authorized entity" has been added to clarify that types of entities that may act as
860 the registered agent for a Florida corporation or for a foreign corporation authorized to transact
861 business in Florida.

862 The following definitions are derived from FRLUCA:

- 863 • The term "governor" is derived from s. 605.0102(28).
- 864 • The term "interest" is derived from s. 605.0102(29).
- 865 • The term "interest holder" is derived from s. 605.0102(32)

- 866 • The term "interest holder liability" is derived from s. 605.0102(32).
- 867 • The term "jurisdiction of formation" is derived from s. 605.0102(34).
- 868 • The term "organic law" is derived from s. 605.0102(46).
- 869 • The term "organic rules" is derived from s. 605.0102(47).
- 870 • The term "private organic rules" is derived from s. 605.0102(55).
- 871 • The term "protected agreement" is derived from s. 605.0102(57).
- 872 • The term "public organic record" is derived from 605.0102(58).
- 873 • The term "type of entity" is derived from s. 605.0102(68).

874 The following definitions are derived from s. 11.01 of the Model Act: (i) subsection (1) –
875 acquired entity; subsection (2) – acquiring entity; (iii) subsection (51) – new interest holder
876 liability; (iv) subsection (55) – party to a merger; and (iv) subsection (73) – survivor.

877 The following definitions are derived from s. 9.01 of the Model Act: (i) subsection (10) –
878 conversion; (ii) subsection (11) – converted entity; (iii) subsection (12) – converting entity; (iv)
879 subsection (20) – domestic; (v) subsection (21) – domesticated corporation; (vi) subsection (22)
880 – domesticating corporation; and (vii) subsection (23) – domestication.

881

882 607.0141 Notices and other communications.

883 (1) (a) Notice under this chapter ~~aet~~ must be in writing, unless oral notice is:

884 1. Expressly authorized by the articles of incorporation or the bylaws, and

885 2. Reasonable under the circumstances.

886 (b) Unless otherwise agreed between the sender and the recipient, words in a notice or
887 other communication under this chapter must be in English.

888 (c) Notice by electronic transmission is written notice.

889 (2) A notice or other communication may be given by any method of delivery including
890 voice mail (where oral notice is permitted), except that electronic transmissions must be in
891 accordance with this section. ~~Notice may be communicated in person; by telephone, voice mail~~
892 ~~(where oral notice is permitted), or other electronic means; or by mail or other method of delivery.~~

893 (3) (a) Written notice by a domestic or foreign corporation authorized to transact
894 business in this state to its shareholder, if in a comprehensible form, is effective:

895 1. Upon deposit into the United States mail, if mailed postpaid and correctly
896 addressed to the shareholder's address shown in the corporation's current record of
897 shareholders; or

898 2. When electronically transmitted to the shareholder in a manner authorized
899 by the shareholder.

900 (b) Unless otherwise provided in the articles of incorporation or bylaws, and
901 without limiting the manner by which notice otherwise may be given effectively to
902 shareholders, any notice to shareholders given by the corporation under any provision of
903 this chapter, the articles of incorporation, or the bylaws shall be effective if given by a
904 single written notice to shareholders who share an address if consented to by the
905 shareholders at that address to whom such notice is given. Any such consent shall be
906 revocable by a shareholder by written notice to the corporation, and if a written notice of
907 revocation is delivered to the corporation, the corporation shall begin providing
908 individual notices, reports and other statements to the revoking shareholder no later than
909 30 days after delivery of the written notice of revocation.

910 (c) Any shareholder who fails to object in writing to the corporation, within 60 days
911 after having been given written notice by the corporation of its intention to send the single
912 notice permitted under paragraph (b), shall be deemed to have consented to receiving
913 such single written notice.

914 ~~(d) This subsection shall not apply to s. 607.0620, s. 607.1402, or s. 607.1404.~~

915 (4) Written notice to a domestic corporation or to a foreign corporation authorized to
916 transact business in this state may be addressed:

917 (a) To its registered agent at its registered office; or

918 (b) To the corporation or its secretary at the corporation's ~~its~~ principal office or
919 electronic mail address as authorized and shown in its most recent annual report or, in the
920 case of a corporation that has not yet delivered an annual report, in a domestic
921 corporation's articles of incorporation or in a foreign corporation's application for
922 certificate of authority.

923 (5) Except as provided in subsection (3) or elsewhere in this ~~act~~ chapter, written notice, if
924 in a comprehensible form, is effective at the earliest date of the following:

925 (a) When received;

926 (b) Five days after its deposit in the United States mail, if mailed postpaid and
927 correctly addressed; or

928 (c) On the date shown on the return receipt, if sent by registered or certified mail,
929 return receipt requested, and the receipt is signed by or on behalf of the addressee; or

930 (d) When it enters an information processing system that the recipient has
931 designated or uses for the purposes of receiving electronic transmissions or information
932 of the type sent, and from which the recipient is able to retrieve the electronic
933 transmission, and it is in a form capable of being processed by that system.

934 ~~(6) Oral notice is effective when communicated if communicated directly to the person to~~
935 ~~be notified in a comprehensible manner. Except with respect to notice to directors by the~~
936 ~~corporation, notice or other communications may be delivered by electronic transmission if~~
937 ~~consented to by the recipient or if authorized by subsection (7). Notice or other communication to~~
938 ~~directors by the corporation may be delivered by electronic transmission if consented to by the~~
939 ~~recipient director; however, if the articles or bylaws require or authorize electronic transmission~~
940 ~~of notice or other communication to a director by the corporation, then no consent by the director~~
941 ~~recipient shall be required for the corporation to deliver notice or other communications to the~~
942 ~~director by electronic transmission.~~

943 (7) A notice or other communication may be in the form of an electronic transmission that
944 cannot be directly reproduced in paper form by the recipient through an automated process used
945 in conventional commercial practice only if (a) the electronic transmission is otherwise retrievable
946 in perceivable form, and (b) the sender and the recipient have consented in writing to the use of
947 such form of electronic transmission.

948 (8) Any consent under subsection (7) may be revoked by the person who consented by written
949 or electronic notice to the person to whom the consent was delivered. Any such consent is deemed
950 revoked if (1) the corporation is unable to deliver two consecutive electronic transmissions given
951 by the corporation in accordance with such consent, and (2) such inability becomes known to the
952 secretary or assistant secretary of the corporation or to the transfer agent, or other person
953 responsible for the giving of notice or other communications; provided, however, that the
954 inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other
955 action.

956 (9) Receipt of an electronic acknowledgement from an information processing system
957 described in subsection (5)(d) establishes that an electronic transmission was received, but, by
958 itself, does not establish that the content sent corresponds to the content received.

959 (10) An electronic transmission is received under this section even if no person is aware of its
960 receipt.

961 (11) Notice or other communication, if in a comprehensible form or manner, is effective at
962 the earliest of the following:

963 (a) Oral notice is effective when communicated if communicated directly to the
964 person to be notified in a comprehensive manner; or

965 (b) If an electronic transmission, when it is received as provided in subsection
966 (5)(d);

967 ~~(7)~~ (12) If this ~~act~~ chapter prescribes requirements for notices ~~notice requirements~~ or other
968 communications ~~for~~ in particular circumstances, those requirements govern. If articles of
969 incorporation or bylaws prescribe requirements for notices or other communications not less
970 stringent than the requirements of this section or other provisions of this chapter ~~act~~, those
971 requirements govern. The articles of incorporation or bylaws may authorize or require delivery of
972 notices of meetings of directors by electronic transmission.

973 (13) In the event that any provisions of this chapter are deemed to modify, limit, or supersede
974 the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.,
975 the provisions of this chapter shall control to the maximum extent permitted by section 102(a)(2) of
976 that federal act.

977 **Commentary to Section 607.0141:**

978 This adopts most of the changes made in the notice requirements in s. 1.41 of the Model Act,
979 although it moves the subsections around in a fashion consistent with the proposal by the
980 committee that reviewed Article 1 in 2011. These changes to the Model Act were initially
981 published in 2009 and were formally adopted in 2010. The Committee on Corporate Laws of the
982 ABA Section of Business Law stated that these changes were made to incorporate terms from the
983 Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National
984 Commerce Act (or the E-Sign act) into the Model Act. With the heavy growth of electronic
985 transmission (and a corresponding decline in mailed correspondence), a corresponding
986 modernization of the Florida Act is believed necessary.

987 The language in s. 1.41(b) of the Model Act, which allows notice to be given by means of a broad
988 non-exclusionary distribution to the public if the methods of delivery approved in this section are
989 impracticable, has not been adopted.

990 Subsection (6) adds a clarification that if the articles or bylaws provide for notice or other
991 communications to directors by electronic transmission, then no consent of the recipient director
992 shall be required for the corporation to provide notice or other communication to the recipient
993 director by electronic transmission.

994 The Model Act provision dealing with the topic of householding provisions is s. 1.44.
995 Householding provisions were added to subsection (3) of the FBCA in 2003. Since the language
996 in the current version of the FBCA is similar to the language in s. 1.44 of the Model Act, this
997 statute continues to include the householding provisions in s. 607.0141(3). The statute includes a
998 modification from the current version of s. 1.44 of the Model Act providing that if a shareholder
999 revokes its consent to householding, the corporation must begin sending notices to the revoking
1000 shareholder not later than 30 days after delivery of the revocation notice.

1001 Subsection (13) mirrors s. 1.41(i) of the Model Act. It implements E-Sign section 7002(a)(2),
1002 which exempts from the federal preemption provisions of E-Sign certain state laws that modify,
1003 limit or supersede E-Sign, and that also make specific reference to E-Sign.

1004

1005 Model Act s. 1.42 Number of Shareholders.

1006 Section 1.42 of the Model Act (Number of shareholders) has not been added to the FBCA.
1007 Commentary on the 1989 proposal stated that this section of the Model Act was not proposed
1008 because the subject matter was treated elsewhere in the FBCA.

1009

1010 607.0143 Qualified director.

1011 (1) A "qualified director" is a director who, at the time action is to be taken under:

1012 (a) s. 607.0744, does not have (i) a material interest in the outcome of the proceeding,
1013 or (ii) a material relationship with a person who has such an interest.

1014 (b) s. 607.0832, is not a director (i) as to whom the transaction is a director's conflict of
1015 interest transaction, or (ii) who has a material relationship with another director as to whom the
1016 transaction is a director's conflict of interest transaction; or

1017 (c) ss. 607.0853 or 607.0855, (i) is not a party to the proceeding, (ii) is not a director as
1018 to whom a transaction is a director's conflict of interest transaction, which transaction is
1019 challenged in the proceeding, and (iii) does not have a material relationship with a director
1020 who is disqualified by virtue of not meeting the requirements of either clause (i) or clause (ii)
1021 of this subsection (1)(c).

1022 (2) For purposes of this section:

1023 (a) "Material relationship" means a familial, financial, professional, employment or other
1024 relationship that would reasonably be expected to impair the objectivity of the director's
1025 judgment when participating in the action to be taken; and

1026 (b) "Material interest" means an actual or potential benefit or detriment (other than one
1027 which would devolve on the corporation or the shareholders generally) that would reasonably
1028 be expected to impair the objectivity of the director's judgment when participating in the
1029 action to be taken.

1030 (3) The presence of one or more of the following circumstances shall not automatically
1031 prevent a director from being a qualified director:

1032 (a) Nomination or election of the director to the current board by any director who is not
1033 a qualified director with respect to the matter (or by any person that has a material relationship
1034 with that director), acting alone or participating with others;

1035 (b) Service as a director of another corporation of which a director who is not a qualified
1036 director with respect to the matter (or any individual who has a material relationship with that
1037 director), is or was also a director; or

1038 (c) With respect to action to be taken under s. 607.0744, status as a named defendant, as
1039 a director against whom action is demanded, or as a director who approved the conduct being
1040 challenged.

1041 **Commentary to Section 607.0143:**

1042 This section is based on the definition contained in s. 1.43 of the Model Act. The term "qualified
1043 director" is used in the derivative action provisions of Article 7, and the director conflict of interest
1044 and indemnification provisions contained in Article 8.

1045 This definition is used in these statutes to make clear that only truly independent directors are
1046 making the decisions called for under those statutes.

1047

1048 Model Act s. 1.44 Householding.

1049

1050 Householding was added to the FBCA (in s. 607.0141(3)) in 2003. Section 607.0141(3) uses

1051 language very similar to the Model Act provision on this topic.

1052

1053 Subchapter E (Model Act ss. 1.45 – 1.52).

1054

1055 Subchapter E of the Model Act covers the topic of ratification of defective corporate acts. These
1056 provisions provide non-exclusive mechanisms to ratify defective corporate acts, which are
1057 corporate actions purportedly taken that were, at the respective times the actions were taken, within
1058 the power of the corporation, but were void or voidable due to a failure of authorization or
1059 constituted an overissue (a purported issuance of shares in excess of the number of shares of a
1060 class or series that the corporation has the power to issue at the time of such issuance or shares of
1061 any class or series that were not then authorized for issuance under the articles of incorporation).
1062 These Model Act provisions were published late last year in *The Business Lawyer* and, to the
1063 knowledge of the Subcommittee, these provisions have not yet been adopted into the corporate
1064 statute of any other state. The corollary provisions of the Delaware General Corporation Law (the
1065 "DGCL"), which are contained in ss. 204 and 205 of the DGCL, have been in place for several
1066 years, but continue to be the subject of debate and proposed modification in Delaware as the
1067 mechanics of using these provisions are tested.

1068 While the Subcommittee believes that this topic should be considered for addition in the FBCA at
1069 a future time, a decision has been made to defer consideration of these provisions to allow the law
1070 on this topic (both in Delaware and in other Model Act states) to further develop before provisions
1071 addressing this topic are considered for adoption in the FBCA. Any provisions addressing this
1072 topic will be considered either (i) later in the process of finalizing this statute, or (ii) at some future
1073 time as a legislative initiative separate from this proposal.

1074

ARTICLE 2

INCORPORATION

1075

1076

1077

1078 607.0201 Incorporators.

1079 One or more persons may act as the incorporator or incorporators of a corporation by
1080 delivering articles of incorporation to the ~~D~~epartment of ~~S~~tate for filing.

1081

1082 **Commentary to Section 607.0201:**

1083 No substantive changes have been made.

1084

1085

1086 607.0202 Articles of incorporation; content.

1087 (1) The articles of incorporation must set forth:

1088 (a) A corporate name for the corporation that satisfies the requirements of s.
1089 607.0401;

1090 (b) The street address of the initial principal office and, if different, the mailing
1091 address of the corporation;

1092 (c) The number of shares the corporation is authorized to issue;

1093 (d) ~~If any preemptive rights are to be granted to shareholders, the provision therefor;~~

1094 ~~(e) The street address of the corporation's initial registered office and the name of~~
1095 ~~its initial registered agent at that office together with a written acceptance as required in~~
1096 ~~s. 607.0501(3); and~~

1097 (f) The name and address of each incorporator.

1098 (2) The articles of incorporation may set forth:

1099 (a) The names and addresses of the individuals who are to serve as the initial
1100 directors;

1101 (b) Provisions not inconsistent with law regarding:

1102 1. The purpose or purposes for which the corporation is organized;

1103 2. Managing the business and regulating the affairs of the corporation;

1104 3. Defining, limiting, and regulating the powers of the corporation and its
1105 board of directors and shareholders;

1106 4. A par value for authorized shares or classes of shares;

1107 5. The imposition of personal liability on shareholders for the debts of the
1108 corporation to a specified extent and upon specified conditions; and

1109 6. Exclusive forum provisions, to the extent permitted by s. 607.0208.

1110 (c) If any preemptive rights are to be granted to shareholders, the provision therefor.

1111 (d) Any provision that under this chapter~~act~~ is required or permitted to be set forth
1112 in the bylaws.

1113 (3) The articles of incorporation need not set forth any of the corporate powers enumerated
1114 in this chapter aet.

1115 (4) Provisions of the articles of incorporation may be made dependent upon facts objectively
1116 ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

1117 (5) The articles of incorporation may not contain any provision that would impose liability
1118 on a shareholder for the attorneys' fees or expenses of the corporation or any other party in
1119 connection with an internal corporate claim, as defined in s. 607.0208(4) of this chapter.

1120

1121 **Commentary to Section 607.0202:**

1122 Cleanup changes have been made to subsections (1) and (2). New subsection (2)(b)6. expressly
1123 authorizes articles of incorporation that allow exclusive forum provisions to the extent permitted by
1124 s. 607.0208. Although the Subcommittee believes that this provision would already be permissible
1125 under the catch-all language in subsection (2)(d), a cross reference was added to confirm that such
1126 provisions are permissible under this section.

1127 New subsection (4) makes clear that articles of incorporation may be made dependent upon facts
1128 objectively ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

1129 New subsection (5) prohibits the inclusion in articles of incorporation of provisions that purport to
1130 impose liability upon a shareholder for the attorneys’ fees or expenses of the corporation or any
1131 other party in connection with an internal corporate claim, as defined in new section 607.0208(4).
1132 A similar provision has been added as new subsection (5) in s. 607.0206.

1133 Similar provisions were recently added to the DGCL following the decision of the Delaware
1134 Supreme Court in *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554 (Del. 2014), in which
1135 the Delaware Supreme Court upheld as facially valid a bylaw imposing liability for certain legal
1136 fees of the nonstock corporation on certain members who participated in the litigation. As a policy
1137 matter, the Subcommittee does not believe that such provisions are appropriate if unilaterally
1138 placed in articles or bylaws.

1139 At the same time, a new subsection has been added to subsection (1) of s. 607.0732 to make clear
1140 that this new subsection of s. 607.0202 is not intended to prevent the application of such fee
1141 shifting provisions pursuant to an agreement that is entered into in compliance with s. 607.0732.

1142

1143 607.0203 Incorporation.

1144 (1) Unless a delayed effective date is specified, the corporate existence begins when the
1145 articles of incorporation are filed or on a date specified in the articles of incorporation, if such date
1146 is within 5 business days prior to the date of filing.

1147 (2) The ~~D~~department's ~~of State's~~ filing of the articles of incorporation is conclusive proof
1148 that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by
1149 the state to cancel or revoke the incorporation or ~~involuntarily~~ administratively dissolve the
1150 corporation.

1151

1152 **Commentary to Section 607.0203:**

1153 No substantive changes have been made.

1154

1155 607.0204 Liability for preincorporation transactions.

1156 All persons purporting to act as or on behalf of a corporation, ~~having actual knowledge~~
1157 knowing that there was no incorporation under this chapter, are jointly and severally liable for all
1158 liabilities created while so acting ~~except for any liability to any person who also had actual~~
1159 ~~knowledge that there was no incorporation.~~

1160

1161 **Commentary to Section 607.0204:**

1162 Revisions are based on language changes in the current version of s. 2.04 of the Model Act.

1163

1164 607.0205 Organizational meeting of directors.

1165 (1) After incorporation:

1166 (a) If initial directors are named in the articles of incorporation, the initial directors shall
1167 hold an organizational meeting, at the call of a majority of the directors, to complete the
1168 organization of the corporation by appointing officers, adopting bylaws, and carrying on any
1169 other business brought before the meeting;

1170 (b) If initial directors are not named in the articles of incorporation, the incorporators
1171 shall hold an organizational meeting at the call of a majority of the incorporators:

1172 1. To elect directors and complete the organization of the corporation; or

1173 2. To elect a board of directors who shall complete the organization of the
1174 corporation.

1175 (2) Action required or permitted by this ~~chapter~~ act to be taken by incorporators or directors
1176 at an organizational meeting may be taken without a meeting if the action taken is evidenced by
1177 one or more written consents describing the action taken and signed by each incorporator or
1178 director.

1179 (3) The directors or incorporators calling the organizational meeting shall give at least ~~3~~ 2
1180 days' notice thereof to each director or incorporator so named, stating the time and place of the
1181 meeting.

1182 (4) An organizational meeting may be held in or out of this state.

1183

1184 **Commentary to Section 607.0205:**

1185 Subsection (3) is changed to specify 2 days’ notice rather than 3 days’ notice, to be consistent with
1186 s. 607.0822(2) of the FBCA and s. 108 of the DGCL.

1187

1188 607.0206 Bylaws.

1189 (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the
1190 corporation unless that power is reserved to the shareholders by the articles of incorporation.

1191 (2) The bylaws of a corporation may contain any provision ~~for managing the business and~~
1192 ~~regulating the affairs of the corporation~~ that is not inconsistent with law or the articles of
1193 incorporation, including the provisions described in subsections (3) and (4) below.

1194 (3) The bylaws of a corporation may contain one or both of the following provisions:

1195 (a) A requirement that if the corporation solicits proxies or consents with respect to an
1196 election of directors, the corporation include in its proxy statement and any form of its proxy
1197 or consent, to the extent and subject to such procedures or conditions as are provided in the
1198 bylaws, one or more individuals nominated by a shareholder in addition to individuals
1199 nominated by the board of directors; and

1200 (b) A requirement that the corporation reimburse the expenses incurred by a shareholder in
1201 soliciting proxies or consents in connection with an election of directors, to the extent and subject
1202 to such procedures and conditions as are provided in the bylaws, provided that no bylaw so
1203 adopted shall apply to elections for which any record date precedes its adoption.

1204 (4) The bylaws of a corporation may contain exclusive forum provisions to the extent
1205 permitted by s. 607.0208.

1206 (5) Notwithstanding s. 607.1020(1)(b), the shareholders in amending, repealing, or adopting
1207 a bylaw described in subsection (3) may not limit the authority of the board of directors to amend
1208 or repeal any condition or procedure set forth in or to add any procedure or condition to such a
1209 bylaw to provide for a reasonable, practical, and orderly process.

1210 (6) The bylaws may not contain any provision that would impose liability on a shareholder
1211 for the attorneys' fees or expenses of the corporation or any other party in connection with an
1212 internal corporate claim, as defined in s. 607.0208(4) of this chapter.

1213

1214 **Commentary to Section 607.0206:**

1215 The change to subsection (2) is to bring Chapter 607 into line with the Model Act. The Committee
1216 believes that the existing language in subsection (2) is intended to mean the same as the current
1217 language in the Model Act, allowing broad latitude as to what type of provisions can be contained
1218 in a corporation’s bylaws. This includes, for example, the ability to include an exclusive forum
1219 bylaw provision. The change is designed to bring the language in the Florida statute into line with
1220 the Model Act and thus avoid any potential of claim that the words "for managing the business
1221 and regulating the affairs of the corporation" were intended to be limiting. For completeness, a
1222 cross reference to subsections (3) and (4) has been added to this subsection.

1223 New subsection (3) expressly authorizes bylaws that require the corporation to include individuals
1224 nominated by shareholders for election as directors in its proxy statement and proxy cards (or
1225 consents) and that require the reimbursement by the corporation of expenses incurred by a
1226 shareholder in soliciting proxies (or consents) in an election of directors, in each case subject to such
1227 procedures or conditions as may be provided in the bylaws. Although the Subcommittee believes
1228 that this provision would already be permissible under subsection (2), because this provision is
1229 expressly in the DGCL and in the Model Act, the decision was made to add these confirming
1230 subsections to the FBCA.

1231 For completeness, new subsection (4) has been added to cross reference s. 607.0208 into this
1232 provision, which expressly authorizes bylaws that allow exclusive forum provisions to the extent
1233 permitted by that section.

1234 New subsection (6) prohibits the inclusion in bylaws of any provision that purports to impose
1235 liability upon a shareholder for the attorneys’ fees or expenses of the corporation or any other party
1236 in connection with an internal corporate claim, as defined in new section 607.0208(4). A similar
1237 provision has been added as new subsection (5) in s. 607.0202.

1238

1239 607.0207 Emergency bylaws.

1240 (1) Unless the articles of incorporation provide otherwise, the board of directors ~~of a~~
1241 ~~corporation~~ may adopt bylaws to be effective only in an emergency defined in subsection (5). The
1242 emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all
1243 provisions necessary for managing the corporation during an emergency, including:

1244 (a) Procedures for calling a meeting of the board of directors;

1245 (b) Quorum requirements for the meeting; and

1246 (c) Designation of additional or substitute directors.

1247 (2) The board of directors, either before or during any such emergency, may provide, and
1248 from time to time modify, lines of succession in the event that during such emergency any or all
1249 officers or agents of the corporation are for any reason rendered incapable of discharging their
1250 duties.

1251 (3) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain
1252 effective during the emergency. The emergency bylaws are not effective after the emergency ends.

1253 (4) Corporate action taken in good faith in accordance with the emergency bylaws:

1254 (a) Binds the corporation; and

1255 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1256 agent of the corporation.

1257 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~ board
1258 of directors cannot readily be assembled because of some catastrophic event.

1259

1260 **Commentary to Section 607.0207:**

1261 No substantive changes have been made.

1262

1263 607.0208 Forum selection provisions.

1264 (1) The articles of incorporation or the bylaws may require that any or all internal corporate
1265 claims shall be brought exclusively in any specified court or courts of this state and, if so specified,
1266 in any additional courts in this state or in any other jurisdictions with which the corporation has a
1267 reasonable relationship.

1268 (2) A provision of the articles of incorporation or bylaws adopted under subsection (1) shall
1269 not have the effect of conferring jurisdiction on any court or over any person or claim, and shall
1270 not apply if none of the courts specified by such provision has the requisite personal and subject
1271 matter jurisdiction. If the court or courts in this state specified in a provision adopted under
1272 subsection (1) do not have the requisite personal and subject matter jurisdiction and another court
1273 in this state does have such jurisdiction, then the internal corporate claim may be brought in such
1274 other court in this state, notwithstanding that such other court in this state is not specified in such
1275 provision, and in any other court specified in such provision that has the requisite jurisdiction.

1276 (3) No provision of the articles of incorporation or the bylaws may prohibit bringing an
1277 internal corporate claim in all courts in this state or require such claims to be determined by
1278 arbitration.

1279 (4) "Internal corporate claim" means, for the purposes of this section:

1280 (a) any claim that is based upon a violation of a duty under the laws of this state by a
1281 current or former director, officer, or shareholder in such capacity;

1282 (b) any derivative action or proceeding brought on behalf of the corporation;

1283 (c) any action asserting a claim arising pursuant to any provision of this chapter or the
1284 articles of incorporation or bylaws; or

1285 (d) any action asserting a claim governed by the internal affairs doctrine that is not
1286 included in subsections (a)-(c) above.

1287

1288 **Commentary to Section 607.0208:**

1289 New s. 607.0208 largely follows s. 2.08 of the Model Act. It authorizes a provision in either the
1290 articles of incorporation or the bylaws creating exclusive jurisdiction for internal corporate
1291 claims. Under section 607.0208(1), the provision to be valid must include all of the courts in this
1292 state or any specified court or courts of this state. The provision may also, but is not required to,
1293 include additional courts within this state (including federal courts) or in one or more additional
1294 jurisdictions with a reasonable relationship to the corporation.

1295 Although the Subcommittee believes that this type of provision is already permissible under existing
1296 s. 607.0206, because this provision is expressly set forth in the DGCL and in the Model Act, the
1297 decision was made to add this confirming section to the FBCA for clarity.

1298

1299 ARTICLE 3

1300 PURPOSES AND POWERS

1301

1302 607.0301 Purposes and application.

1303 ~~Corporations may be organized under this act for any lawful purpose or purposes,~~

1304 (1) Every corporation incorporated under this chapter has the purpose of engaging in any
1305 lawful business unless a more limited purpose is set forth in the articles of incorporation.

1306 (2) A corporation engaging in a business that is subject to regulation under another statute of
1307 this state may incorporate under this chapter only if permitted by, and subject to all limitations of,
1308 the other statute.

1309 (3) ~~and~~ The provisions of this chapter ~~act~~ extend to all corporations, whether chartered by
1310 special acts or general laws, except that special statutes for the regulation and control of types of
1311 business and corporations shall control when in conflict herewith.

1312

1313 **Commentary to Section 607.0301:**

1314 Although Florida's existing statute was very similar to the Model Act, it used different wording.
1315 Because the wording of the Model Act seemed clearer and more organized than the existing Florida
1316 statute, the existing language was replaced by the Model Act language in subsections (1) and (2).
1317 However, because the existing statute included language to the effect that Chapter 607 applied to
1318 corporations chartered by both special acts and general law, a decision was made to retain such
1319 language as subsection (3) to avoid an implication that such was not the case, even though there is
1320 possibly some overlap of coverage between subsections (2) and (3).

1321

1322 607.0302 General powers.

1323 Unless its articles of incorporation provide otherwise, every corporation has perpetual
1324 duration and succession in its corporate name and has the same powers as an individual to do all
1325 things necessary or convenient to carry out its business and affairs, including ~~without limitation~~
1326 power:

1327 (1) To sue and be sued, complain, and defend in its corporate name;

1328 (2) To have a corporate seal, which may be altered at will and to use it or a facsimile of it,
1329 by impressing or affixing it or in any other manner reproducing it;

1330 (3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
1331 otherwise deal with real or personal property or any legal or equitable interest in property wherever
1332 located;

1333 (4) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, and
1334 otherwise dispose of all or any part of its property;

1335 (5) To lend money to, and use its credit to assist, its officers and employees in accordance
1336 with s. 607.0833;

1337 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,
1338 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in,
1339 or obligations of, any other entity;

1340 (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds,
1341 and other securities and obligations (which may be convertible into or include the option to
1342 purchase other securities of the corporation), and secure any of its obligations by mortgage or
1343 pledge of any of its property, franchises, ~~and~~ or income and make contracts of guaranty and
1344 suretyship which are necessary or convenient to the conduct, promotion, or attainment of the
1345 business of a corporation the majority of the outstanding stock of which is owned, directly or
1346 indirectly, by the contracting corporation; a corporation which owns, directly or indirectly, a
1347 majority of the outstanding stock of the contracting corporation; or a corporation the majority of
1348 the outstanding stock of which is owned, directly or indirectly, by a corporation which owns,
1349 directly or indirectly, the majority of the outstanding stock of the contracting corporation, which
1350 contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct,
1351 promotion, or attainment of the business of the contracting corporation, and make other contracts
1352 of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or
1353 attainment of the business of the contracting corporation;

1354 (8) To lend money, invest and reinvest its funds, and receive and hold real and personal
1355 property as security for repayment;

1356 (9) To conduct its business, locate offices, and exercise the powers granted by this act within
1357 or without this state;

1358 (10) To elect directors and appoint officers, employees, and agents of the corporation and
1359 define their duties, fix their compensation, and lend them money and credit;

1360 (11) To make and amend bylaws, not inconsistent with its articles of incorporation or with
1361 the laws of this state, for managing the business and regulating the affairs of the corporation;

1362 (12) To make donations for the public welfare or for charitable, scientific, or educational
1363 purposes;

1364 (13) To transact any lawful business that will aid governmental policy;

1365 (14) To make payments or donations or do any other act not inconsistent with law that
1366 furthers the business and affairs of the corporation;

1367 (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share
1368 bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former
1369 directors, officers, employees, and agents and for any or all of the current or former directors,
1370 officers, employees, and agents of its subsidiaries;

1371 (16) To provide insurance for its benefit on the life of any of its directors, officers, or
1372 employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares
1373 of its stock owned by the shareholder or by the spouse or children of the shareholder; and

1374 (17) To be a promoter, incorporator, partner, member, associate, or manager of any
1375 corporation, partnership, joint venture, trust, or other entity.

1376

1377 **Commentary to Section 607.0302:**

1378 The FBCA and Model Act provisions are identical in most respects, but with certain additional
1379 items in Florida, many of which were based on pre-1989 Florida law and Delaware law. Those
1380 distinctions, principally in subsections (4), (5), (7), (15) and (16), were retained. Minor changes
1381 are also made to subsections (3) and (7) to match the language in the corollary sections of the
1382 Model Act, but without any intent to change the intended meaning.

1383

1384 607.0303 Emergency powers.

1385 (1) In anticipation of or during any emergency defined in subsection (5), the board of
1386 directors of a corporation may:

1387 (a) Modify lines of succession to accommodate the incapacity of any director,
1388 officer, employee, or agent; and

1389 (b) Relocate the principal office or designate alternative principal offices or
1390 regional offices or authorize the officers to do so.

1391 (2) During an emergency defined in subsection (5), unless emergency bylaws provide
1392 otherwise:

1393 (a) Notice of a meeting of the board of directors need be given only to those directors
1394 whom it is practicable to reach and may be given in any practicable manner, including by
1395 publication and radio;

1396 (b) One or more officers of the corporation present at a meeting of the board of
1397 directors may be deemed to be directors for the meeting, in order of rank and within the
1398 same rank in order of seniority, as necessary to achieve a quorum; and

1399 (c) The director or directors in attendance at a meeting, or any greater number affixed
1400 by the emergency bylaws, constitute a quorum.

1401 (3) Corporate action taken in good faith during an emergency under this section to further
1402 the ordinary business affairs of the corporation:

1403 (a) Binds the corporation; and

1404 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1405 agent of the corporation.

1406 (4) No officer, director, or employee acting in accordance with any emergency bylaws shall
1407 be liable except for willful or intentional misconduct.

1408 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~ board
1409 of directors cannot readily be assembled because of some catastrophic event.

1410 (6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the
1411 corporation shall remain in effect during any emergency, and upon termination of the emergency,
1412 the emergency bylaws will cease to be operative.

1413

1414 **Commentary to Section 607.0303:**

1415 Florida follows the Model Act for the most part, with certain differences in subsections (2)(c), (4)
1416 and (6).

1417

1418 607.0304 Lack of Power to Act ~~Ultra vires~~.

1419 (1) Except as provided in subsection (2), the validity of corporate action, including, but
1420 not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a
1421 corporation, may not be challenged on the ground that the corporation lacks or lacked power to
1422 act.

1423 (2) A corporation’s power to act may be challenged:

1424 (a) In a proceeding by a shareholder against the corporation to enjoin the act;

1425 (b) In a proceeding by the corporation, directly, derivatively, or through a receiver,
1426 trustee, or other legal representative, or through shareholders in a representative suit, against
1427 an incumbent or former director, officer, employee, or agent of the corporation; or

1428 (c) In a proceeding by the ~~Attorney General~~ the Department of Legal Affairs, (i) under
1429 s. 607.1430(1) or (ii) as provided in this act, to dissolve the corporation or in a proceeding by
1430 ~~the Attorney General~~ to enjoin the corporation from the transaction of unauthorized business.

1431 (3) In a shareholder’s proceeding under paragraph (2)(a) to enjoin an unauthorized corporate
1432 act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to
1433 the proceeding, and may award damages for loss (other than anticipated profits) suffered by the
1434 corporation or another party because of enjoining the unauthorized act.

1435

1436 **Commentary to Section 607.0304:**

1437 Except for minor differences, the Florida act mirrors the Model Act.

1438 The change in the title is not intended to be a change in the law or to change the meaning of this
1439 section. The change is merely to align the title with the title now used in the corollary Model Act
1440 provision.

1441 Subsection (2)(b) is amended to correct what appears to be an inadvertent omission of the word
1442 "directors".

1443 Subsection (2)(c) is amended (i) to reference the proper governmental agency (i.e., the Department
1444 of Legal Affairs, as opposed to the Attorney General) with power to bring the referenced actions,
1445 thus coordinating with the terminology in Section 607.1430, (ii) consistent with the language in
1446 the Model Act, to cross reference to the judicial dissolution provisions of Section 607.1430, and,
1447 (iii) to retain the right and power of the Department of Legal Affairs to pursue injunctive action so
1448 as to enjoin the corporation from the transaction of unauthorized business.

1449

1450 ARTICLE 4

1451 CORPORATE NAMES

1452
1453
1454
1455 607.0401 Corporate name.

1456 (1) A corporate name:

1457 (4a) Must contain the word "corporation," "company," or "incorporated" or the
1458 abbreviation "Corp.," or "Inc.," or "Co.," or the designation "Corp," or "Inc," or "Co.," as will
1459 clearly indicate that it is a corporation instead of a natural person, partnership, or other eligible
1460 ~~business~~ entity.

1461 (2b) May not contain language stating or implying that the corporation is organized for
1462 a purpose other than that permitted in this chapter ~~aet~~ and its articles of incorporation.

1463 (3c) May not contain language stating or implying that the corporation is connected
1464 with a state or federal government agency or a corporation or other entity chartered under the
1465 laws of the United States.

1466 (4d) Must be distinguishable from the names of all other entities or filings that are on
1467 file with the department ~~Division of Corporations~~, except fictitious name registrations
1468 pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited
1469 liability partnership statements pursuant to s. 620.9001 which are organized, registered, or
1470 reserved under the laws of this state. A name that is different from the name of another entity
1471 or filing due to any of the following is not considered distinguishable:

- 1472 1. A suffix.
- 1473 2. A definite or indefinite article.
- 1474 3. The word "and" and the symbol "&."
- 1475 4. The singular, plural, or possessive form of a word.

1476 ~~(e) A recognized abbreviation of a root word.~~

- 1477 5. A punctuation mark or a symbol.

1478 (e) Notwithstanding the foregoing, a corporation may register under a name that is not
1479 otherwise distinguishable on the records of the department with the written consent of the
1480 other entity if the consent is filed with the department at the time of registration of such name
1481 and if such name is not identical to the name of the other entity.

1482 (25) As filed with the ~~D~~department of State, is for public notice only and does not alone create
1483 any presumption of ownership beyond that which is created under the common law.

1484 (3) This chapter does not control the use of fictitious names.

1485

1486 **Commentary to Section 607.0401:**

1487 A new paragraph is added as subsection (1)(e). It permits, under certain circumstances, the use of
1488 names that are otherwise prohibited if appropriate consent in writing from the other entity is
1489 obtained and provided to the Department of State. The new paragraph mirrors the corollary
1490 language contained in s. 605.0112(1)(b) of FRLUCA, but corrects an errant use of the word
1491 "owner."

1492 Subsection (1)(e), consistent with s. 607.1506(5) with respect to foreign corporations, allows a
1493 name otherwise unavailable to be used by consent. The section also provides that the department
1494 shall deny such a request if the name of the entity requested with consent is identical to the name
1495 of the other entity.

1496

1497 607.0402 Reserved Name.

1498 (1) A person may reserve the exclusive use of a corporate name, including an alternate name
1499 for a foreign corporation whose corporate name is not available, by delivering an application to
1500 the department for filing. The application must set forth the name and address of the applicant and
1501 the name proposed to be reserved. If the department finds that the corporate name applied for is
1502 available, it shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day
1503 period.

1504 (2) The owner of a reserved corporate name may transfer the reservation to another person
1505 by delivering to the department a signed notice of the transfer that states the name and address of
1506 the transferee.

1507 (3) The department may revoke any reservation if, after a hearing, it finds that the application
1508 therefor or any transfer thereof was not made in good faith.

1509

1510 **Commentary to Section 607.0402:**

1511 Section 607.0402, which addresses the reservation of a corporate name, is newly adopted and is
1512 modeled after s. 4.02 of the Model Act. The Florida parallel statute was removed from the FBCA
1513 in 1998 (according to available commentary, because of then budgetary concerns affecting the
1514 Department of State). Florida is one of only three jurisdictions (along with Delaware and Puerto
1515 Rico) that does not allow for name reservations.

1516 Unlike the Model Act, but consistent with most jurisdictions that allow for name reservations, new
1517 s. 607.0402 includes in subsection (2) an express authorization for transfers of a reserved name.

1518

1519 607.0403 Registered name; application; renewal; revocation.

1520 (1) A foreign corporation may register its corporate name, or its corporate name with the
1521 ~~any~~ addition of any word or abbreviation required by s. 607.1506, if the name is distinguishable
1522 upon the records of the ~~D~~department of State from the corporate names that are not available under
1523 s. 607.0401(4).

1524 (2) A foreign corporation registers its corporate name, or its corporate name with any
1525 addition permitted ~~required~~ by s. 607.1506, by delivering to the ~~D~~department of State for filing an
1526 application:

1527 (a) Setting forth that its corporate name, or its corporate name with any addition
1528 ~~required by s. 607.1506~~, the state or country and date of its incorporation, and a brief
1529 description of the nature of the business which is to be conducted in this state in which it is
1530 ~~engaged~~; and

1531 (b) Accompanied by a certificate of existence, or a certificate setting forth that such
1532 corporation is in good standing under the laws of the state or country wherein it is organized
1533 (or a document of similar import), from the state or country of incorporation.

1534 (3) The name is registered for the applicant’s exclusive use upon the effective date of the
1535 application and shall be effective until the close of the calendar year in which the application for
1536 registration is filed.

1537 (4) A foreign corporation the registration of which is effective may renew it from year to
1538 year by annually filing a renewal application which complies with the requirements of subsection
1539 (2) between October 1 and December 31 of the preceding year. The renewal application when filed
1540 renews the registration for the following calendar year.

1541 (5) A foreign corporation the registration of which is effective may thereafter qualify as a
1542 foreign corporation under the registered name or consent in writing to the use of that name by a
1543 corporation thereafter incorporated under this chapter ~~act~~ or by another foreign corporation
1544 thereafter authorized to transact business in this state. The registration terminates when the
1545 domestic corporation is incorporated or the foreign corporation qualifies or consents to the
1546 qualification of another foreign corporation under the registered name.

1547 (6) The ~~D~~department of State may revoke any registration if, after a hearing, it finds that the
1548 application therefor or any renewal thereof was not made in good faith.

1549

1550 **Commentary to Section 607.0403:**

1551 No substantive changes have been made.

1552

1553 ARTICLE 5

1554 OFFICE AND AGENT

1555
1556 607.0501 Registered office and registered agent.

1557 (1) Each corporation shall ~~designate~~ have and continuously maintain in this state:

1558 (a) A registered office, which may be the same as its place of business in this state; and

1559 (b) A registered agent, which who may must be either:

1560 1. An individual who resides in this state whose business ~~address~~ office is identical
1561 to the address of the ~~with such~~ registered office; or

1562 2. Another domestic entity that is an authorized entity and whose business address
1563 is identical to the address of the registered office, or a foreign entity authorized to transact
1564 business in this state that is an authorized entity and whose business address is identical
1565 to the address of the registered office. ~~Another corporation or not for profit corporation~~
1566 ~~as defined in chapter 617, authorized to transact business or conduct its affairs in this~~
1567 ~~state, having a business office identical with the registered office; or~~

1568 3. ~~A foreign corporation or not for profit foreign corporation authorized pursuant~~
1569 ~~to this chapter or chapter 617 to transact business or conduct its affairs in this state, having~~
1570 ~~a business office identical with the registered office.~~

1571 (2) This section does not apply to corporations which are required by law to designate the
1572 Chief Financial Officer as their attorney for the service of process, associations subject to the
1573 provisions of chapter 665, and banks and trust companies subject to the provisions of the financial
1574 institutions codes.

1575 (3) Each initial A-registered agent, and each appointed pursuant to this section or a successor
1576 registered agent that is appointed, pursuant to s. 607.0502 on whom process may be served shall
1577 each file a statement in writing with the Department of State, in the such form and manner as
1578 shall be prescribed by the department, accepting the appointment as a-registered agent while
1579 simultaneously with his or her being designated as the registered agent. ~~The Such~~ statement of
1580 acceptance must provide shall state that the registered agent is familiar with, and accepts, the
1581 obligations of that position.

1582 (4) The duties of a registered agent are as follows:

1583 (a) To forward to the corporation at the address most recently supplied to the registered
1584 agent by the corporation, a process, notice or demand pertaining to the corporation which is
1585 served on or received by the registered agent;

1586 (b) If the registered agent resigns, to provide the notice required under s. 607.0503 to the
1587 corporation at the address most recently supplied to the registered agent by the corporation.

1588 (5) ~~The Department of State~~ shall maintain an accurate record of the registered agents and
1589 registered offices for ~~the~~ service of process and shall promptly furnish ~~any~~ information disclosed
1590 thereby ~~promptly~~ upon request and payment of the required fee.

1591 (6) A corporation may not prosecute or maintain any action in a court in this state until the
1592 corporation complies with the provisions of this section, pays to the department any amounts
1593 required under this chapter, and, to the extent ordered by a court of competent jurisdiction, pays to
1594 the department a penalty of \$5 for each day it has failed to so comply or \$500, whichever is less.

1595 (7) A court may stay a proceeding commenced by a corporation until the corporation
1596 complies with this section.

1597

1598 **Commentary to Section 607.0501:**

1599 The Florida statute contains the same elements as, but is significantly more expansive than the
1600 Model Act. The revisions to the statute are based on s. 605.0113 of FRLCA covering this same
1601 topic. Sections (2) through (6) of the Florida statute do not appear in the Model Act.

1602 The scope of the changes to subsection (6), which is modeled after the corresponding LLC
1603 statutory provision, has been modified to clarify that a domestic corporation cannot prosecute or
1604 maintain an action in this state unless it has complied with this section, but may defend an action
1605 in this state. This modification is also proposed to be made to s. 605.0113 for harmonization.
1606 Allowing a corporation to defend an action (even if the corporation is not in compliance with this
1607 provision) is consistent with the corollary Model Act provision and with s. 607.1502 relating to
1608 the consequences of transacting business in this state without authority.

1609 New subsection (6) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
1610 commenced by a corporation until the corporation complies with this section. The change in
1611 subsection (6) relating to payment of a penalty reflects the current position of the Department of
1612 State not to collect this penalty unless required to do so by a court of competent jurisdiction.

1613

1614 607.0502 Change of registered office or registered agent. ; ~~resignation of registered~~
1615 agent

1616 (1) In order to change its registered agent or registered office address, aA corporation may
1617 deliver to the department for filing ~~change its registered office or its registered agent upon filing~~
1618 with the Department of State a statement of change containing the following setting forth:

1619 (a) The name of the corporation.

1620 (b) The name of its current registered agent.

1621 (c) If the current registered agent is to be changed, the name of the new registered
1622 agent.

1623 (d) The street address of its current registered office for its current registered agent.

1624 (e) If the street address of the current registered office is to be changed, the new street
1625 address of the registered office in this state.

1626 ~~(b) — The street address of its current registered office;~~

1627 ~~(c) — If the current registered office is to be changed, the street address of the new~~
1628 ~~— registered office;~~

1629 ~~(d) — The name of its current registered agent;~~

1630 ~~(e) — If its current registered agent is to be changed, the name of the new — registered~~
1631 ~~agent and the new agent’s written consent (either on the statement or attached — to it) to the~~
1632 ~~appointment;~~

1633 ~~(f) — That the street address of its registered office and the street address of the~~
1634 ~~— business office of its registered agent, as changed, will be identical;~~

1635 ~~(fg) — That such change was authorized by resolution duly adopted by its board of~~
1636 ~~— directors or by an officer of the corporation so authorized by the board of directors.~~

1637 ~~(2) — Any registered agent may resign his or her agency appointment by signing and delivering~~
1638 ~~for filing with the Department of State a statement of resignation and mailing a copy of such~~
1639 ~~statement to the corporation at its principal office address shown in its most recent annual report~~
1640 ~~or, if none, filed in the articles of incorporation or other most recently filed document. The~~
1641 ~~statement of resignation shall state that a copy of such statement has been mailed to the corporation~~
1642 ~~at the address so stated. The agency is terminated as of the 31st day after the date on which the~~
1643 ~~statement was filed and unless otherwise provided in the statement, termination of the agency acts~~
1644 ~~as a termination of the registered office.~~

1645 (2) If the registered agent is changed, the written acceptance of the successor registered agent
1646 described in s. 607.0501(3) must also be included in or attached to the statement of change.

1647 (3) A statement of change is effective when filed by the department.

1648 (4) The changes described in this section may also be made on the corporation's annual
1649 report, in an application for reinstatement filed with the department under s. 607.1622, or in an
1650 amendment to or restatement of a company's articles of incorporation in accordance with ss.
1651 607.1006 or 607.1007.

1652 ~~(3) If a registered agent changes his or her business name or business address, he or she may~~
1653 ~~change such name or address and the address of the registered office of any corporation for which~~
1654 ~~he or she is the registered agent by:~~

1655 ~~(a) Notifying all such corporations in writing of the change ,~~

1656 ~~(b) Signing (either manually or in facsimile) and delivering to the Department of~~
1657 ~~State for filing a statement that substantially complies with the requirements of paragraphs~~
1658 ~~(1)(a) (f), setting forth the names of all such corporations represented by the registered~~
1659 ~~agent, and~~

1660 ~~(c) Reciting that each corporation has been notified of the change.~~

1661 ~~(4) Changes of the registered office or registered agent may be made by a change on the~~
1662 ~~corporation's annual report form filed with the Department of State.~~

1663 ~~(5) The Department of State shall collect a fee pursuant to s. 15.09(2) for the filings~~
1664 ~~authorized under this section.~~

1665

1666 **Commentary to Section 607.0502:**

1667 The Florida statute and Model Act statutes are very similar, although Florida's statute is more
1668 expansive. The language changes are largely derived from s. 605.0114 of FRLCA.

1669 Old subsection (2) has been replaced with new s. 607.0503 and subsection (3) has been replaced
1670 with new s. 607.05031. Both of these sections track the comparable provisions of FRLCA.

1671 A provision comparable to current subsection (1)(g) was not included in FRLCA and has been
1672 eliminated in this statute, even though it has been in the corporate statute since 1989.

1673

1674 607.0503 Resignation of registered agent.

1675 (1) A registered agent may resign as agent for a corporation by delivering to the department
1676 for filing a signed statement of resignation containing the name of the corporation.

1677 (2) After delivering the statement of resignation to the department for filing, the registered
1678 agent shall promptly mail a copy to the corporation at its current mailing address.

1679 (3) A registered agent is terminated upon the earlier of:

1680 (a) The 31st day after the department files the statement of resignation; or

1681 (b) When a statement of change or other record designating a new registered agent is
1682 filed by the department.

1683 (4) When a statement of resignation takes effect, the registered agent ceases to have
1684 responsibility for a matter thereafter tendered to it as agent for the corporation. The resignation
1685 does not affect contractual rights that the corporation has against the agent or that the agent has
1686 against the corporation.

1687 (5) A registered agent may resign from a corporation regardless of whether the corporation
1688 has active status.

1689

1690 **Commentary to Section 607.0503:**

1691 This section is derived from s. 605.0115 of FRLUCA. It replaces s. 607.0502(2). The
1692 corresponding section of the Model Act is s. 5.03.

1693

- 1694 607.05031 Change of name or address by registered agent.
- 1695 (1) If a registered agent changes his or her name or address, the agent may deliver to the
- 1696 department for filing a statement of change that provides the following:
- 1697 (a) The name of the corporation represented by the registered agent.
- 1698 (b) The name of the registered agent as currently shown in the records of the department
- 1699 for the corporation.
- 1700 (c) If the name of the registered agent has changed, its new name.
- 1701 (d) If the address of the registered agent has changed, the new address.
- 1702 (e) A statement that the registered agent has given the notice required under subsection
- 1703 (2).
- 1704 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 1705 changes made by the statement filed with the department to the represented corporation.
- 1706

1707 **Commentary to Section 607.05031:**

1708 This section is derived from s. 605.0116 of FRLCA. It replaces s. 607.0502(3).

1709

1710 607.05032 Delivery of notice or other communication.

1711 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
1712 or other communication includes delivery by hand, the United States Postal Service, a
1713 commercial delivery service, and electronic transmission, all as more particularly described in s.
1714 607.0141.

1715 (2) Except as provided in subsection (3), delivery to the department is effective only when
1716 a notice or other communication is received by the department.

1717 (3) If a check is mailed to the department for payment of an annual report fee or the annual
1718 supplemental fee required under s. 607.193, the check shall be deemed to have been received by
1719 the department as of the postmark date appearing on the envelope or package transmitting the
1720 check if the envelope or package is received by the department.

1721

1722 **Commentary to Section 607.05032:**

1723 This section is derived from s. 605.0118 of FRLUCA. It is new to the corporate statute.

1724

1725 607.0504 Service of process, notice, or demand on a corporation.

1726 (1) A corporation may be served with process required or authorized by law by serving on
1727 its registered agent.

1728 (2) If a corporation ceases to have a registered agent or if its registered agent cannot with
1729 reasonable diligence be served, the process required or permitted by law may instead be served on
1730 the chair of the board, the president, any vice president, the secretary, or the treasurer of the
1731 corporation at the principal office of the corporation in this state.

1732 (3) If the process cannot be served on a corporation pursuant to subsection (1) or subsection
1733 (2), the process may be served on the secretary of state as an agent of the corporation.

1734 (4) Service of process on the secretary of state may be made by delivering to and leaving
1735 with the department duplicate copies of the process.

1736 (5) Service is effectuated under subsection (3) on the date shown as received by the
1737 department.

1738 (6) The department shall keep a record of each process served on the secretary of state
1739 pursuant to this section and record the time of and the action taken regarding the service.

1740 (7) Any notice or demand on a corporation under this chapter may be given or made to the
1741 chair of the board, the president, any vice president, the secretary, or the treasurer of the
1742 corporation; to the registered agent of the corporation at the registered office of the corporation in
1743 this state; or to any other address in this state that is in fact the principal office of the corporation
1744 in this state.

1745 (8) This section does not affect the right to serve process, give notice, or make a demand in
1746 any other manner provided by law.

1747 ~~(1) Process against any corporation may be served in accordance with chapter 48 or chapter~~
1748 ~~49.~~

1749 ~~(2) Any notice to or demand on a corporation under this act may be made to the chair of the~~
1750 ~~board, the president, any vice president, the secretary, or the treasurer; to the registered agent of~~
1751 ~~the corporation at the registered office of the corporation in this state; or to any other address in~~
1752 ~~this state that is in fact the principal office of the corporation in this state.~~

1753 ~~(3) This section does not prescribe the only means, or necessarily the required means, of~~
1754 ~~servicing notice or demand on a corporation.~~

1755

1756 **Commentary to Section 607.0504:**

1757 This section is derived from s. 605.0117 of FRLCA, which establishes a "waterfall" approach to
1758 proper service on a limited liability company of any process, notice or demand. The provisions of
1759 this section as revised are also consistent with s. 504 of the Model Act.

1760 The one change made was to bifurcate between the statutory provisions relating to service of
1761 process and the provisions dealing with notices or demands on the corporation.

1762 Additionally, the Subcommittee believes that corollary changes should be made to s. 48.081 of the
1763 Florida Statutes dealing generally with service on a corporation so that it is consistent with this
1764 section. Those changes would read as follows:

1765 48.081 Service on corporation.

1766
1767 (1) Process against any private corporation, domestic or foreign, may be served:

1768
1769 (a) ~~On the president or vice president, or other head of the corporation;~~

1770
1771 (b) ~~In the absence of any person described in paragraph (a), on the cashier,~~
1772 ~~treasurer, secretary, or general manager;~~

1773
1774 (c) ~~In the absence of any person described in paragraph (a) or paragraph (b),~~
1775 ~~on any director; or~~

1776
1777 (d) ~~In the absence of any person described in paragraph (a), paragraph (b), or~~
1778 ~~paragraph (c), on any officer or business agent residing in the state.~~

1779
1780 on the registered agent designated by the corporation under chapter 607. A person
1781 attempting to serve process pursuant to this subsection may serve the process on any
1782 employee of the registered agent during the first attempt at service even if the registered
1783 agent is a natural person and is temporarily absent from his or her office.

1784
1785 (2) ~~If a foreign corporation has none of the foregoing officers or agents in this state,~~
1786 ~~service may be made on any agent transacting business for it in this state.~~

1787
1788 (3)(a) ~~As an alternative to all of the foregoing, process may be served on the agent~~
1789 ~~designated by the corporation under s. 48.091. However, if service cannot be made on a~~
1790 ~~registered agent because of failure to comply with s. 48.091, service of process shall be~~
1791 ~~permitted on any employee at the corporation's principal place of business or on any~~
1792 ~~employee of the registered agent. A person attempting to serve process pursuant to this~~
1793 ~~paragraph may serve the process on any employee of the registered agent during the first~~
1794 ~~attempt at service even if the registered agent is temporarily absent from his or her office.~~

1795
1796 (2) If service cannot be made on a registered agent of the corporation because of
1797 failure to comply with chapter 607 or because the corporation does not have a registered

1798 agent, or if its registered agent cannot with reasonable diligence be served, process against
1799 the corporation, domestic or foreign, may be served on the chair of the board, the president,
1800 any vice president, the secretary, or the treasurer at the principal office of the corporation
1801 in this state.

1802
1803 (3) If, after reasonable diligence, service of process cannot be served on a
1804 corporation pursuant to subsection (1) or subsection (2), the process may be served on the
1805 department as an agent of the company.

1806
1807 (4) If, after reasonable diligence, service of process cannot be completed under
1808 subsection (1) or subsection (2), service of process may be effected by service upon the
1809 secretary of state as agent of the corporation as provided for in s. 48.181.

1810
1811 (5) If the address provided for the registered agent or, officer, director, or principal
1812 place of business is a residence, a private mailbox, a virtual office, or an executive office
1813 or mini suite, service on the corporation may be made by serving the registered agent or ,
1814 officer, or director in accordance with s. 48.031.

1815
1816 (46) This section does not apply to service of process on insurance companies.

1817 (57) When a corporation engages in substantial and not isolated activities within this
1818 state, or has a business office within the state and is actually engaged in the transaction
1819 of business therefrom, service upon any officer or business agent while on corporate
1820 business within this state may personally be made, pursuant to this section, and it is not
1821 necessary in such case that the action, suit, or proceeding against the corporation shall
1822 have arisen out of any transaction or operation connected with or incidental to the
1823 business being transacted within the state.

1824 The Subcommittee has recommended to the Business Litigation Committee of the Section that a
1825 full review of Chapter 48 be undertaken to clean up and modernize that chapter, and as a result,
1826 the Subcommittee did not include this item in its proposal. In the view of the Subcommittee, this
1827 change should be considered as part of a comprehensive review of Chapter 48.

1828

1829 607.0505 Registered agent; duties.

1830 (1) (a) Each corporation, foreign corporation, or alien business organization that owns real
1831 property located in this state, that owns a mortgage on real property located in this state, or
1832 that transacts business in this state shall have and continuously maintain in this state a
1833 registered office and a registered agent and shall file with the ~~D~~department of ~~S~~State notice of
1834 the registered office and registered agent as provided in ss. 607.0501 and 607.0502. The
1835 appointment of a registered agent in compliance with s. 607.0501 or s. 607.1507 is sufficient
1836 for purposes of this section provided the registered agent so appointed files, in such form and
1837 manner as prescribed by the ~~D~~department of ~~S~~State, an acceptance of the obligations provided
1838 for in this section.

1839 (b) Each such corporation, foreign corporation, or alien business organization which
1840 fails to have and continuously maintain a registered office and a registered agent as required
1841 in this section will be liable to this state for \$500 for each year, or part of a year, during which
1842 the corporation, foreign corporation, or alien business organization fails to comply with these
1843 requirements; but such liability will be forgiven in full upon the compliance by the
1844 corporation, foreign corporation, or alien business organization with the requirements of this
1845 subsection, even if such compliance occurs after an action to collect such liability is instituted.
1846 The Department of Legal Affairs may file an action in the circuit court for the judicial circuit
1847 in which the corporation, foreign corporation, or alien business organization is found or
1848 transacts business, or in which real property belonging to the corporation, foreign corporation,
1849 or alien business organization is located, to petition the court for an order directing that a
1850 registered agent be appointed and that a registered office be designated, and to obtain
1851 judgment for the amount owed under this subsection. In connection with such proceeding, the
1852 Department of Legal Affairs may, without prior approval by the court, file a lis pendens
1853 against real property owned by the corporation, foreign corporation, or alien business
1854 organization, which lis pendens shall set forth the legal description of the real property and
1855 shall be filed in the public records of the county where the real property is located. If the lis
1856 pendens is filed in any county other than the county in which the action is pending, the lis
1857 pendens which is filed must be a certified copy of the original lis pendens. The failure to
1858 comply timely or fully with an order directing that a registered agent be appointed and that a
1859 registered office be designated will result in a civil penalty of not more than \$1,000 for each
1860 day of noncompliance. A judgment or an order of payment entered pursuant to this subsection
1861 will become a judgment lien against any real property owned by the corporation, foreign
1862 corporation, or alien business organization when a certified copy of the judgment or order is
1863 recorded as required by s. 55.10. The Department of Legal Affairs will be able to avail itself
1864 of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to
1865 further the collecting or obtaining of payment pursuant to a judgment or order of payment.
1866 The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment
1867 lien, any amount up to the amount of the judgment or lien obtained pursuant to this subsection.

1868 All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01-
1869 895.09 and used or distributed in accordance with the procedure set forth in s. 895.09. A
1870 corporation, foreign corporation, or alien business organization which fails to have and
1871 continuously maintain a registered office and a registered agent as required in this section may
1872 not defend itself against any action instituted by the Department of Legal Affairs or by any
1873 other agency of this state until the requirements of this subsection have been met.

1874 (2) Each corporation, foreign corporation, or alien business organization that owns real
1875 property located in this state, that owns a mortgage on real property located in this state, or that
1876 transacts business in this state shall, pursuant to subpoena served upon the registered agent of the
1877 corporation, foreign corporation, or alien business organization issued by the Department of Legal
1878 Affairs, produce, through its registered agent or through a designated representative within 30 days
1879 after service of the subpoena, testimony and records reflecting the following:

1880 (a) True copies of documents evidencing the legal existence of the entity, including the
1881 articles of incorporation and any amendments to the articles of incorporation or the legal
1882 equivalent of the articles of incorporation and such amendments.

1883 (b) The names and addresses of each current officer and director of the entity or persons
1884 holding equivalent positions.

1885 (c) The names and addresses of all prior officers and directors of the entity or persons
1886 holding equivalent positions, for a period not to exceed the 5 years previous to the date of
1887 issuance of the subpoena.

1888 (d) The names and addresses of each current shareholder, equivalent equitable owner,
1889 and ultimate equitable owner of the entity, the number of which names is limited to the names
1890 of the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in
1891 comparison to all other shareholders, equivalent equitable owners, or ultimate equitable
1892 owners, respectively, own the largest number of shares of stock of the corporation, foreign
1893 corporation, or alien business organization or the largest percentage of an equivalent form of
1894 equitable ownership of the corporation, foreign corporation, or alien business organization.

1895 (e) The names and addresses of all prior shareholders, equivalent equitable owners, and
1896 ultimate equitable owners of the entity for the 12-month period preceding the date of issuance
1897 of the subpoena, the number of which names is limited to the 100 shareholders, equivalent
1898 equitable owners, and ultimate equitable owners that, in comparison to all other shareholders,
1899 equivalent equitable owners, or ultimate equitable owners, respectively, own the largest
1900 number of shares of stock of the corporation, foreign corporation, or alien business
1901 organization or the largest percentage of an equivalent form of equitable ownership of the
1902 corporation, foreign corporation, or alien business organization.

1903 (f) The names and addresses of the person or persons who provided the records and
1904 information to the registered agent or designated representative of the entity.

1905 (g) The requirements of paragraphs (d) and (e) do not apply to:

1906 1. A financial institution;

1907 2. A corporation, foreign corporation, or alien business organization the
1908 securities of which are registered pursuant to s. 12 of the Securities Exchange Act of
1909 1934, 15 U.S.C. ss. 78a-78kk, if such corporation, foreign corporation, or alien
1910 business organization files with the United States Securities and Exchange
1911 Commission the reports required by s. 13 of that act; or

1912 3. A corporation, foreign corporation, or alien business organization, the
1913 securities of which are regularly traded on an established securities market located
1914 in the United States or on an established securities market located outside the United
1915 States, if such non-United States securities market is designated by rule adopted by
1916 the Department of Legal Affairs;

1917 upon a showing by the corporation, foreign corporation, or alien business
1918 organization that the exception in subparagraph 1., subparagraph 2., or subparagraph
1919 3. applies to the corporation, foreign corporation, or alien business organization.
1920 Such exception in subparagraph 1., subparagraph 2., or subparagraph 3. does not,
1921 however, exempt the corporation, foreign corporation, or alien business organization
1922 from the requirements for producing records, information, or testimony otherwise
1923 imposed under this section for any period of time when the requisite conditions for
1924 the exception did not exist.

1925 (3) The time limit for producing records and testimony may be extended for good cause
1926 shown by the corporation, foreign corporation, or alien business organization.

1927 (4) A person, corporation, foreign corporation, or alien business organization designating
1928 an attorney, accountant, or spouse as a registered agent or designated representative shall, with
1929 respect to this state or any agency or subdivision of this state, be deemed to have waived any
1930 privilege that might otherwise attach to communications with respect to the information required
1931 to be produced pursuant to subsection (2), which communications are among such corporation,
1932 foreign corporation, or alien business organization; the registered agent or designated
1933 representative of such corporation, foreign corporation, or alien business organization; and the
1934 beneficial owners of such corporation, foreign corporation, or alien business organization. The
1935 duty to comply with the provisions of this section will not be excused by virtue of any privilege or
1936 provision of law of this state or any other state or country, which privilege or provision authorizes

1937 or directs that the testimony or records required to be produced under subsection (2) are privileged
1938 or confidential or otherwise may not be disclosed.

1939 (5) If a corporation, foreign corporation, or alien business organization fails without lawful
1940 excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department
1941 of Legal Affairs may file an action in the circuit court for the judicial circuit in which the
1942 corporation, foreign corporation, or alien business organization is found or transacts business or in
1943 which real property belonging to the corporation, foreign corporation, or alien business
1944 organization is located, for an order compelling compliance with the subpoena. The failure without
1945 a lawful excuse to comply timely or fully with an order compelling compliance with the subpoena
1946 will result in a civil penalty of not more than \$1,000 for each day of noncompliance with the order.
1947 In connection with such proceeding, the Department of Legal Affairs ~~department~~ may, without
1948 prior approval by the court, file a lis pendens against real property owned by the corporation,
1949 foreign corporation, or alien business organization, which lis pendens shall set forth the legal
1950 description of the real property and shall be filed in the public records of the county where the real
1951 property is located. If the lis pendens is filed in any county other than the county in which the
1952 action is pending, the lis pendens which is filed must be a certified copy of the original lis pendens.
1953 A judgment or an order of payment entered pursuant to this subsection will become a judgment
1954 lien against any real property owned by the corporation, foreign corporation, or alien business
1955 organization when a certified copy of the judgment or order is recorded as required by s. 55.10.
1956 The Department of Legal Affairs ~~department~~ will be able to avail itself of, and is entitled to use,
1957 any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining
1958 of payment pursuant to a judgment or order of payment. The state, through the Attorney General,
1959 may bid, at any judicial sale to enforce its judgment lien, an amount up to the amount of the
1960 judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection
1961 shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with
1962 the procedure set forth in s. 895.09.

1963 (6) Information provided to, and records and transcriptions of testimony obtained by, the
1964 Department of Legal Affairs pursuant to this section are confidential and exempt from the
1965 provisions of s. 119.07(1) while the investigation is active. For purposes of this section, an
1966 investigation shall be considered "active" while such investigation is being conducted with a
1967 reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal
1968 proceeding. An investigation does not cease to be active so long as the Department of Legal Affairs
1969 ~~department~~ is proceeding with reasonable dispatch and there is a good faith belief that action may
1970 be initiated by the Department of Legal Affairs ~~department~~ or other administrative or law
1971 enforcement agency. Except for active criminal intelligence or criminal investigative information,
1972 as defined in s. 119.011, and information which, if disclosed, would reveal a trade secret, as defined
1973 in s. 688.002, or would jeopardize the safety of an individual, all information, records, and
1974 transcriptions become public record when the investigation is completed or ceases to be active.
1975 The Department of Legal Affairs ~~department~~ shall not disclose confidential information, records,

1976 or transcriptions of testimony except pursuant to the authorization by the Attorney General in any
1977 of the following circumstances:

1978 (a) To a law enforcement agency participating in or conducting a civil
1979 investigation under chapter 895, or participating in or conducting a criminal investigation.

1980 (b) In the course of filing, participating in, or conducting a judicial proceeding
1981 instituted pursuant to this section or chapter 895.

1982 (c) In the course of filing, participating in, or conducting a judicial proceeding
1983 to enforce an order or judgment entered pursuant to this section or chapter 895.

1984 (d) In the course of a criminal or civil proceeding.

1985 A person or law enforcement agency which receives any information, record, or
1986 transcription of testimony that has been made confidential by this subsection shall maintain the
1987 confidentiality of such material and shall not disclose such information, record, or transcription of
1988 testimony except as provided for herein. Any person who willfully discloses any information,
1989 record, or transcription of testimony that has been made confidential by this subsection, except as
1990 provided for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s.
1991 775.082 or s. 775.083. If any information, record, or testimony obtained pursuant to subsection (2)
1992 is offered in evidence in any judicial proceeding, the court may, in its discretion, seal that portion
1993 of the record to further the policies of confidentiality set forth herein.

1994 (7) This section is supplemental and shall not be construed to preclude or limit the scope of
1995 evidence gathering or other permissible discovery pursuant to any other subpoena or discovery
1996 method authorized by law or rule of procedure.

1997 (8) It is unlawful for any person, with respect to any record or testimony produced pursuant
1998 to a subpoena issued by the Department of Legal Affairs under subsection (2), to knowingly and
1999 willfully falsify, conceal, or cover up a material fact by a trick, scheme, or device; make any false,
2000 fictitious, or fraudulent statement or representation; or make or use any false writing or document
2001 knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.
2002 A person who violates this provision is guilty of a felony of the third degree, punishable as
2003 provided in s. 775.082, s. 775.083, or s. 775.084.

2004 (9) In the absence of a written agreement to the contrary, a registered agent is not liable for
2005 the failure to give notice of the receipt of a subpoena under subsection (2) to the corporation,
2006 foreign corporation, or alien business organization which appointed such registered agent if such
2007 registered agent timely sends written notice of the receipt of such subpoena by first-class mail or
2008 domestic or international air mail, postage fees prepaid, to the last address that has been designated

2009 in writing to the registered agent by such appointing corporation, foreign corporation, or alien
2010 business organization.

2011 (10) The designation of a registered agent and a registered office as required by subsection
2012 (1) for a corporation, foreign corporation, or alien business organization which owns real property
2013 in this state or a mortgage on real property in this state is solely for the purposes of this ~~act~~ chapter;
2014 and, notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any other relevant section of the
2015 Florida Statutes, such designation shall not be used in determining whether the corporation, foreign
2016 corporation, or alien business organization is actually doing business in this state.

2017 (11) As used in this section, the term:

2018 (a) "Alien business organization" means:

2019 1. Any corporation, association, partnership, trust, joint stock company, or
2020 other entity organized under any laws other than the laws of the United States, of
2021 any United States territory or possession, or of any state of the United States; or

2022 2. Any corporation, association, partnership, trust, joint stock company, or
2023 other entity or device 10 percent or more of which is owned or controlled, directly
2024 or indirectly, by an entity described in subparagraph 1. or by a foreign natural
2025 person.

2026 (b) "Financial institution" means:

2027 1. A bank, banking organization, or savings association, as defined in s.
2028 220.62;

2029 2. An insurance company, trust company, credit union, or industrial savings
2030 bank, any of which is licensed or regulated by an agency of the United States or
2031 any state of the United States; or

2032 3. Any person licensed under part III of chapter 494.

2033 (c) "Mortgage" means a mortgage on real property situated in this state, except a
2034 mortgage owned by a financial institution.

2035 (d) "Real property" means any real property situated in this state or any interest in
2036 such real property.

2037 (e) "Ultimate equitable owner" means a natural person who, directly or indirectly,
2038 owns or controls an ownership interest in a corporation, foreign corporation, or alien
2039 business organization, regardless of whether such natural person owns or controls such

2040 ownership interest through one or other natural persons or one or more proxies, powers
2041 of attorney, nominees, corporations, associations, partnerships, trusts, joint stock
2042 companies, or other entities or devices, or any combination thereof.

2043 (12) Any alien business organization may withdraw its registered agent designation by
2044 delivering an application for certificate of withdrawal to the ~~D~~department of ~~State~~ for filing. Such
2045 application shall set forth:

2046 (a) The name of the alien business organization and the jurisdiction under the law of
2047 which it is incorporated or organized.

2048 (b) That it is no longer required to maintain a registered agent in this state.

2049

2050 **Commentary to Section 607.0505:**

2051 This section is not included in the Model Act. It is unique to Florida and was adopted in 1984 as
2052 part of the Florida RICO Act. It was intended to provide law enforcement officials with additional
2053 powers to fight organized crime.

2054 This section expands the registered agent and registered office requirements to foreign
2055 corporations and other types of entities that are not required to qualify to do business in Florida
2056 under the FBCA if such foreign corporations or other entities are "alien business organizations" as
2057 defined in subsection 11(a) of the section. Thus, the reach of this section is much broader than the
2058 other provisions of the FBCA insofar as the section attempts to impose registered agent and
2059 registered office requirements on entities that otherwise would not be subject to the FBCA. This
2060 section imposes substantial reporting, notification, waiver of immunity and disclosure
2061 requirements on registered agents of corporations, both domestic and foreign, as well as alien
2062 business organizations, and it includes criminal penalties for non-compliance with its terms.

2063 Because of the broad language in Section 607.0505 of the FBCA, although these provisions are
2064 not contained in Florida's other entity statutes, these provisions are likely to apply to other types
2065 of Florida entities.

2066 Minor changes have been made to reflect the use of the defined term "Department" as reference to
2067 the "Department of State, Division of Corporations" and to reflect when the use of the term
2068 "department" in this section means the "Department of Legal Affairs."

2069 This section contains some elements similar to, but does not seem to be analogous to, the Model
2070 Registered Agent's Act (MRAA), which was first drafted in 2004 by NCCUSL in association with
2071 the ABA and the International Association of Commercial Administrators (IACA). To date,
2072 MRAA has been adopted in twelve jurisdictions: The District of Columbia, Hawaii, Idaho, Maine,
2073 Montana, North Dakota, South Dakota, Utah, Arkansas, Maine, Wyoming, and Nevada.

2074

ARTICLE 6

SHARES AND DISTRIBUTIONS

2075
2076
2077
2078

2079 607.0601 Authorized shares.

2080 (1) The articles of incorporation must set forth any ~~prescribe the~~ classes of shares and
2081 series of shares within a class, and the number of shares of each class and series, that the
2082 corporation is authorized to issue. If more than one class or series of shares is authorized, the
2083 articles of incorporation must prescribe a distinguishing designation for each class or series and
2084 before ~~prior to~~ the issuance of shares of a class or series, describe the terms, including the
2085 preferences, limitations, and relative rights, of that class or series ~~must be described in the articles~~
2086 ~~of incorporation~~. All shares of a class or series must have terms, including preferences, limitations,
2087 and relative rights, identical with those of other shares of the same class or series, except to the
2088 extent otherwise permitted by this section, or s. 607.0602 or s. 607.0624.

2089 (2) The articles of incorporation must authorize:

2090 (a) One or more classes or series of shares that together have unlimited voting rights,
2091 and

2092 (b) One or more classes or series of shares (which may be the same class or
2093 series or classes or series as those with voting rights) that together are entitled to receive
2094 the net assets of the corporation upon dissolution.

2095 (3) The articles of incorporation may authorize one or more classes or series of shares
2096 that:

2097 (a) Have special, conditional, or limited voting rights, or no right to vote, except to
2098 the extent otherwise provided ~~prohibited~~ by this chapter act;

2099 (b) Are redeemable or convertible as specified in the articles of incorporation:

2100 1. At the option of the corporation, the shareholder, or another person or upon
2101 the occurrence of a specified ~~designated~~ event;

2102 2. For cash, indebtedness, securities, or other property; or

2103 3. At prices and in an amount specified, or determined, in accordance with a
2104 formula ~~In a designated amount or in an amount determined in accordance with a~~
2105 ~~designated formula or by reference to extrinsic data or events;~~

2106 (c) Entitle the holders to distributions calculated in any manner, including dividends
2107 that may be cumulative, noncumulative, or partially cumulative;

2108 (d) Have preference over any other class or series of shares with respect to
2109 distributions, including ~~dividends and~~ distributions upon the dissolution of the corporation.

2110 (4) The description of the designations, preferences, limitations, and relative rights of
2111 share classes or series in subsection (3) is not exhaustive.

2112 (5) Terms of shares may be made dependent on facts ascertainable outside the articles
2113 of incorporation in accordance with s. 607.0120(11).

2114 (6) Shares which are entitled to preference in the distribution of dividends or assets shall
2115 not be designated as common shares. Shares which are not entitled to preference in the distribution
2116 of dividends or assets shall be common shares and shall not be designated as preferred shares.

2117

2118 **Commentary to Section 607.0601:**

2119 Clarifying changes are made in subsections (1) and (2) to add the concept of "series" to this section,
2120 consistent with the Model Act language. Since the FBCA already includes the concept of a "series"
2121 of shares, this change is viewed as non-substantive.

2122 The Model Act changes the word "unlimited" to "full" in the corollary Model Act provision to
2123 subsection (2). The commentary to this provision in the Model Act states that "the phrase "full
2124 voting rights" refers to the right to vote on all matters for which voting is required by either the
2125 Act or the corporation's articles of incorporation." The corollary Delaware provision, s. 151(a),
2126 also uses term "full" in this context. Nevertheless, because the Florida provision has been in place
2127 since 1989, has never been misinterpreted, and is believed to be substantively the same, the term
2128 "unlimited" has been retained.

2129 Subsection (3) of the Florida statute has been revised so that it is modeled after the better worded
2130 subsection (c) of the corollary applicable Model Act provision.

2131 Subsection (5) has been added to make clear, following the corollary Model Act section, that the
2132 terms of shares may be made dependent on facts ascertainable outside the articles of incorporation,
2133 so long as it is in accordance with s. 607.0120(11) dealing with this subject. However, the statute
2134 is revised to use the term "ascertainable" instead of the Model Act wording "objectively
2135 ascertainable." The corollary provision in the LLC statute (s. 605.1005), the corollary provision in
2136 RULLCA (s. 1005) and the corollary provision in the DGLC (s.102(d)), do not use the word
2137 "objectively." To harmonize the wording in FRLLCA and the FBCA, the word "ascertainable" is
2138 used in the revised statute, rather than the Model Act language ("objectively ascertainable").
2139 Notwithstanding, since reasonableness is generally required in interpreting a provision of this type,
2140 the words are believed to be substantively identical.

2141 Subsection (e) of Model Act s. 6.01, which provides that terms of shares may be varied among
2142 holders of the same class or series so long as such variations are expressly set forth in the articles
2143 of incorporation, has not been added to the statute. While the FBCA does allow limited variation
2144 in the terms of shares of the same class or series under s. 607.0624 with respect to rights, it
2145 historically has not been the general rule in Florida.

2146

2147 607.0602 Terms of class or series determined by board of directors.

2148 (1) If the articles of incorporation so provide, the board of directors ~~is authorized may~~
2149 ~~determine, in whole or in part, the preferences, limitations and relative rights (within the limits set~~
2150 ~~forth in s. 607.0601) of~~, without shareholder approval, to:

2151 (a) ~~classify any class of unissued shares before the issuance of any shares of that~~
2152 into one or more classes or into one or more series within a class; or

2153 (b) ~~one or more series within a class before the issuance of any shares of that series~~
2154 reclassify any unissued shares of any class into one or more classes or into one or more
2155 series within one or more classes; or

2156 (c) reclassify any unissued shares of any series of any class into one or more classes
2157 or into one or more series within a class.

2158 (2) If the board of directors acts pursuant to subsection (1), it shall determine the terms,
2159 including the preferences, limitations and relative rights, to the extent permitted under s. 607.0601,
2160 of:

2161 (a) Any class of shares before the issuance of any shares of that class, or

2162 (b) Any series within a class before the issuance of any shares of that series.

2163 (3) Each class and each series of a class must be given a distinguishing designation.

2164 (4) All shares of a series must have preferences, limitations, and relative rights identical
2165 with those of other shares of the same series and, except to the extent otherwise provided in the
2166 description of the series, of those of other series of the same class.

2167 (5) Before issuing any shares of a class or series created under this section, the
2168 corporation ~~shall must~~ deliver to the ~~D~~department of ~~S~~State for filing articles of amendment, which
2169 are effective without shareholder action, that set forth:

2170 (a) The name of the corporation;

2171 (b) The text of the amendment determining the terms of the class or series of shares;

2172 (c) The date the amendment was adopted; and

2173 (d) A statement that the amendment was duly adopted by the board of directors.

2174

2175 **Commentary to Section 607.0602:**

2176 The changes in this section are based on the 2003 changes to the Model Act. Although these
2177 changes are not considered to be substantive changes, the modern language is considered clearer
2178 and easier to understand.

2179 Subsection (5) has been in the FBCA since 1989 and includes substantively similar provisions to
2180 s. 607.1006 dealing generally with amendments to articles of incorporation. While there is some
2181 overlap between these sections, the statute retains this subsection in order that the provisions
2182 dealing with the required amendment to the articles of incorporation are easily found by users of
2183 this statute.

2184

2185 607.0603 Issued and outstanding shares.

2186 (1) A corporation may issue the number of shares of each class or series authorized by
2187 the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired,
2188 redeemed, converted, or canceled, except as provided in s. 607.0631.

2189 (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the
2190 limitations of subsection (3) and to s. 607.06401.

2191 (3) At all times that shares of the corporation are outstanding, one or more shares that
2192 together have unlimited voting rights and one or more shares that together are entitled to receive
2193 the net assets of the corporation upon dissolution must be outstanding.

2194

2195 **Commentary to Section 607.0603:**

2196 No changes have been made. Except for the reference to section 607.0631 at the end of subsection
2197 (1) dealing with treasury shares (which are not contemplated in the Model Act provision), this
2198 statute is identical to Section 6.03 of the Model Act.

2199

2200 607.0604 Fractional shares.

2201 (1) A corporation may:

2202 (a) Issue fractions of a share or, in lieu of doing so, pay in money the fair value of
2203 fractions of a share;

2204 (b) Make arrangements, or provide reasonable opportunity, for any person entitled
2205 to or holding a fractional interest in a share to sell such fractional interest or to purchase
2206 such additional fractional interests as may be necessary to acquire a full share;

2207 (c) Issue scrip in registered or bearer form, over the manual or facsimile signature
2208 of an officer of the corporation or its agent, entitling the holder to receive a full share
2209 upon surrendering enough scrip to equal a full share.

2210 (2) The board of directors may authorize the issuance of scrip subject to any condition
2211 ~~considered desirable~~, including that:

2212 (a) ~~That~~ The scrip will become void if not exchanged for full shares before a
2213 specified date; and

2214 (b) ~~That~~ The shares for which the scrip is exchangeable may be sold and the
2215 proceeds paid to the scrip holders.

2216 (3) Each certificate representing scrip must be conspicuously labeled "scrip" and must
2217 contain the information required by s. 607.0625.

2218 (4) The holder of a fractional share is entitled to exercise the rights of a shareholder,
2219 including the rights to vote, to receive dividends, and to receive distributions upon dissolution
2220 ~~participate in the assets of the corporation upon liquidation~~. The holder of scrip is not entitled to
2221 any of these rights unless the scrip provides for them.

2222 (5) ~~When a corporation is to pay in money the value of fractions of a share, the good~~
2223 ~~faith judgment of the board of directors as to the fair value shall be conclusive.~~

2224

2225 **Commentary to Section 607.0604:**

2226 Subsection (1)(b) differs from Section (a)(2) of the Model Act in that the Model Act provision
2227 only allows for the disposition of scrip. The current Florida statute allows for the purchase or sale
2228 of fractional interests. The broader language in the current Florida statute has been retained.

2229 Subsection (1)(c), which requires that scrip be in registered or bearer form "over the manual or
2230 facsimile signature of an officer of the corporation or its agent" is not Model Act language.
2231 However, it has been in the FBCA since 1989 and therefore has been retained.

2232 Subsection (5), which is not in the corollary section of the Model Act, has been eliminated. The
2233 board of directors of a corporation has fiduciary duties with respect to the valuation of fractional
2234 shares, and it is believed that those duties provide sufficient discretion to the board in making this
2235 determination. Further, there is a concern that the term "conclusive" as had been used in this section
2236 could have been deemed to inappropriately eliminate fiduciary duties under these circumstances
2237 or eliminate judicial oversight of this decision. Further, in the context of appraisal rights, no such
2238 conclusive presumption exists. As a result, it was decided to remove the conclusive presumption
2239 from this section of the statute.

2240

2241 607.0620 Subscriptions for shares.

2242 (1) A subscription for shares entered into before incorporation is irrevocable for 6 months
2243 unless the subscription agreement provides a longer or shorter period or all the subscribers agree
2244 to revocation.

2245 (2) A subscription for shares, whether made before or after incorporation, is not enforceable
2246 against the subscriber unless in writing and signed by the subscriber.

2247 (3) The board of directors may determine the payment terms of subscriptions for shares that
2248 were entered into before incorporation, unless the subscription agreement specifies them. A call
2249 for payment by the board of directors must be uniform as to all shares of the same class or series,
2250 unless the subscription agreement specifies otherwise.

2251 (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid
2252 and nonassessable when the corporation receives the consideration specified in the subscription
2253 agreement.

2254 (5) If a subscriber defaults in payment of money or property under a subscription agreement
2255 entered into before incorporation, the corporation may collect the amount owed as any other debt.
2256 Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind
2257 the agreement and may sell the shares if the debt remains unpaid more than 20 days after the
2258 corporation delivers ~~sends~~ written demand for payment to the subscriber. ~~If mailed, such written~~
2259 ~~demand shall be deemed to be made when deposited in the United States mail in a sealed envelope~~
2260 ~~addressed to the subscriber at his or her last post office address known to the corporation, with~~
2261 ~~first class postage thereon prepaid. If the subscription agreement is rescinded and the shares sold,~~
2262 then notwithstanding the rescission, the defaulting subscriber or his or her legal representative
2263 shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and
2264 unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no
2265 event shall the defaulting subscriber or his or her legal representative be entitled to be paid an
2266 amount greater than the amount paid by the subscriber on the subscription.

2267 (6) A subscription agreement entered into after incorporation is also subject to s. 607.0621.

2268

2269 **Commentary to Section 607.0620:**

2270 The title to s. 6.20 of the Model Act adds the words "before incorporation" at the end of the title.
 2271 However, because subsection (2) and new proposed subsection (6) deal with subscriptions after
 2272 incorporation, the title to this section was not changed.

2273 Subsections (1) and (4) of the Florida statute are identical to Subsections (a) and (c) respectively,
 2274 of s. 6.20 of the Model Act. Subsection (2) of the Florida statute puts Florida in a minority of states
 2275 that require a subscription to be in writing. The Model Act does not require that subscriptions be
 2276 in writing to be enforceable. However, when the FBCA was adopted in 1989, the drafters elected
 2277 to leave this requirement in subsection (2) based on existing Florida law, and the statute retains
 2278 that concept in the FBCA. Notwithstanding, this provision has been clarified to make clear that it
 2279 only deals with the requirement that a subscription be in writing to be enforceable against the
 2280 subscriber. This is consistent with case law in Florida and is not intended to apply to cases where
 2281 a subscriber is seeking to enforce an oral subscription against the corporation.

2282 Subsection (3) of Florida's statute and Subsection (b) of the Model Act are substantially similar.
 2283 However, Florida's statute requires that the call for payment by the board of directors "must be
 2284 uniform as to all shares of that same class or series", while subsection (b) of the Model Act requires
 2285 that the call for payment be uniform so far as practicable. While the "so far as practicable" language
 2286 is used in approximately 30 jurisdictions, including the vast majority of Model Act jurisdictions,
 2287 when the FBCA was adopted in 1989, the drafters stated that the provision was not included in
 2288 order to incorporate the stricter requirement in the existing Florida law that the call be uniform
 2289 without modification, with the view that this prevents favoritism or unfair treatment among
 2290 subscribers. Therefore, the existing Florida language has been retained.

2291 Subsection (5) of the Florida statute and subsection (d) of the Model Act are similar, in that the
 2292 first two sentences of the Florida Act are identical to subsection (d) of the Model Act. The last two
 2293 sentences were added in 1989. The sentence dealing with mailing of the demand has been removed
 2294 because it is already stated in s. 607.0141. The second sentence, however, dealing with repayment
 2295 to the delinquent subscriber of any amounts paid if there are excess sale proceeds over the sum of
 2296 the amount due plus expenses (which was intended to prevent the corporation from having a
 2297 windfall gain if it is able to resell the shares without loss) and limiting what the defaulting
 2298 subscriber can receive to what they paid on their subscription (which was intended to prevent the
 2299 defaulting subscriber from having a windfall if the shares are resold at a higher price) has been
 2300 retained.

2301 For completeness, new subsection (6) has been added to clarify that post-incorporation
 2302 subscriptions are also subject to the requirements of s. 607.0621.

2303 607.0621 Issuance of shares.

2304 (1) The powers granted in this section to the board of directors may be reserved to the
2305 shareholders by the articles of incorporation.

2306 (2) The board of directors may authorize shares to be issued for consideration consisting of
2307 any tangible or intangible property or benefit to the corporation, including cash, promissory notes,
2308 services performed, promises to perform services evidenced by a written contract, or other
2309 securities of the corporation.

2310 (3) Before the corporation issues shares, the board of directors shall ~~must~~ determine that the
2311 consideration received or to be received for shares to be issued is adequate. That determination by
2312 the board of directors is conclusive insofar as the adequacy of consideration for the issuance of
2313 shares relates to whether the shares are validly issued, fully paid, and nonassessable. When it
2314 cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a
2315 conclusive presumption that such shares are fully paid and nonassessable if the board of directors
2316 makes a good faith determination that there is no substantial evidence that the full consideration
2317 for such shares has not been paid.

2318 (4) When the corporation receives the consideration for which the board of directors
2319 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
2320 Consideration in the form of a promise to pay money or a promise to perform services is received
2321 by the corporation at the time of the making of the promise, unless the agreement specifically
2322 provides otherwise.

2323 (5) The corporation may place in escrow shares issued for a contract for future services or
2324 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and
2325 may credit distributions in respect of the shares against their purchase price, until the services are
2326 performed, the note is paid, or the benefits received. If the services are not performed, the note is
2327 not paid or the benefits are not received, the shares escrowed or restricted and the distributions
2328 credited may be canceled in whole or part.

2329

2330 **Commentary to Section 607.0621:**

2331 Subsection (2) retains the existing Florida wording using the words "promises to perform services
2332 evidenced by a written contract" instead of the words "contracts for services to be performed"
2333 contained in s. 6.21(b) of the Model Act. The commentary to the 1989 Act, which proposed the
2334 current statutory language, stated as a rationale that requiring a written contract avoids differing
2335 recollections and can be more protective of the interests of the parties and the other shareholders.

2336 The last sentence of subsection (3), adding a conclusive presumption that shares are fully paid and
2337 nonassessable where the board of directors makes a good faith determination that there is no
2338 substantial evidence that the full consideration for such shares has not been paid, has been retained.
2339 The commentary to the 1989 Act stated that this provision was modeled after a similar provision
2340 contained in the Virginia corporate statute (s. 13.1-643.E.) and that this good faith determination
2341 is important, for example, for opinion letters of counsel, which rely on the board of directors' good
2342 faith determination.

2343 The last sentence of subsection (4) continues to include a provision that is peculiar to the Florida
2344 Statute clarifying that consideration in the form of a promise to pay money or a promise to perform
2345 services is received at the time of the making of the promise, unless the agreement specifically
2346 provides otherwise. The commentary to the 1989 Act states that this language was added to avoid
2347 the concern that the Model Act arguably creates confusion as to when consideration is received
2348 when it is in the form of promises for future payments or services.

2349 A non-substantive clarifying change is included in subsection (5).

2350 Subsection (f) of s. 6.21 of the Model Act, which requires shareholder approval of share issuances
2351 of more than 20% of the voting power outstanding immediately before the issuance, has not been
2352 added to the statute.

2353

2354 607.0622 Liability for shares issued before payment.

2355 (1) A holder of, or subscriber to, shares of a corporation shall be under no obligation to the
2356 corporation or its creditors with respect to such shares other than the obligation to pay to the
2357 corporation the full consideration for which such shares were issued or to be issued. Such an
2358 obligation may be enforced by the corporation and its successors or assigns; by a shareholder suing
2359 derivatively on behalf of the corporation; by a receiver, liquidator, or trustee in bankruptcy of the
2360 corporation; or by another person having the legal right to marshal the assets of such corporation.

2361 (2) Any person becoming an assignee or transferee of shares, or of a subscription for shares,
2362 in good faith and without knowledge or notice that the full consideration therefor has not been paid
2363 shall not be personally liable to the corporation or its creditors for any unpaid portion of such
2364 consideration, but the assignor or transferor shall continue to be liable therefor.

2365 (3) No pledgee or other holder of shares as collateral security shall be personally liable as a
2366 shareholder, but the pledgor or other person transferring such shares as collateral shall be
2367 considered the holder thereof for purposes of liability under this section.

2368 (4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of
2369 creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder
2370 of, or subscriber to, shares of a corporation, but the estate and funds in her or his hands shall be so
2371 liable.

2372 (5) No liability under this section may be asserted more than 5 years after the earlier of:

2373 (a) The issuance of the stock, or

2374 (b) The date of the subscription upon which the assessment is sought.

2375

2376 **Commentary to Section 607.0622:**

2377 No changes have been made to this section of the FBCA.

2378 Section 607.0622 of the FBCA does not follow the corollary section of the Model Act. Current s.
2379 607.0622 is based on the pre-1989 Florida statute, which appears to have been based on earlier
2380 versions of the Model Act. The 1989 committee determined to include subsections (2), (3) and (4)
2381 in the corporate statute so that they were part of the corporate statute, despite, as pointed out in the
2382 Model Act commentary, these provisions are otherwise covered in Article 8 of the UCC.

2383 The 1989 committee, with respect to subsection (b) of s. 6.22 of the Model Act, decided not to
2384 adopt the provision because of a belief that it is unnecessary to confirm the limited liability
2385 concept. They were also concerned whether the "own acts or conduct" language was troublesome
2386 in its ambiguity.

2387 Subsection (5) was added to the FBCA in 1989 and is retained in the statute. It provides a five year
2388 statute of limitations for claims under this statute and is generally patterned after s. 162(e) of the
2389 DGCL.

2390

2391 607.0623 Share dividends.

2392 (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and
2393 without consideration to the corporation’s shareholders or to the shareholders of one or more
2394 classes or series of shares. An issuance of shares under this subsection is a share dividend.

2395 (2) Shares of one class or series may not be issued as a share dividend in respect of shares of
2396 another class or series unless:

2397 (a) The articles of incorporation so authorize,

2398 (b) A majority of the votes entitled to be cast by the class or series to be issued
2399 approves the issue, or

2400 (c) There are no outstanding shares of the class or series to be issued.

2401 (3) The board of directors may fix the record date for determining shareholders entitled to a
2402 share dividend, which date may not be retroactive. If the board of directors does not fix the record
2403 date for determining shareholders entitled to a share dividend, the record date ~~is~~ is the date the
2404 board of directors authorizes the share dividend.

2405

2406 **Commentary to Section 607.0623:**

2407 Non-substantive cleanup changes have been made to this section based on recent clean-up changes
2408 made to s. 6.23 of the Model Act.

2409

2410 607.0624 Share rights, options, warrants and awards.

2411 (1) Unless the articles of incorporation provide otherwise, a corporation may issue rights,
2412 options, or warrants for the purchase of shares of the corporation of any class or series, whether
2413 authorized but unissued shares of the corporation, treasury shares, or shares of the corporation to
2414 be purchased or acquired by the corporation. The board of directors shall determine the terms and and
2415 conditions upon which the rights, options, or warrants are issued, including the consideration for
2416 which the shares are to be issued. ~~The authorization by the board of directors for the corporation~~
2417 ~~to issue such rights, options, or warrants constitutes authorization for the issuance of the shares for~~
2418 ~~which the rights, options, or warrants are exercisable, their form and content, and the consideration~~
2419 ~~for which the shares are to be issued.~~

2420 (2) The terms and conditions of such stock rights, and options, or warrants, including those
2421 outstanding on the effective date of this section, which are created and issued by a corporation
2422 formed under this chapter, or its successor, and which entitle the holders thereof to purchase from
2423 the corporation shares of any class or series, whether authorized but unissued shares, treasury
2424 shares, or shares to be purchased or acquired by the corporation, may include, without limitation,
2425 restrictions or conditions that:

2426 (a) Preclude or limit the exercise, transfer or receipt or holding of such rights, options or
2427 warrants by any person or persons, including any person or persons owning or offering to
2428 acquire a specified number or percentage of the outstanding common shares or other securities
2429 of the corporation, owning or offering to acquire a specified number or percentage of the
2430 outstanding shares of the corporation or by any transferee or transferees of any such person or
2431 persons, or

2432 (b) Invalidate or void such rights, options or warrants held by any such person or persons
2433 or any such transferee or transferees.

2434 (3) The board of directors may authorize a board committee or the board of directors may
2435 authorize one or more officers, or a board committee so authorized by the board of directors may
2436 authorize one or more officers, to (A) designate the recipients of rights, options, warrants, or other
2437 equity compensation awards that involve the issuance of shares, and (B) determine, within an
2438 amount and subject to any other limitations established by the board of directors, a board
2439 committee, and, if applicable, the shareholders, the number of such rights, options, warrants, or
2440 other equity compensation awards and the terms and conditions of such rights, options, warrants
2441 or awards to be received by the recipients, provided that an officer may not use such authority to
2442 designate himself or herself or any other persons as the board of directors or a committee of the
2443 board may specify as a recipient of such rights, options, warrants or other equity compensation
2444 awards.

2445 (4) For purposes of this section, "shares" includes a security convertible into or carrying a
2446 right to subscribe for or acquire shares.

2447

2448 **Commentary to Section 607.0624:**

2449 Subsection (1) has been modernized based on the language contained in s. 6.24(a) of the 2016
2450 version of the Model Act.

2451 Subsection (2) allows the creation of rights required for adoption of a shareholders' rights plan
2452 (a/k/a a "poison pill"). The revised language adopts the more concise language in s. 6.24(b) of the
2453 2016 version of the Model Act. However, it does not change nor is it intended to change the
2454 substance of the provision.

2455 New subsection (3) follows the wording in s. 6.24(c) of the 2016 version of the Model Act. This
2456 language includes language similar to s. 157 of the DGCL and clarifies that not only the board of
2457 directors, but also committees of the board charged with dealing with these matters (such as a
2458 compensation committee under a stock incentive plan adopted by the board of directors and/or the
2459 shareholders), may be authorized by the board to make these equity compensation decisions.
2460 Unlike s. 607.0825, which requires limits to be specified for an authorization, the authorization
2461 under this new subsection, although limited to equity compensation, may be absolute rather than
2462 within specified limits. Nevertheless, as a matter of good corporate governance, boards choosing
2463 to delegate authorization under this new subsection would be well advised to specify limits in
2464 making any such delegation.

2465 Further, new subsection (3) allows delegations of authority to "officers" without imposing an
2466 obligation to set forth specified limits. In contrast, s. 607.0825, which relates to the right of the
2467 board of directors or a board committee to delegate authority to finalize the sale price of shares to
2468 be sold by the corporation, covers more than just equity compensation; but, in the realm of equity
2469 compensation, this new subsection is broader than s. 607.0825 in two key respects: (i) the new
2470 subsection authorizes delegation to "officers" rather than to just "senior executive officers" and
2471 (ii) the new subsection does not require limits to be specified in the delegation of authority to
2472 officers. Section 607.0825 is intended to operate independently of this new subsection and is not
2473 intended in any way to limit the equity compensation delegation authorized by this new subsection.
2474 Thus, for equity compensation, this new subsection makes clear that authorization to designate
2475 recipients of equity compensation can be delegated to a broader category of officers than would
2476 fall within the term "senior executive" officers in s. 607.0825 and that no limits need be specified
2477 in any such delegation.

2478

2479 607.0625 Form and content of certificates.

2480 (1) Shares may but need not be represented by certificates. Unless this ~~chapter~~ or another
2481 statute expressly provides otherwise, the rights and obligations of shareholders are identical
2482 regardless of whether ~~or not~~ their shares are represented by certificates.

2483 (2) At a minimum, each share certificate must state on its face:

2484 (a) The name of the ~~issuing~~ corporation and that the corporation is organized under the
2485 laws of this state;

2486 (b) The name of the person to whom issued; and

2487 (c) The number and class of shares and the designation of the series, if any, the
2488 certificate represents.

2489 (3) If the ~~issuing~~ corporation is authorized to issue different classes of shares or different
2490 series of shares within a class, the designations, relative rights, preferences, and limitations
2491 applicable to each class and the variations in rights, preferences, and limitations determined for
2492 each series (and the authority of the board of directors to determine variations for future series)
2493 must be summarized on the front or back of each certificate. Alternatively, each certificate may
2494 state conspicuously on its front or back that the corporation will furnish the shareholder a full
2495 statement of this information on request and without charge.

2496 (4) Each share certificate:

2497 (a) Must be signed (either manually or in facsimile) by an officer or officers
2498 designated in the bylaws or designated by the board of directors, and

2499 (b) May bear the corporate seal or its facsimile.

2500 (5) If the person who signed (either manually or in facsimile) a share certificate no longer
2501 holds office when the certificate is issued, the certificate is nevertheless valid.

2502 (6) Nothing in this section may be construed to invalidate any share certificate validly issued
2503 and outstanding under the general corporation law on July 1, 1990.

2504

2505 **Commentary to Section 607.0625:**

2506 The existing language in subsection (3) requiring a full statement of this information to be provided
2507 upon request (which language has been used in the FBCA since 1990) has been retained even
2508 though it is not in the corollary section of the Model Act (which simply uses the words "this
2509 information". Further, the language in s. 6.25(c) of the Model Act requiring this request to be in
2510 writing has not been adopted. This "writing" requirement was expressly considered and not
2511 adopted by the 1989 committee.

2512 Subsection (4)(a) continues to require the signature of one or more officers. The language used in
2513 s. 6.25(d) of the Model Act, which requires the signature of two officers on a share certificate, was
2514 expressly considered and not adopted by the 1989 committee.

2515 Section 607.0625(1) permits uncertificated shares. Uncertificated shares must comply with s.
2516 607.0626. Further, the issuance, transfer and registration of both certificated and uncertificated
2517 shares is subject to the detailed provisions of Article 8 of the Uniform Commercial Code (Chapter
2518 678).

2519

2520 607.0626 Shares without certificates.

2521 (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
2522 of a corporation may authorize the issuance ~~issue~~ of some or all of the shares of any or all of its
2523 classes or series without certificates. The authorization does not affect shares already represented
2524 by certificates until they are surrendered to the corporation.

2525 (2) Within a reasonable time after the issuance ~~issue~~ or transfer of shares without certificates,
2526 the corporation shall deliver to ~~send~~ the shareholder a written statement of the information required
2527 on certificates by ss. 607.0625(2) and (3), and, if applicable, s. 607.0627.

2528

2529 **Commentary to Section 607.0626:**

2530 No substantive changes have been made to this section.

2531

2532 607.0627 Restriction on transfer of shares and other securities.

2533 (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an
2534 agreement between shareholders and the corporation may impose restrictions on the transfer or
2535 registration of transfer of shares of the corporation. A restriction does not affect shares issued
2536 before the restriction was adopted unless the holders of such shares are parties to the restriction
2537 agreement or voted in favor of the restriction.

2538 (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable
2539 against the holder or a transferee of the holder if the restriction is authorized by this section and its
2540 existence is noted conspicuously on the front or back of the certificate or is contained in the
2541 information statement required by s. 607.0626(2). Unless so noted, a restriction is not enforceable
2542 against a person without knowledge of the restriction.

2543 (3) A restriction on the transfer or registration of transfer of shares is authorized:

2544 (a) To maintain the corporation's status when it is dependent on the number or
2545 identity of its shareholders;

2546 (b) To preserve exemptions under federal or state securities law; or

2547 (c) For any other reasonable purpose.

2548 (4) A restriction on the transfer or registration of transfer of shares may:

2549 (a) Obligate the shareholder first to offer the corporation or other persons (separately,
2550 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

2551 (b) Obligate the corporation or other persons (separately, consecutively, or
2552 simultaneously) to acquire the restricted shares;

2553 (c) Require the corporation, the holders of any class or series of its shares, or other
2554 persons ~~another person~~ to approve the transfer of the restricted shares, if the requirement is
2555 not manifestly unreasonable; or

2556 (d) Prohibit the transfer of the restricted shares to designated persons or classes of
2557 persons, if the prohibition is not manifestly unreasonable.

2558 (5) For purposes of this section, "shares" includes a security convertible into or carrying a
2559 right to subscribe for or acquire shares.

2560

2561 **Commentary to Section 607.0627:**

2562 The Florida statute and Model Act statute are virtually identical and no substantive changes have
 2563 been made to this section of the FBCA. The Model Act provision is generally based on s. 202 of
 2564 the DGCL, although s. 202 of the DGCL arguably expands the flexibility to include restraints on
 2565 alienation with respect to shares beyond the current statute and corollary FBCA section.

2566 Share transfer restrictions are used by corporations for a variety of purposes. Subsection (3)
 2567 enumerates certain purposes for which share transfer restrictions may be imposed, but does not
 2568 limit the purposes, given that subsection (3) permits restrictions "for any other reasonable
 2569 purpose." Examples of the "corporation's status" referred to in subsection (3)(a) include the
 2570 subchapter S election under the Internal Revenue Code, and entitlement to a program or eligibility
 2571 for a privilege administered by governmental agencies or national securities exchanges.

2572 Examples of the uses of share transfer restrictions include: (i) a corporation with few shareholders
 2573 may impose share transfer restrictions to ensure that shareholders do not transfer their shares to a
 2574 person not acceptable to the corporation or other shareholders; (ii) a corporation with few
 2575 shareholders may impose share transfer restrictions to establish the value of the shares of deceased
 2576 shareholders; (iii) a professional corporation may impose share transfer restrictions to ensure that
 2577 its treatment of departing, retiring or deceased shareholders is consistent with rules applicable to
 2578 the profession in question; (iv) a corporation may impose share transfer restrictions to ensure that
 2579 its election of subchapter S treatment under the Internal Revenue Code, or its election to be treated
 2580 as a real estate investment trust will not be unexpectedly terminated; (v) a corporation issuing
 2581 securities pursuant to an exemption from federal or state securities registration may impose share
 2582 transfer restrictions to ensure that subsequent transfers of shares will not result in the loss of the
 2583 exemption being relied upon; and (vi) a corporation may impose restrictions to protect a valuable
 2584 corporate asset that may be impacted by share transfers (such as a net operating loss).

2585 Subsection (4) describes the types of restrictions that may be imposed. The types of restrictions
 2586 referred to in subsections (4)(a) (rights of first offer) and (b) (buy-sell agreements) are imposed as
 2587 a matter of contractual negotiation and do not prohibit the outright transfer of shares. Rather, they
 2588 designate to whom shares or other securities must be offered at a price established in the agreement
 2589 or by a formula or method agreed to in advance. By contrast, the restrictions described in
 2590 subsections (4)(c) and (d) may permanently limit the market for shares by disqualifying all or some
 2591 potential purchasers. However, the restrictions imposed by these two provisions must not be
 2592 "manifestly unreasonable."

2593

2594 607.0628 Expenses of issue.

2595 A corporation may pay the expenses of selling or underwriting its shares, and of organizing
2596 or reorganizing the corporation, from the consideration received for shares.

2597

2598 **Commentary to Section 607.0628:**

2599 This section contains a general authorization to the corporation to pay its expenses of formation
2600 and raising capital out of its original capitalization and is included in the FBCA and in a large
2601 number of state corporation statutes. While this section has recently been eliminated in the 2016
2602 version of the Model Act, it is retained in the FBCA to make clear that a corporation may pay its
2603 expenses of formation and raising capital out of its original capitalization.

2604

2605 607.0630 Shareholders' preemptive rights.

2606 (1) The shareholders of a corporation do not have a preemptive right to acquire the
2607 corporation's unissued shares or the corporation's treasury shares, except in each case to the extent
2608 the articles of incorporation so provide.

2609 (2) A statement included in the articles of incorporation that "the corporation elects to have
2610 preemptive rights" (or words of similar import) means that the following principles apply except
2611 to the extent the articles of incorporation expressly provide otherwise:

2612 (a) The shareholders of the corporation have a preemptive right, granted on uniform
2613 terms and conditions prescribed by the board of directors to provide a fair and reasonable
2614 opportunity to exercise the right, to acquire proportional amounts of the corporation's
2615 unissued shares and treasury shares upon the decision of the board of directors to issue them.

2616 (b) A shareholder may waive his or her preemptive right. A waiver evidenced by a
2617 writing is irrevocable even though it is not supported by consideration.

2618 (c) There is no preemptive right with respect to:

2619 1. Shares issued as compensation to directors, officers, agents, or employees of the
2620 corporation, ~~or~~ its subsidiaries or affiliates;

2621 2. Shares issued to satisfy conversion or option rights created to provide
2622 compensation to directors, officers, agents, or employees of the corporation, ~~or~~ its
2623 subsidiaries or affiliates;

2624 3. Shares authorized in the articles of incorporation that are issued within 6 months
2625 from the effective date of incorporation;

2626 4. Shares issued pursuant to a plan of reorganization approved by a court of
2627 competent jurisdiction pursuant to a law of this state or of the United States; or

2628 5. Shares issued for consideration other than money.

2629 (d) Holders of shares of any class or series without general voting rights but with
2630 preferential rights to distributions to receive the ~~or~~ net assets of the corporation upon
2631 dissolution ~~and liquidation~~ have no preemptive rights with respect to shares of any class or
2632 series.

2633 (e) Holders of shares of any class or series with general voting rights but without
2634 preferential rights to distributions ~~or net assets~~ upon dissolution ~~or liquidation~~ have no
2635 preemptive rights with respect to shares of any class or series with preferential rights to receive

2636 the net assets of the corporation upon dissolution ~~distributions or assets~~ unless the shares with
2637 preferential rights are convertible into or carry a right to subscribe for or acquire the shares
2638 without preferential rights.

2639 (f) Shares subject to preemptive rights that are not acquired by shareholders may be
2640 issued to any person for a period of 1 year after being offered to shareholders at a consideration
2641 set by the board of directors that is not lower than the consideration set for the exercise of
2642 preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject
2643 to the shareholders' preemptive rights.

2644 (3) For purposes of this section, "shares" includes a security convertible into or carrying a
2645 right to subscribe for or acquire shares.

2646 (4) In the case of any corporation in existence prior to January 1, 1976, shareholders of such
2647 corporation shall continue to have the preemptive rights in such corporation which they had
2648 immediately prior to that date, unless and until the articles of incorporation are amended to alter
2649 or terminate shareholders' preemptive rights.

2650

2651 **Commentary to Section 607.0630:**

2652 The Model Act, along with the corporate statutes in many jurisdictions (including Florida), contain
2653 "opt in" provisions with respect to preemptive rights under which a corporation's shareholder do
2654 not have statutory preemptive rights unless expressly granted in the articles of incorporation.

2655 For the most part, with minor language differences, the Florida statute is identical to the Model
2656 Act. There are two substantive differences between the statutes. The first, found in s.
2657 607.0630(2)(c)(4), exempts from preemptive rights shares that are issued pursuant to a court-
2658 approved reorganization. The second is a grandfather clause, retaining "opt out" preemptive rights
2659 for corporations in existence prior to January 1, 1976.

2660 Clarifying changes were made to subsections (2)(d) and (2)(e) in 2003 to make the language used
2661 (net assets upon dissolution) consistent with the corollary language used for the same purpose in
2662 s. 607.0601(2)(b) and s. 607.0603(3). However, further clean-up changes have been made to
2663 subsections 2(d) and 2(e) to make the language consistent among these three statutory provisions.

2664

2665 607.0631 Corporation's acquisition of its own shares.

2666 (1) A corporation may acquire its own shares, and, unless otherwise provided in the articles
2667 of incorporation or except as provided in subsection (4) or subsection (5), shares so acquired
2668 constitute authorized but unissued shares of the same class but undesignated as to series.

2669 (2) If the articles of incorporation prohibit the reissue of acquired shares, the number of
2670 authorized shares is reduced by the number of shares acquired, effective upon amendment of the
2671 articles of incorporation.

2672 (3) Articles of amendment to effectuate a reduction in the authorized shares by the number
2673 of shares acquired by the corporation, may be adopted by the board of directors without
2674 shareholder action, shall be delivered to the ~~D~~department of State for filing, and shall set forth:

2675 (a) The name of the corporation;

2676 (b) The reduction in the number of authorized shares, itemized by class and series; and

2677 (c) The total number of authorized shares, itemized by class and series, remaining after
2678 reduction of the shares.

2679 (4) Shares of a corporation in existence on June 30, 1990, which are treasury shares under s.
2680 607.004(18), Florida Statutes (1987), shall be issued, but not outstanding, until canceled or
2681 disposed of by the corporation.

2682 (5) A corporation that has shares of any class or series which are ~~either~~ registered on a
2683 national securities exchange ~~or designated as a national market system security on an interdealer~~
2684 ~~quotation system by the National Association of Securities Dealers, Inc.,~~ may acquire such shares
2685 and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the
2686 corporation shall constitute treasury shares.

2687 (6) Shares that a corporation acquires in a fiduciary capacity for the benefit of any person
2688 other than the corporation directly or indirectly through an entity controlled by the corporation
2689 shall not be deemed to have been acquired by the corporation for purposes of this section.

2690

2691 **Commentary to Section 607.0631:**

2692 Florida takes a more expansive view of a corporation's re-acquisition of its own shares than the
2693 Model Act. The Model Act states only that a corporation may acquire its own shares and that the
2694 shares so acquired constitute authorized but unissued shares (similar to subsection (1) above,
2695 though Florida adds that (i) a corporation may provide otherwise in its articles of incorporation
2696 (which includes the ability to expressly provide in the articles of incorporation that shares acquired
2697 by the corporation shall become treasury shares rather than authorized but unissued shares), and
2698 (ii) adds the exemptions found in subsections (4) and (5) above) and that if the articles of
2699 incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced
2700 by the number of shares acquired (identical to subsection (2) above).

2701 Subsection (3) is identical to the corollary section contained in an earlier version of the Model Act.
2702 This section was removed from the Model Act in 1999, because it was believed that the required
2703 amendment to the articles was adequately covered in Article 10. However, because the language
2704 has been in the FBCA since 1989 and addresses the required amendment in the same section as
2705 the language addressing the reasons for the proposed amendment, this language has been retained.
2706 This is similar to the position taken in s. 607.0602(5).

2707 The grandfathering provision contained in subsection (4) for treasury shares outstanding prior to
2708 1990 (when the FBCA became effective) has been retained.

2709 Subsection (5), added to the FBCA in 1999, deals with the ability of a Florida corporation to
2710 designate shares reacquired by listed companies or companies whose shares are traded on the
2711 NASDAQ as treasury shares. Since NASDAQ listed companies are now
2712 "listed on a national securities exchange", the statutory language dealing with companies traded
2713 on the NASDAQ has been eliminated.

2714 New subsection (6), with respect to shares acquired by a corporation in a fiduciary capacity, is
2715 derived from a proposed change to s. 6.31 of the Model Act that is currently being considered by
2716 the Corporate Laws Committee. The change adds language consistent with the language contained
2717 in s. 607.0721(3).

2718

2719 607.06401 Distributions to shareholders.

2720 (1) A board of directors may authorize and the corporation may make distributions to its
2721 shareholders subject to restriction by the articles of incorporation and the limitations in subsection
2722 (3).

2723 (2) ~~The~~ ~~if the~~ board of directors may ~~does not~~ fix the record date for determining shareholders
2724 entitled to a distribution, which date may not be retroactive (~~other than one involving a purchase,~~
2725 ~~redemption, or other acquisition of the corporation's shares~~). If the , it is the date the board of
2726 directors does not fix a record date for determining shareholders entitled to a distribution (other
2727 than one involving a purchase, redemption or other acquisition of the corporation's shares), the
2728 record date is the date the board of directors authorizes the distribution.

2729 (3) No distribution may be made if, after giving it effect:

2730 (a) The corporation would not be able to pay its debts as they become due in the usual
2731 course of the corporation's activities and affairs ~~business~~; or

2732 (b) The corporation's total assets would be less than the sum of its total liabilities plus
2733 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the
2734 corporation were to be dissolved and wound up at the time of the distribution, to satisfy the
2735 preferential rights upon dissolution and winding up of shareholders whose preferential rights
2736 are superior to those receiving the distribution.

2737 (4) The board of directors may base a determination that a distribution is not prohibited under
2738 subsection (3) on:

2739 (a) ~~either on~~ Financial statements prepared on the basis of accounting practices and
2740 principles that are reasonable under ~~in~~ the circumstances; or

2741 (b) ~~on~~ A fair valuation or other method that is reasonable under ~~in~~ the circumstances. In
2742 the case of any distribution based upon such a valuation, each such distribution shall be
2743 identified as a distribution based upon a current valuation of assets, and the amount per share
2744 paid on the basis of such valuation shall be disclosed to the shareholders concurrent with their
2745 receipt of the distribution.

2746 (5) If the articles of incorporation of a corporation engaged in the business of exploiting
2747 natural resources or other wasting assets so provide, distributions may be paid in cash out of
2748 depletion or similar reserves; and each such distribution shall be identified as a distribution based
2749 upon such reserves, and the amount per share paid on the basis of such reserves shall be disclosed
2750 to the shareholders concurrent with their receipt of the distribution.

2751 (6) Except as provided in subsection (8), the effect of a distribution under subsection (3) is
2752 measured:

2753 (a) In the case of a distribution by purchase, redemption, or other acquisition of the
2754 corporation's shares, as of the earlier of the date on which:

2755 1. ~~The date~~ Money or other property is transferred or the debt to a shareholder is
2756 incurred by the corporation, or

2757 2. The ~~date the~~ shareholder ceases to be a shareholder with respect to the acquired
2758 shares;

2759 (b) In the case of ~~a any other~~ distribution of indebtedness, as of the date on which the
2760 indebtedness is distributed;

2761 (c) In all other cases, as of the date on which:

2762 1. The ~~date the~~ distribution is authorized if the payment occurs within 120 days
2763 after that the date of authorization, or

2764 2. The ~~date the~~ payment is made if the payment is occurs more than 120 days after
2765 the date that the distribution is authorized ~~date of authorization~~.

2766 (7) A corporation's indebtedness to a shareholder incurred by reason of a distribution made
2767 in accordance with this section is at parity with the corporation's indebtedness to its general,
2768 unsecured creditors except to the extent provided otherwise ~~subordinated~~ by agreement. The
2769 obligation to pay such indebtedness may be secured by a lien on assets of the corporation if not
2770 prohibited under a law other than this chapter.

2771 (8) Indebtedness of a corporation, including indebtedness issued as a distribution, is not
2772 considered a liability for purposes of determinations under subsection (3) if the terms of the
2773 indebtedness ~~its terms~~ provide that payment of principal and interest is ~~are~~ made only if and to the
2774 extent that payment of a distribution to shareholders could then be made under this section. If such
2775 the indebtedness is issued as a distribution, and by its terms provides that the payments of each
2776 payment of principal or interest are made only to the extent a is treated as a distribution could be
2777 made under this section, then each payment of principal and interest of that indebtedness is treated
2778 as a distribution, the effect of which is measured on the date the payment is actually made.

2779 (9) This section shall not apply to distributions in liquidation under ss. 607.1401-607.14401.

2780

2781 **Commentary to Section 607.06401:**

2782 The cleanup changes in subsection (2) are based on language changes in the 2016 version of the
2783 Model Act and are non-substantive.

2784 The changes in subsection (3) are consistent with the language in s. 605.0405(1)(a) and are
2785 intended to harmonize the language in the FBCA and FRLCA on this provision.

2786 Subsection (4) has been modified to harmonize this section with the language contained in s.
2787 605.0405(2). This section also retains existing Florida language not found in the Model Act
2788 clarifying disclosure rules to shareholders where directors rely on statements of accountants to
2789 determine whether a corporation is authorized to make a distribution under this section. The 1989
2790 commentary to the FBCA provided that this language requires disclosure to shareholders of the
2791 fact that the dividend payment or other distribution is based on valuation in excess of standard
2792 accounting techniques. It also provides that this "[D]isclosure is appropriate to prevent
2793 shareholders from being misled about the reason or basis for their dividends."

2794 Subsection (5) retains existing Florida language not found in the Model Act, and relates to special
2795 situations involving distributions in corporations relying on the depletion of natural resources. This
2796 language was added to the FBCA in 1989 based on the then existing Florida statute. The 1989
2797 commentary provides that "[I]t is possible to read the "fair valuation or other method" language of
2798 s. 6.40(d) as broad enough to permit distributions out of depletion reserves." Rather than leave that
2799 question open, it is appropriate to adopt the clear provision in the Florida code."

2800 The changes in subsection (6) are intended to harmonize the language in the FBCA and FRLCA
2801 and are derived from the language contained in s. 605.0405(3).

2802 The language in subsection (7) has been modified to make clear that a corporation is not precluded
2803 from securing/collateralizing indebtedness which is owed to a shareholder and incurred by reason
2804 of a distribution, so long as it does not violate a law other than Chapter 607.

2805 The changes in subsection (8) are intended to harmonize the language in the FBCA and FRLCA
2806 and are derived from the language contained in s. 605.0405(5).

2807

2808 ARTICLE 7

2809 SHAREHOLDERS

2810

2811 607.0701 Annual meeting.

2812 (1) Unless directors are elected by written consent in lieu of an annual meeting as permitted
2813 by s. 607.0704, aA corporation shall hold a meeting of shareholders annually, for the election of
2814 directors and for the transaction of any proper business, at a time stated in or fixed in accordance
2815 with the bylaws.

2816 (2) Annual ~~shareholders'~~ meetings of shareholders may be held in or out of this state at a
2817 place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws,
2818 stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the
2819 bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the
2820 corporation's principal office.

2821 (3) The failure to hold the annual meeting at the time stated in or fixed in accordance with a
2822 corporation's bylaws or pursuant to this chapter ~~act~~ does not affect the validity of any corporate
2823 action and shall not work a forfeiture of or dissolution of the corporation.

2824 (4) Participation of shareholders and proxy holders at an annual meeting of shareholders by
2825 remote communication shall be governed by and subject to the provisions of s. 607.0709. If
2826 authorized by the board of directors, and subject to such guidelines and procedures as the board of
2827 directors may adopt, shareholders and proxy holders not physically present at an annual meeting
2828 of shareholders may, by means of remote communication:

2829 (a) ~~Participate in an annual meeting of shareholders.~~

2830 (b) ~~Be deemed present in person and vote at an annual meeting of shareholders, whether~~
2831 ~~such meeting is to be held at a designated place or solely by means of remote communication,~~
2832 ~~provided that:~~

2833 1. ~~The corporation shall implement reasonable measures to verify that each person~~
2834 ~~deemed present and permitted to vote at the annual meeting by means of remote~~
2835 ~~communication is a shareholder or proxy holder;~~

2836 2. ~~The corporation shall implement reasonable measures to provide such~~
2837 ~~shareholders or proxy holders a reasonable opportunity to participate in the annual~~
2838 ~~meeting and to vote on matters submitted to the shareholders, including, without~~
2839 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2840 ~~annual meeting substantially concurrently with such proceedings; and~~

2841 3. ~~If any shareholder or proxy holder votes or takes other action at the annual~~
2842 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2843 ~~be maintained by the corporation.~~

2844

2845 **Commentary to Section 607.0701:**

2846 The revision clarifies that companies are allowed to hold an annual shareholders' meeting solely
2847 by remote communication or by way of a written consent under s. 607.0704, even if one or more
2848 shareholders object and would prefer to hold an in-person meeting.

2849 Although this language does not appear in the Model Act, the words "and shall not work a
2850 forfeiture of or dissolution of the corporation" were left in subsection (3). There was a belief that,
2851 even if the language were to be removed, the law would still be the same. However, a concern was
2852 expressed that removing this language might be misinterpreted as a change in the law. As a result,
2853 the language was retained in the statute.

2854 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2855 regarding participation in meetings of shareholders by remote communications.

2856

2857 607.0702 Special meeting.

2858 (1) A corporation shall hold a special meeting of shareholders:

2859 (a) On call of its board of directors or the person or persons authorized to do so by the
2860 articles of incorporation or bylaws; or

2861 (b) If shareholders holding ~~the holders of~~ not less than 10 percent, unless a greater
2862 percentage not to exceed 50 percent is required by the articles of incorporation, of all the votes
2863 entitled to be cast on any issue proposed to be considered at the proposed special meeting
2864 sign, date, and deliver to the corporation’s secretary one or more written demands for the
2865 meeting describing the purpose or purposes for which it is to be held. Unless otherwise
2866 provided in the articles of incorporation, a written demand for a special meeting may be
2867 revoked by a writing to that effect received by the corporation prior to the receipt by the
2868 corporation of demands sufficient in number to require the holding of a special meeting.

2869 (2) Special meetings of shareholders’ ~~meetings~~ may be held in or out of the state at a place
2870 stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, in the
2871 notice of the special meeting. If no place is stated in or fixed in accordance with the bylaws or in
2872 the notice of the special meeting, special meetings shall be held at the corporation’s principal
2873 office.

2874 (3) Only business within the purpose or purposes described in the special meeting notice
2875 required by s. 607.0705 may be conducted at a special meeting of shareholders’ ~~meeting~~.

2876 (4) Participation of shareholders and proxy holders at a special meeting of shareholders by
2877 remote communication shall be governed by and subject to the provisions of s. 607.0709. If
2878 authorized by the board of directors, and subject to such guidelines and procedures as the board of
2879 directors may adopt, shareholders and proxy holders not physically present at a special meeting of
2880 shareholders may, by means of remote communication:

2881 (a) ~~Participate in a special meeting of shareholders.~~

2882 (b) ~~Be deemed present in person and vote at a special meeting of shareholders, whether~~
2883 ~~such meeting is to be held at a designated place or solely by means of remote communication,~~
2884 ~~provided that:~~

2885 1. ~~The corporation shall implement reasonable measures to verify that each person~~
2886 ~~deemed present and permitted to vote at the special meeting by means of remote~~
2887 ~~communication is a shareholder or proxy holder;~~

2888 2. ~~The corporation shall implement reasonable measures to provide such~~
2889 ~~shareholders or proxy holders a reasonable opportunity to participate in the special~~
2890 ~~meeting and to vote on matters submitted to the shareholders, including, without~~

2891 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2892 ~~special meeting substantially concurrently with such proceedings; and~~

2893 ~~3. If any shareholder or proxy holder votes or takes other action at the special~~
2894 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2895 ~~be maintained by the corporation.~~

2896

2897 **Commentary to Section 607.0702:**

2898 Clarifying changes in subsection (1)(b), which are derived from the Model Act, are considered
2899 non-substantive.

2900 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2901 regarding participation in a meeting of shareholders by remote communications.

2902

2903 607.0703 Court-ordered meeting.

2904 (1) The circuit court ~~in the applicable of the county where a corporation’s principal office is~~
2905 ~~located, if located in this state, or where a corporation’s registered office is located if its principal~~
2906 ~~office is not located in this state, may, after notice to the corporation, summarily order a meeting~~
2907 ~~to be held:~~

2908 (a) On application of any shareholder ~~of the corporation~~ entitled to vote ~~in~~ at an annual
2909 meeting if neither an annual meeting has ~~not~~ been held nor action by written consent in lieu
2910 thereof has become effective within any ~~13-15-~~month period; or

2911 (b) On application of one or more shareholders ~~a shareholder~~ who signed a demand for
2912 a special meeting valid under s. 607.0702, if:

2913 1. Notice of the special meeting was not given within 60 days after the first day on
2914 which the requisite number of demands have been ~~date the demand was~~ delivered to the
2915 corporation’s secretary; or

2916 2. The special meeting was not held in accordance with the notice.

2917 (2) The court may fix the time and place of the meeting, determine the shares entitled to
2918 participate in the meeting, specify a record date or dates for determining shareholders entitled to
2919 notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
2920 quorum by voting group required for matters to be considered at the meeting (or direct that the
2921 votes of a voting group represented at the meeting constitute a quorum of such voting group for
2922 action on those matters), and enter other orders as ~~may be appropriate~~ necessary to accomplish the
2923 purpose or purposes of the meeting.

2924

2925 **Commentary to Section 607.0703:**

2926 The words "after notice to the corporation" is not in the Model Act and has been deleted in
2927 subsection (1). This change is not considered substantive, since the company will have to be
2928 notified of the action through the service of process in the lawsuit. Further, this change is not
2929 intended to authorize or allow an ex parte action.

2930 The word "summarily" has been added to the language at the end of subsection (1) regarding the
2931 Court's power to order a meeting. This language matches the language in s. 7.03(a) of the Model
2932 Act and corresponds with other existing similar references throughout Chapter 607 and in the
2933 Delaware corporate statute. The use of the word "summarily" is intended to urge courts to act
2934 quickly on this type of request, possibly through, within the applicable power and discretion of the
2935 court, expedited briefing and a quick decision.

2936 The words "of the corporation" were removed from (1)(a). This is not intended to be a substantive
2937 change, since the definition of "shareholder" in s. 607.0141(65) states that a shareholder is a holder
2938 of shares in the corporation.

2939 The time frame in subsection (1)(a) was changed from 13 months to 15 months so that it is
2940 consistent with s. 7.03(a)(1) of the Model Act. The 60 day provision in s. 607.0703(1)(b) was not
2941 changed, despite the shorter 30 day period contained in s. 7.03(a)(2) of the Model Act. This longer
2942 period was an intentional deviation from the Model Act adopted in 1989 and was intended to give
2943 public companies more time to comply with applicable Exchange Act requirements if a demand
2944 for a meeting has been received.

2945 Section 607.0703(1)(a) was amended to make clear that a court may not order an annual meeting
2946 if shareholders have acted by written consent to elect directors, in accordance with s. 607.0701(1),
2947 within the 15-month period.

2948 The words "or dates" was added to subsection (2) to recognize the ability of a corporation, at its
2949 option, to establish bi-furcated record dates. In addition, the broader Model Act language in s.
2950 7.03(b) replaces the language in current subsection (2). Further, language was added to make clear
2951 that courts have the authority to establish quorum requirements for separate voting groups.

2952 For clarity, this section is not intended to be overruled by an exclusive forum bylaws provision
2953 that selects a forum different from the circuit court identified in this section (the circuit court in
2954 the applicable county). Such circuit court continues to have jurisdiction for the matters described
2955 in this section, notwithstanding any validly adopted exclusive forum bylaw provision.

2956

2957 607.0704 Action by shareholders without a meeting.

2958 (1) Unless otherwise provided in the articles of incorporation or in subsection (8), action
2959 required or permitted by this chapter aet to be taken at an annual or special meeting of shareholders
2960 may be taken without a meeting, without prior notice, and without a vote if the action is taken by
2961 the holders of outstanding stock of each voting group entitled to vote thereon having not less than
2962 the minimum number of votes with respect to each voting group that would be necessary to
2963 authorize or take such action at a meeting at which all voting groups and shares entitled to vote
2964 thereon were present and voted. In order to be effective the action must be evidenced by one or
2965 more written consents describing the action taken, dated and signed by approving shareholders
2966 having the requisite number of votes of each voting group entitled to vote thereon, and delivered
2967 to the corporation by delivery to its principal office in this state, its principal place of business, the
2968 corporate secretary, or another officer or agent of the corporation having custody of the book in
2969 which proceedings of meetings of shareholders are recorded. No written consent shall be effective
2970 to take the corporate action referred to therein unless, within 60 days of the date of the earliest
2971 dated consent delivered in the manner required by this section, written consents signed by
2972 shareholders owning a sufficient number of shares ~~the number of shareholders~~ required to
2973 authorize or take the action have been ~~are~~ delivered to the corporation by delivery as set forth in
2974 this section.

2975 (2) Any written consent may be revoked prior to the date that the corporation receives the
2976 required number of consents to authorize the proposed action. No revocation is effective unless in
2977 writing and until received by the corporation at its principal office or received by the corporate
2978 secretary or other officer or agent of the corporation having custody of the book in which
2979 proceedings of meetings of shareholders are recorded.

2980 (3) Within 10 days after (i) written consents sufficient to authorize or take the action have
2981 been delivered to the corporation, or (ii) such later date that tabulation of consents is completed
2982 pursuant to an authorization under subsection (4) ~~obtaining such authorization by written consent~~,
2983 notice must be given to those shareholders who have not consented in writing or who are not
2984 entitled to vote on the action. The notice shall fairly summarize the material features of the
2985 authorized action and, if the action be such for which appraisal dissenters' rights are provided
2986 under this chapter aet, the notice shall contain a clear statement of the right of shareholders entitled
2987 to assert appraisal rights under this chapter with respect to the action ~~dissenting therefrom~~ to be
2988 paid the fair value of their shares upon compliance with further provisions of this act regarding the
2989 rights of ~~dissenting~~ shareholders entitled to assert appraisal rights under this chapter with respect
2990 to the action.

2991 (4) A consent signed under this section has the effect of a meeting vote and may be described
2992 as such in any document. Unless the articles of incorporation, bylaws or a resolution of the board
2993 of directors provides for a reasonable delay to permit tabulation of written consents, the action
2994 taken by written consent shall be effective when written consents signed by shareholders owning

2995 a sufficient number of shares required to authorize or take the action have been delivered to the
2996 corporation.

2997 (5) In the event that the action to which the shareholders consent is such as would have
2998 required the filing of a certificate under any other section of this chapter ~~act~~ if such action had been
2999 voted on by shareholders at a meeting thereof, the certificate filed under such other section shall
3000 state that written consent has been given in accordance with the provisions of this section.

3001 (6) Whenever action is taken pursuant to this section, the written consent of the shareholders
3002 consenting thereto or the written reports of inspectors appointed to tabulate such consents shall be
3003 filed with the minutes of proceedings of shareholders.

3004 (7) The notice requirements in subsection (3) shall not delay the effectiveness of actions
3005 taken by written consent, and a failure to comply with such notice requirement shall not invalidate
3006 actions taken by written consent, provided that this subsection shall not be deemed to limit judicial
3007 power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure
3008 to give such notice within the required time period.

3009 (8) If a corporation's articles of incorporation authorize shareholders to cumulate their votes
3010 when electing directors pursuant to s. 607.0728, directors may not be elected by written consent
3011 of the shareholders unless the consent is unanimous.

3012

3013 **Commentary to Section 607.0704:**

3014 Subsection (4) has been modified, following s. 7.04(d) of the Model Act, addressing an ability to
3015 delay effectiveness of a written consent for a reasonable period of time to permit tabulation of the
3016 written consents received. A parallel change has also been made in subsection (3) requiring notice
3017 of an action taken by written consent to non-consenting shareholders within ten days after
3018 authorization of the action. No specific outside time limit on the time to tabulate written consents
3019 has been added. However, this provision is not intended to allow a corporation to inappropriately
3020 delay effecting an action taken by the corporation's shareholders by written consent.

3021 The language in Model Act s. 7.04(g) was added as new s. 607.0704(7) (expressing that the failure
3022 to give the required notice does not delay the effectiveness of the action taken or invalidate the
3023 action taken, subject to the right of a court to fashion an appropriate remedy for failure to give
3024 such notice). It is believed that this new language merely codifies the existing state of court
3025 decisions relative to this issue.

3026 New subsection (8) clarifies that if a corporation's articles of incorporation authorize shareholders
3027 to cumulate their votes when electing directors pursuant to s. 607.0728, directors may only be elected
3028 by written consent of the shareholders if the consent is unanimous.

3029

3030 607.0705 Notice of meeting.

3031 (1) A corporation shall notify shareholders of the date, time, and place of each annual and
 3032 special shareholders’ meeting no fewer than 10 or more than 60 days before the meeting date. The
 3033 notice shall include the record date for determining the shareholders entitled to vote at the meeting,
 3034 if such date is different than the record date for determining shareholders entitled to notice of the
 3035 meeting. If the board of directors has authorized participation by means of remote communication
 3036 pursuant to s. 607.0709 for any class or series of shares, the notice to the holders of such class or
 3037 series must describe the means of remote communication to be used. Unless this ~~chapter~~ or
 3038 the articles of incorporation require otherwise, the corporation is required to give notice only to
 3039 shareholders entitled to vote at the meeting as of the record date for determining the shareholders
 3040 entitled to notice of the meeting. Notice shall be given in the manner provided in s. 607.0141, by
 3041 or at the direction of the president, the secretary, or the officer or persons calling the meeting. If
 3042 the notice is mailed at least 30 days before the date of the meeting, it may be done by a class of
 3043 United States mail other than first class. Notwithstanding s. 607.0141, if mailed, such notice shall
 3044 be deemed to be delivered when deposited in the United States mail addressed to the shareholder
 3045 at her or his address as it appears in the record of shareholders of the corporation (maintained in
 3046 accordance with s. 607.1601(4) on the stock transfer books of the corporation, with postage thereon
 3047 prepaid.

3048 (2) Unless this ~~chapter~~ or the articles of incorporation require otherwise, notice of an
 3049 annual meeting of shareholders need not include a description of the purpose or purposes for which
 3050 the meeting is called.

3051 (3) Notice of a special meeting of shareholders must include a description of the purpose or
 3052 purposes for which the meeting is called.

3053 (4) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting is
 3054 adjourned to a different date, time, or place, or to add or modify the terms of participation by
 3055 remote communication, notice need not be given of the new date, time, ~~or~~ place or terms of
 3056 participation by remote communication if the new date, time, ~~or~~ place or terms of participation by
 3057 remote communication is announced at the meeting before an adjournment is taken, and any
 3058 business may be transacted at the adjourned meeting that might have been transacted on the
 3059 original date of the meeting. If a new record date for the adjourned meeting is or must be fixed
 3060 under s. 607.0707, however, notice of the adjourned meeting must be given under this section to
 3061 persons who are shareholders as of the new record date who are entitled to notice of the meeting.

3062 (5) Notwithstanding the foregoing, whenever notice is required to be given to any
 3063 shareholder under any provision of this chapter or the articles of incorporation or bylaws of any
 3064 corporation to whom~~no notice of a shareholders’ meeting need be given to a shareholder if:~~

3065 (a) Notice of two consecutive annual meetings, and all notices of meetings or the taking
 3066 of action by written consent without a meeting to such person during the period between such

3067 ~~two consecutive annual meetings. An annual report and proxy statements for two consecutive~~
3068 ~~annual meetings of shareholders or~~

3069 (b) All, and at least two, ~~checks in~~ payments of dividends or interest on securities during
3070 a 12-month period,

3071 have been sent by first-class United States mail, addressed to the shareholder at ~~her or his~~ such
3072 person's address as it appears in the record of shareholders on the share transfer books of the
3073 corporation (maintained in accordance with s. 607.1601(4)), and returned undeliverable, then the
3074 giving of such notice to such person shall not be required. Any action or meeting which shall be
3075 taken or held without notice to such person shall have the same force and effect as if such notice
3076 has been duly given. The obligation of the corporation to give notice of a shareholders' meeting to
3077 any such shareholder shall be reinstated once the corporation has received a new address for such
3078 shareholder for entry on its share transfer books. If any such person shall deliver to the corporation
3079 a written notice setting forth such person's then current address, the requirement that a notice be
3080 given to such person with respect to future notices shall be reinstated.

3081

3082 **Commentary to Section 607.0705:**

3083 Language was added to subsection (1), with a cross reference to s. 607.0709 which now contains
3084 all of the provisions regarding attendance at shareholders' meetings, whether the meeting is an
3085 annual meeting or a special meeting, using remote communications, to the effect that if the board
3086 of directors has agreed to allow participation by remote communication at a shareholders' meeting,
3087 the notice shall be required to describe the means of remote communication to be used.

3088 Language has been added to subsection (4) to address the obligation to communicate the terms of
3089 remote communication for the continuation of an adjourned meeting.

3090 The language in subsection (5), which authorizes the corporation not to have to give notice to
3091 certain missing stockholders under certain circumstances, is modified to follow the language used
3092 in the current version of DGCL s. 230 (upon which this FBCA provision was originally based).

3093

3094 607.0706 Waiver of notice.

3095 (1) A shareholder may waive any notice required by this ~~chapter act~~, or the articles of
3096 incorporation, or bylaws, before or after the date and time stated in the notice. The waiver must be
3097 in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation
3098 for filing by the corporation with inclusion in the minutes or ~~filing with the~~ corporate records.
3099 Neither the business to be transacted at nor the purpose of any regular or special meeting of the
3100 shareholders need be specified in any written waiver of notice unless so required by the articles of
3101 incorporation or the bylaws.

3102 (2) A shareholder’s attendance at a meeting:

3103 (a) Waives objection to lack of notice or defective notice of the meeting, unless the
3104 shareholder at the beginning of the meeting objects to holding the meeting or transacting
3105 business at the meeting; or

3106 (b) Waives objection to consideration of a particular matter at the meeting that is not
3107 within the purpose or purposes described in the meeting notice, unless the shareholder objects
3108 to considering the matter when it is presented.

3109

3110 **Commentary to Section 607.0706:**

3111 The language at the end of subsection (1), which confirms that the purpose of the meeting need
3112 not be included in the waiver of notice in order for the waiver of notice to be valid, was retained.
3113 Although not in the Model Act, it derives from s. 229 of the DGCL.

3114

3115 607.0707 Record date.

3116 (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or
3117 more voting groups ~~in order~~ to determine the shareholders entitled to notice of a shareholders'
3118 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix
3119 or provide for fixing such a record date, the board of directors ~~of the corporation~~ may fix the record
3120 date. In no event may a record date fixed by the board of directors be a date preceding the date
3121 upon which the resolution fixing the record date is adopted.

3122 (2) If not otherwise provided by or pursuant to the bylaws, the record date for determining
3123 shareholders entitled to demand a special meeting is the date the first shareholder delivers his or
3124 her demand to the corporation.

3125 (3) The bylaws may fix or provide the manner of fixing the record date for determining
3126 shareholders entitled to take action by the written consent of shareholders. If not otherwise
3127 provided by or pursuant to the bylaws, the board of directors of the corporation may set a record
3128 date for determining shareholders entitled to take action by the written consent of shareholders. In
3129 no event may a record date fixed by the board of directors be a date preceding the date upon which
3130 the resolution fixing the record date is adopted. If the bylaws do not fix or provide for the manner
3131 of fixing such a record date and if no such record date is fixed by the board of directors, the record
3132 date for determining shareholders entitled to take such action shall be ~~If not otherwise provided by~~
3133 ~~or pursuant to the bylaws and no prior action is required by the board of directors pursuant to this~~
3134 ~~act, the record date for determining shareholders entitled to take action without a meeting is the~~
3135 ~~date that the first signed written consent is delivered to the corporation under s. 607.0704. If not~~
3136 ~~otherwise fixed, and prior action is required by the board of directors pursuant to this chapter, the~~
3137 ~~record date for determining shareholders entitled to take action without a meeting is at the close of~~
3138 ~~business on the day on which the board of directors adopts the resolution taking such prior action.~~

3139 (4) If not otherwise provided by or pursuant to the bylaws, or by a court order pursuant to s.
3140 607.0703, the record date for determining shareholders entitled to notice of and to vote at an annual
3141 or special shareholders' meeting is the close of business on the day before the first notice is
3142 delivered to shareholders.

3143 (5) A record date for purposes of this section may not be more than 70 days before the
3144 meeting or action requiring a determination of shareholders.

3145 (6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting
3146 is effective for any adjournment of the meeting unless the board of directors fixes a new record
3147 date or dates, which it must do if the meeting is adjourned to a date more than 120 days after the
3148 date fixed for the original meeting.

3149 (7) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for
3150 the original meeting, it may provide that the original record date or dates continues in effect or it
3151 may fix a new record date or dates.

3152 (8) The record date for a shareholders' meeting fixed by or in the manner provided in the
3153 bylaws or by the board of directors shall be the record date for determining shareholders entitled
3154 both to notice, of and to vote at, the shareholders' meeting, unless in the case of a record date fixed
3155 by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it
3156 fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on
3157 or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

3158 (9) Shares of a corporation's own stock acquired by the corporation between the record date
3159 for determining shareholders entitled to notice of or to vote at a meeting of shareholders and the
3160 time of the meeting may be voted at the meeting by the holder of record as of the record date and
3161 shall be counted in determining the total number of outstanding shares entitled to be voted at the
3162 meeting.

3163 (10) If not otherwise fixed under s. 607.0703, the record date for determining shareholders
3164 entitled to demand a special meeting shall be the first date on which a signed shareholder demand
3165 is delivered to the corporation. No written demand for a special meeting shall be effective unless,
3166 within 60 days of the earliest date on which such a demand delivered to the corporation as required
3167 by s. 607.0702 was signed, written demands signed by shareholders holding at least the percentage
3168 of votes specified in or fixed in accordance with s. 607.0702(1)(b) have been delivered to the
3169 corporation.

3170

3171 **Commentary to Section 607.0707:**

3172 The ability to establish bifurcated record dates has been added to this section (and to corresponding
 3173 places in other Article 7 sections) to provide corporations, if the directors so choose, with greater
 3174 flexibility to align shareholder ownership and voting by setting a record date for voting closer to
 3175 the meeting date. Delaware enacted similar provisions in 2009, and those provisions are contained
 3176 in s. 213 of the DGCL. This option to establish bifurcated record dates is likely to be used primary
 3177 by public companies. In light of this expectation, the Model Act commentary provides that
 3178 although corporate laws provide this flexibility, public corporations will need to consider the SEC's
 3179 proxy rules and the practicalities of proxy voting and vote counting mechanisms in using this
 3180 flexibility.

3181 The changes to subsection (3) are based (in part) on s. 213(b) of the DGCL, make clear that the
 3182 board may set a record date for determining shareholders entitled to take action by written consent
 3183 of shareholders, and set a default rule for determining the record date if the board doesn't set a
 3184 specific record date. However, the language for the bylaws override for fixing or establishing the
 3185 method for fixing such record date contained in this section has been changed to parallel the syntax
 3186 appearing in the lead-in to subsection (2). Finally, the last sentence of subsection (1) has also been
 3187 added to subsection (3).

3188 The "unless" language contained in new subsection (8), which is based on s. 7.07(e) of the Model
 3189 Act, is meant only to refer to bi-furcated record dates.

3190 New subsection (9) has been added to resolve an inconsistency between s. 607.0707(1), which
 3191 states that shareholders of record on the record date are to receive notice of and are authorized to
 3192 vote at a shareholders' meeting, and s. 607.0631, which provides that shares acquired by a
 3193 corporation shall become, when acquired by the corporation, authorized but not issued and
 3194 outstanding shares of the corporation (or authorized and issued but not outstanding, treasury shares
 3195 under the circumstances set forth in s. 607.0631(5)). Because of these inconsistent positions, a
 3196 Florida corporation might be reluctant to reacquire its shares between the record date and a meeting
 3197 date because of the uncertainty as to how to deal with voting of those shares given the fact that
 3198 under s. 607.0631(1) these shares would not be outstanding on the meeting date, even though they
 3199 were issued and outstanding on the record date. This provision is based on a similar provision
 3200 contained in Maryland's corporate statute.

3201

3202 Model Act s. 7.08 Conduct of the Meeting.

3203 Section 7.08 of the Model Act, which creates default rules regarding the conduct of shareholders'
3204 meetings, has not been added to the statute. It is believed that remedies already exist for dealing
3205 with manipulations of the shareholder voting machinery and that adding this section to the FBCA
3206 is therefore unnecessary.

3207 However, the poll closing provision that is contained in s. 7.08 of the Model Act has been added
3208 to s. 607.0729(6).

3209

3210 607.0709 Remote Participation in Annual and Special Meetings of Shareholders.

3211 (1) Shareholders of any voting group, other persons entitled to vote on behalf of shareholders
3212 pursuant to s. 607.0721, attorneys in fact for shareholders and holders of proxies appointed
3213 pursuant to s. 607.0722, may participate in any annual or special meeting of shareholders by means
3214 of remote communication to the extent the board of directors authorizes such participation for such
3215 voting group. Participation by means of remote communication shall be subject to such guidelines
3216 and procedures as the board of directors adopts, and shall be in conformity with subsection (2).

3217 (2) Shareholders, other persons entitled to vote on behalf of shareholders pursuant to s.
3218 607.0721, attorneys in fact for shareholders and holders of proxies appointed pursuant to s.
3219 607.0722, participating in a shareholders' meeting by means of remote communication authorized
3220 in conformity with subsection (1) shall be deemed present in person and may vote at such a
3221 meeting, whether such meeting is to be held at a designated place or solely by means of remote
3222 communication, if the corporation has implemented reasonable measures:

3223 (a) To verify that each person participating remotely as a shareholder is a shareholder,
3224 is another person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, is an
3225 attorney in fact for a shareholder or is a holder of a proxy appointed pursuant to s. 607.0722,
3226 and

3227 (b) To provide such shareholders, such other persons entitled to vote on behalf of
3228 shareholders pursuant to s. 607.0721, such attorneys in fact for shareholders and such holders
3229 of proxies appointed pursuant to s. 607.0722, a reasonable opportunity to participate in the
3230 meeting and to vote on matters submitted to the shareholders, including an opportunity to
3231 communicate, and to read or hear the proceedings of the meeting, substantially concurrently
3232 with such proceedings.

3233 (3) If any shareholder, any other person entitled to vote on behalf of a shareholder pursuant
3234 to s. 607.0721, any attorney in fact for a shareholder or any holder of a proxy appointed pursuant
3235 to s. 607.0722, votes or takes action at a shareholder's meeting by means of remote communication
3236 authorized in conformity with this section, a record of such vote or other action shall be maintained
3237 by the corporation.

3238 (4) If the board of directors is authorized to determine the place of a shareholders' meeting,
3239 the board of directors may, in its sole discretion, determine that the meeting shall be held solely
3240 by means of remote communication.

3241

3242 **Commentary to Section 607.0709:**

3243 New s. 607.0709 replaces the language previously contained in ss. 607.0701 and 607.0702
3244 regarding participation in a shareholders meeting by remote communication. The language is based
3245 on Model Act s. 7.09.

3246 The language in subsection (1) that allows the corporation's board of directors to authorize remote
3247 participation for less than all shareholders (selecting between classes and series that can participate
3248 by remote participation) is based on subsection (1) of the Model Act provision. It is believed that
3249 the Board should have the flexibility to decide which classes or series of shares can participate in
3250 a meeting by remote participation, and that any abuse by the board in inappropriately using this
3251 provision should be able to be addressed by way of remedies available to shareholders for breaches
3252 of fiduciary duties.

3253 The term "voting groups" has been substituted for "classes and series" in subsection (1).

3254

3255 607.0720 Shareholders’ list for meeting.

3256 (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of
3257 the names of all its shareholders who are entitled to notice of a shareholders’ meeting, ~~arranged by~~
3258 ~~voting group with the address of, and the number and class and series, if any, of shares held by,~~
3259 ~~each.~~ If the board of directors fixes a different record date under s. 607.0707(8) to determine the
3260 shareholders entitled to vote at the meeting, the corporation shall also prepare an alphabetical list
3261 of the names of all its shareholders who are entitled to vote at the meeting. Each list must be
3262 arranged by voting group (and within each voting group by class or series of shares) and show the
3263 address of and number of shares held by each shareholder. Nothing contained in this subsection
3264 shall require the corporation to include on such list the electronic mail address or other electronic
3265 contact information of a shareholder.

3266 (2) The shareholders’ list for notice must be available for inspection by any shareholder for
3267 a period of 10 days prior to the meeting or such shorter time as exists between the record date and
3268 the meeting and continuing through the meeting at the corporation’s principal office, at a place
3269 identified in the meeting notice in the city where the meeting will be held, or at the office of the
3270 corporation’s transfer agent or registrar. Any separate shareholders’ list for voting, if different,
3271 must be similarly available for inspection promptly after the record date for voting. A shareholder
3272 or the shareholder’s agent or attorney is entitled on written demand to inspect and, ~~the list~~ (subject
3273 to the requirements of s. 607.1602(3)), copy a list during regular business hours and at his or her
3274 expense, during the period it is available for inspection.

3275 (3) The corporation shall make the ~~shareholders’ list~~ of shareholders entitled to vote available
3276 at the meeting, and any shareholder or the shareholder’s agent or attorney is entitled to inspect the
3277 list at any time during the meeting or any adjournment.

3278 (4) The shareholders’ list is prima facie evidence of the identity of shareholders entitled to
3279 examine the shareholders’ list or to vote at a meeting of shareholders.

3280 (5) If the requirements of this section have not been substantially complied with or if the
3281 corporation refuses to allow a shareholder or the shareholder’s agent or attorney to inspect ~~a the~~
3282 ~~shareholders’ list~~ (or copy a list as permitted by subsection (2)) before or at the meeting, the
3283 meeting shall be adjourned until such requirements are complied with on the demand of any
3284 shareholder in person or by proxy who failed to get such access, or, if not adjourned upon such
3285 demand and such requirements are not complied with, the circuit court in the applicable ~~of the~~
3286 ~~county where a corporation’s principal office (or, if none in this state, its registered office) is~~
3287 ~~located,~~ on application of the shareholder, may summarily order the inspection or copying at the
3288 corporation’s expense and may postpone the meeting for which the list was prepared until the
3289 inspection or copying is complete.

3290 (6) Refusal or failure to comply with the requirements of this section shall not affect the
3291 validity of any action taken at such meeting.

3292 (7) A shareholder may not sell or otherwise distribute any information or records inspected
3293 under this section, except to the extent that such use is for a proper purpose as defined in s.
3294 607.1602(3). ~~Any person who violates this provision shall be subject to a civil penalty of \$5,000.~~

3295

3296 **Commentary to Section 607.0720:**

3297 Subsection (1) was modified to make it clear that the corporation need not include electronic mail
3298 addresses in its shareholder list.

3299 Subsection (2) was modified to make clear that shareholders have an absolute right to inspect the
3300 corporation's shareholders' list in connection with a meeting of shareholders, but that the right to
3301 obtain a copy of the shareholders' list is subject to the requirements of s. 607.1602 (requiring a
3302 demand made in good faith and with a proper purpose).

3303 Language was added to subsection (2) to correspond with the addition of the possibility of a bi-
3304 furcated record date. Such additional new language deals with the requirement to have a separate
3305 list of those entitled to vote in those cases where a bi-furcated record date has been established.

3306 Subsection (4), which subsection sets forth that the shareholder' list is prima facie evidence as to
3307 the identity of shareholders entitled to examine the list or to vote at the meeting, was retained, even
3308 though this subsection is not in the corresponding section of the Model Act.

3309 While not in the Model Act, the language in subsection (7), which has been in the Florida statute
3310 since 1994, was retained. However, the second sentence in subsection (7), which provides that any
3311 person who violates this provision shall be subject to a civil penalty of \$5,000, was removed. By
3312 removing this sentence, the penalty for improperly selling a shareholders' list is left to the courts
3313 to determine.

3314

3315 607.0721 Voting entitlement of shares.

3316 (1) Except as provided in subsections (2), (3), and (4) or unless the articles of incorporation
3317 or this chapter ~~æet~~ provides otherwise, each outstanding share, regardless of class or series, is
3318 entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares
3319 are entitled to vote. If the articles of incorporation provide for more or less than one vote for any
3320 share on any matter, every reference in this chapter ~~æet~~ to a majority or other proportion of shares
3321 shall refer to such a majority or other proportion of votes entitled to be cast.

3322 (2) ~~The S~~shares of a corporation are not entitled to vote if they are owned by or otherwise
3323 belong to the corporation directly or indirectly through an entity of which a majority of the voting
3324 power is held directly or indirectly by the corporation or which is otherwise controlled by the
3325 ~~domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares~~
3326 ~~entitled to vote for directors of the second corporation.~~

3327 (3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are
3328 entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation
3329 directly, or indirectly through an entity of which a majority of the voting power is held directly or
3330 indirectly by the corporation or which is otherwise controlled by the corporation ~~Subsection (2)~~
3331 ~~does not limit the power of a corporation to vote any shares, including its own shares, held by it in~~
3332 ~~a fiduciary capacity. For purposes of this subsection, "voting power" means the current power to~~
3333 ~~vote in the election of directors of a corporation or to elect, select or appoint those persons who~~
3334 ~~will govern another entity.~~

3335 (4) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be
3336 outstanding, after delivery of a written notice of redemption is effective ~~mailed to the holders~~
3337 ~~thereof~~ and a sum sufficient to redeem such shares has been deposited with a bank, trust company,
3338 or other financial institution upon an irrevocable obligation to pay the holders the redemption price
3339 upon surrender of the shares.

3340 (5) Shares standing in the name of another corporation, domestic or foreign, may be voted
3341 by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in the
3342 absence of any applicable provision, by such person as the board of directors of the corporate
3343 shareholder may designate. In the absence of any such designation or in case of conflicting
3344 designation by the corporate shareholder, the chair of the board, the president, any vice president,
3345 the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to be
3346 fully authorized to vote such shares.

3347 (6) Shares held by an administrator, executor, guardian, personal representative, or
3348 conservator may be voted by him or her, either in person or by proxy, without a transfer of such
3349 shares into his or her name. Shares standing in the name of a trustee may be voted by him or her,
3350 either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her
3351 without a transfer of such shares into his or her name or the name of his or her nominee.

3352 (7) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or
3353 an assignee for the benefit of creditors may be voted by him or her without the transfer thereof into
3354 his or her name.

3355 (8) If a share or shares stand of record in the names of two or more persons, whether
3356 fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or
3357 otherwise, or if two or more persons have the same fiduciary relationship respecting the same
3358 shares, unless the secretary of the corporation is given notice to the contrary and is furnished with
3359 a copy of the instrument or order appointing them or creating the relationship wherein it is so
3360 provided, then acts with respect to voting have the following effect:

3361 (a) If only one votes, in person or by proxy, his or her act binds all;

3362 (b) If more than one vote, in person or by proxy, the act of the majority so voting binds
3363 all;

3364 (c) If more than one vote, in person or by proxy, but the vote is evenly split on any
3365 particular matter, each faction is entitled to vote the share or shares in question proportionally;

3366 (d) If the instrument or order so filed shows that any such tenancy is held in unequal
3367 interest, a majority or a vote evenly split for purposes of this subsection shall be a majority or
3368 a vote evenly split in interest;

3369 (e) The principles of this subsection shall apply, insofar as possible, to execution of
3370 proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a
3371 quorum.

3372 (9) Subject to s. 607.0723, nothing herein contained shall prevent trustees or other fiduciaries
3373 holding shares registered in the name of a nominee from causing such shares to be voted by such
3374 nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by
3375 a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee
3376 or other fiduciary.

3377

3378 **Commentary to Section 607.0721:**

3379 Clarifying changes were made in subsections (1) – (4) based on changes made in the 2016 version
3380 of the Model Act, none of which are considered substantive. Subsections (5) – (9) are not in the
3381 Model Act, but have been in the FBCA since 1989 and are retained.

3382

3383 607.0722 Proxies.

3384 (1) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s.
3385 607.0721, or attorney in fact for a shareholder may vote the shareholder’s shares in person or by
3386 proxy.

3387 (2) (a) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s.
3388 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act
3389 for the shareholder by signing an appointment form or by electronic transmission. Any type
3390 of electronic transmission appearing to have been, or containing or accompanied by such
3391 information or obtained under such procedures to reasonably ensure that the electronic
3392 transmission was, transmitted by such person is a sufficient appointment, subject to the
3393 verification requested by the corporation under s. 607.0724.

3394 (b) Without limiting the manner in which a shareholder, other person entitled to vote on
3395 behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may
3396 appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a
3397 shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721,
3398 or attorney in fact for a shareholder may make such an appointment by:

3399 1. Signing an appointment form, with the signature affixed, by any reasonable
3400 means including, but not limited to, facsimile or electronic signature.

3401 2. Transmitting or authorizing the transmission of an electronic transmission to the
3402 person who will be appointed as the proxy or to a proxy solicitation firm, proxy support
3403 service organization, registrar, or agent authorized by the person who will be designated
3404 as the proxy to receive such transmission. However, any electronic transmission must set
3405 forth or be submitted with information from which it can be determined that the electronic
3406 transmission was authorized by the shareholder, other person entitled to vote on behalf of
3407 a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder. If it is
3408 determined that the electronic transmission is valid, the inspectors of election or, if there
3409 are no inspectors, such other persons making that determination shall specify the
3410 information upon which they relied.

3411 (3) An appointment of a proxy is effective when a signed appointment form or an electronic
3412 transmission of the appointment is received by the inspector of election or by the secretary or other
3413 officer or agent authorized to count tabulate votes. An appointment is valid for the term ~~up to 11~~
3414 ~~months unless a longer period is expressly provided in the appointment form and, if no term is~~
3415 provided, is valid for 11 months unless the appointment is irrevocable under subsection (5).

3416 (4) The death or incapacity of the shareholder appointing a proxy does not affect the right of
3417 the corporation to accept the proxy’s authority unless notice of the death or incapacity is received

3418 by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises
3419 his or her authority under the appointment.

3420 (5) An appointment of a proxy is revocable by the shareholder unless the appointment form
3421 or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled
3422 with an interest. Appointments coupled with an interest include the appointment of:

3423 (a) A pledgee;

3424 (b) A person who purchased or agreed to purchase the shares;

3425 (c) A creditor of the corporation who extended credit to the corporation under terms
3426 requiring the appointment;

3427 (d) An employee of the corporation whose employment contract requires the
3428 appointment; or

3429 (e) A party to a voting agreement created under s. 607.0731.

3430 (6) An appointment made irrevocable under subsection (5) becomes revocable when the
3431 interest with which it is coupled is extinguished.

3432 (7) Unless it otherwise provides, an appointment made irrevocable under subsection (5)
3433 continues in effect after a transfer of the shares and a transferee takes subject to the appointment,
3434 except that a~~A~~ transferee for value of shares subject to an irrevocable appointment may revoke the
3435 appointment if the transferee did not know of its existence when he or she acquired the shares and
3436 the existence of the irrevocable appointment was not noted conspicuously on the certificate
3437 representing the shares or on the information statement for shares without certificates.

3438 (8) Subject to s. 607.0724 and to any express limitation on the proxy's authority appearing
3439 on the face of the appointment form or in the electronic transmission, a corporation is entitled to
3440 accept the proxy's vote or other action as that of the shareholder making the appointment.

3441 (9) If an appointment form expressly provides, any proxy holder may appoint, in writing, a
3442 substitute to act in his or her place.

3443 (10) Any copy, facsimile transmission, or other reliable reproduction of the writing or
3444 electronic transmission created under subsection (2) may be substituted or used in lieu of the
3445 original writing or electronic transmission for any purpose for which the original writing or
3446 electronic transmission could be used if the copy, facsimile transmission, or other reproduction is
3447 a complete reproduction of the entire original writing or electronic transmission.

3448 (11) A corporation may adopt bylaws authorizing additional means or procedures for
3449 shareholders to use in exercising rights granted by this section.

3450 **Commentary to Section 607.0722:**

3451 Changes to subsection (3) follow the recently adopted changes to s. 7.22(c) of the Model Act. The
3452 new language clarifies that a proxy is valid for the period specified in the appointment form (which
3453 can be less than 11 months, 11 months or more than 11 months), and that if no term is specified,
3454 the term would be defaulted to 11 months unless such appointment is irrevocable under (5)
3455 (because it is coupled with an interest).

3456 The language added to subsection (7) follows recently adopted changes to s. 7.22 of the Model
3457 Act. This language makes clear that unless the appointment otherwise provides, an appointment
3458 made irrevocable under subsection (5) continues in effect after a transfer of the shares and a
3459 transferee takes subject to the appointment, except if such transferee is a transferee for value who
3460 did not know (or have reason to know from a notation on the certificate or in a related information
3461 statement) that there was an irrevocable appointment associated with such shares. This clarifying
3462 change is not believed to be substantive.

3463

3464 607.0723 Shares held by intermediaries and nominees.

3465 (1) A corporation's board of directors may establish a procedure ~~under~~ by which a person on
3466 whose behalf ~~the beneficial owner~~ of shares that are registered in the name of an intermediary or
3467 a nominee may elect to be treated ~~is recognized~~ by the corporation as the record shareholder by
3468 filing with the corporation a beneficial ownership certificate. ~~The extent of this recognition may~~
3469 ~~be determined in the procedure~~ terms, conditions, and limitations of this treatment shall be
3470 specified in the procedure. To the extent such person is treated under such procedure as having
3471 rights or privileges that the record shareholder otherwise would have, the record shareholder shall
3472 not have those rights or privileges.

3473 (2) The procedure ~~shall specify~~ may set forth:

3474 (a) The types of intermediaries or nominees to which it applies;

3475 (b) The rights or privileges that the corporation recognizes in a person with respect to
3476 whom a beneficial owner ownership certificate is filed;

3477 (c) The manner in which the procedure is selected ~~by the nominee, which shall include~~
3478 that the beneficial ownership certificate be signed or assented to by or on behalf of the record
3479 shareholder and the person or persons on whose behalf the shares are held;

3480 (d) The information that must be provided when the procedure is selected;

3481 (e) The period for which selection of the procedure is effective; ~~and~~

3482 (f) Requirements for notice to the corporation with respect to the arrangement; and

3483 (g) the form and contents of the beneficial ownership certificate.

3484 (3)(f) The procedure may specify any oOther aspects of the rights and duties created by the
3485 filing of a beneficial ownership certificate.

3486

3487 **Commentary to Section 607.0723:**

3488 The changes follow the recently adopted changes to s. 7.23 of the Model Act. The new language
3489 modernizes this provision of the FBCA to better deal with issues of beneficial ownership of shares.

3490

3491 607.0724 Corporation's Acceptance of votes and other instruments.

3492 (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3493 appointment corresponds to the name of a shareholder, the corporation if acting in good faith is
3494 entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and
3495 give it effect as the act of the shareholder.

3496 (2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3497 appointment does not correspond to the name of its shareholder, the corporation if acting in good
3498 faith is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or
3499 proxy appointment and give it effect as the act of the shareholder if:

3500 (a) The shareholder is an entity and the name signed purports to be that of an officer or
3501 agent of the entity;

3502 (b) The name signed purports to be that of an administrator, executor, guardian, personal
3503 representative, or conservator representing the shareholder and, if the corporation requests,
3504 evidence of fiduciary status acceptable to the corporation has been presented with respect to
3505 the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

3506 (c) The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee
3507 for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this
3508 status acceptable to the corporation has been presented with respect to the vote, ballot, consent,
3509 waiver, shareholder demand, or proxy appointment;

3510 (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in
3511 fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation
3512 of the signatory's authority to sign for the shareholder has been presented with respect to the
3513 vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

3514 (e) Two or more persons are the shareholder as co-tenants or fiduciaries and the name
3515 signed purports to be the name of at least one of the co-owners and the person signing appears
3516 to be acting on behalf of all the co-owners.

3517 (3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand,
3518 or proxy appointment if the ~~secretary or other officer or agent~~ person authorized to accept or reject
3519 such instrument ~~tabulate votes~~, acting in good faith, has reasonable basis for doubt about the
3520 validity of the signature on it or about the signatory's authority to sign for the shareholder.

3521 (4) ~~The corporation and its officer or agent who~~ Neither the corporation or any person
3522 authorized by it, nor an inspector of election under s. 607.0729, that accepts or rejects a vote, ballot,
3523 consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with
3524 the standards of this section ~~are not~~ is liable in damages to the shareholder for the consequences
3525 of the acceptance or rejection.

3526 (5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver,
3527 shareholder demand, or proxy appointment under this section is valid unless a court of competent
3528 jurisdiction determines otherwise.

3529 (6) If an inspector of election has been appointed under s. 607.0729, the inspector of election
3530 also has the authority to request information and make determinations under subsections (1), (2),
3531 and (3). Any determination made by the inspector of election under those subsections is
3532 controlling.

3533

3534 **Commentary to Section 607.0724:**

3535 Clarifying changes have been made following recent changes to s. 7.24 of the Model Act, including
3536 references to "ballot" and "shareholder demand" and language designed to coordinate with the
3537 inspector of election provisions in s. 607.0729.

3538

3539 607.0725 Quorum and voting requirements for voting.

3540 (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting
3541 only if a quorum of those shares exists with respect to that matter. Unless the articles of
3542 incorporation or this chapter ~~aet~~ provides otherwise, a majority of the votes entitled to be cast on
3543 the matter by the voting group constitutes a quorum of that voting group for action on that matter.

3544 (2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum
3545 purposes for the remainder of the meeting and for any adjournment of that meeting unless a new
3546 record date is or must be fixed ~~set~~ for that adjourned meeting.

3547 (3) If a quorum exists, action on a matter (other than the election of directors) by a voting
3548 group is approved if the votes cast within the voting group favoring the action exceed the votes
3549 cast opposing the action, unless the articles of incorporation or this chapter ~~aet~~ requires a greater
3550 number of affirmative votes.

3551 (4) The holders of a majority of the shares represented, and who would be entitled to vote at
3552 a meeting if a quorum were present, where a quorum is not present, may adjourn such meeting
3553 from time to time.

3554 (5) The articles of incorporation may provide for a greater voting requirement or a greater or
3555 lesser quorum requirement for shareholders, or voting groups of shareholders, than is provided by
3556 this chapter ~~aet~~, but in no event shall a quorum consist of less than one-third of the shares entitled
3557 to vote.

3558 (6) An amendment to the articles of incorporation that adds, changes, or deletes a greater or
3559 lesser quorum or voting requirement shall meet the same quorum requirement and be adopted by
3560 the same vote and voting groups required to take action under the quorum and voting requirements
3561 then in effect or proposed to be adopted, whichever is greater.

3562 (7) The election of directors is governed by s. 607.0728.

3563 (8) Whenever a provision of this chapter provides for voting of classes or series as separate
3564 voting groups, the rules provided in s. 607.1004 for amendments of articles of incorporation apply
3565 to that provision.

3566

3567 **Commentary to Section 607.0725:**

3568 The language in subsection (4), dealing with the ability of the holders of a majority of the shares
3569 in attendance at a meeting for which a quorum is not present to adjourn the meeting (which has
3570 been in the statute since 1989 but is not in the Model Act) has been retained.

3571 Subsections (5) and (6) are derived from s. 7.27 of the Model Act.

3572 Practitioners are reminded that the best way to avoid the possibility that a separate vote of each
3573 voting group will be required under particular circumstances is to expressly and clearly state in the
3574 corporation's articles of incorporation that all shares will vote together as a single voting group on
3575 such matters.

3576

3577 607.0726 Action by single and multiple voting groups.

3578 (1) If the articles of incorporation or this chapter ~~act~~ provides for voting by a single voting
3579 group on a matter, action on that matter is taken when voted upon by that voting group as provided
3580 in s. 607.0725.

3581 (2) If the articles of incorporation or this chapter ~~act~~ provides for voting by two or more
3582 voting groups on a matter, action on that matter is taken only when voted upon by each of those
3583 voting groups counted separately as provided in s. 607.0725. Action may be taken by different ~~one~~
3584 voting groups on a matter ~~even though no action is taken by another voting group entitled to vote~~
3585 ~~on the matter~~ at different times.

3586

3587 **Commentary to Section 607.0726:**

3588 Clarifying changes based on the most recent versions of the corollary section of the Model Act
3589 have been made. None of these changes are considered substantive.

3590

3591 607.0728 Voting for directors; cumulative voting.

3592 (1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a
3593 greater voting requirement for the election of directors and that is adopted by the board of directors
3594 or shareholders of a corporation having shares registered pursuant to section 12 of the Securities
3595 Exchange Act of 1934 ~~listed on a national securities exchange~~ at the time of adoption, directors
3596 are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting
3597 at which a quorum is present. A bylaw provision or amendment adopted by shareholders which
3598 specifies the votes necessary for the election of directors may not be further amended or repealed
3599 by the board of directors.

3600 (2) Each shareholder who is entitled to vote at an election of directors has the right to vote
3601 the number of shares owned by him or her for as many persons as there are directors to be elected
3602 and for whose election the shareholder has a right to vote. Shareholders do not have a right to
3603 cumulate their votes for directors unless the articles of incorporation so provide.

3604 (3) A statement included in the articles of incorporation that "all or a designated voting group
3605 of shareholders are entitled to cumulate their votes for directors," or words of similar import, means
3606 that the shareholders designated are entitled to multiply the number of votes they are entitled to
3607 cast by the number of directors for whom they are entitled to vote and cast the product for a single
3608 candidate or distribute the product among two or more candidates.

3609

3610 **Commentary to Section 607.0728:**

3611 Subsection (1), which was added to the Florida statute in 2009, allows directors of a public
3612 company to amend the corporation's bylaws to fix a greater voting requirement for the election of
3613 directors without requiring action by the shareholders. The definition of public company used in
3614 this section has been modified to provide that the board of directors of any company with a class
3615 of shares registered pursuant to section 12 of the Securities Exchange Act of 1934 (whether or not
3616 on a national securities exchange) may adopt a majority voting standard.

3617 The language in the first sentence of subsection (2) is not included in Model Act s. 7.28(b).
3618 However, this language is believed to be the general rule with respect to shares entitled to vote for
3619 the election of directors, and therefore the language has been retained.

3620 The language in s. 7.28(d) of the Model Act dealing with the rules for cumulative voting was
3621 determined not to be necessary and thus has not been included.

3622 Concern was expressed that the language allowing the board of directors of a public company to
3623 adopt a majority voting standard could be viewed as in conflict with the language in s. 607.1021
3624 (although it was agreed that the drafters of the 2009 change did not intend for Section 607.1021 to
3625 override the authority granted to directors to act alone to fix the greater voting requirement). The
3626 subcommittee considered whether to add a cross reference to s. 607.1021 so as to eliminate any
3627 potential for conflict. However, it was concluded that the cross reference was unnecessary.

3628

3629 607.0729 Voting Procedures; Inspectors of Election.

3630 (1) A corporation that has a class of shares registered pursuant to section 12 of the Securities
3631 Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act
3632 at a meeting of shareholders in connection with determining voting results. Each inspector will
3633 faithfully execute the duties of inspector with strict impartiality and according to the best of the
3634 inspector’s ability. An inspector may be an officer or employee of the corporation. The inspectors
3635 may appoint or retain other persons to assist the inspectors in the performance of the duties of
3636 inspector under subsection (2), and may rely on information provided by such persons and other
3637 persons, including those appointed to count votes, unless the inspectors believe reliance is
3638 unwarranted.

3639 (2) The inspectors shall:

3640 (a) Ascertain the number of shares outstanding and the voting power of each;

3641 (b) Determine the shares represented at a meeting;

3642 (c) Determine the validity of proxy appointments and ballots;

3643 (d) Count the votes; and

3644 (e) Make a written report of the results.

3645 (3) In performing their duties, the inspectors may examine (i) the proxy appointment forms
3646 and any other information provided in accordance with s. 607.0722(2), (ii) any envelope or related
3647 writing submitted with those appointment forms, (iii) any ballots, (iv) any evidence or other
3648 information specified in s. 607.0724, and (v) the relevant books and records of the corporation
3649 relating to its shareholders and their entitlement to vote, including any securities position list
3650 provided by a depository clearing agency.

3651 (4) The inspectors also may consider other information that they believe is relevant and
3652 reliable for the purpose of performing any of the duties assigned to them pursuant to subsection
3653 (2), including for the purpose of evaluating inconsistent, incomplete or erroneous information and
3654 reconciling information submitted on behalf of banks, brokers, their nominees or similar persons
3655 that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or
3656 more votes being cast than the record shareholder is entitled to cast. If the inspectors consider
3657 other information allowed by this subsection, they shall, in their report under subsection (2),
3658 specify the information considered by them, including the purpose or purposes for which the
3659 information was considered, the person or persons from whom they obtained the information,
3660 when the information was obtained, the means by which the information was obtained, and the
3661 basis for the inspectors’ belief that such information is relevant and reliable.

3662 (5) Determinations of law by the inspectors of election are subject to de novo review by a
3663 court in a judicial proceeding challenging the inspector’s activities under this section.

3664 (6) The chair of the meeting shall announce at the meeting when the polls close for each
3665 matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon
3666 the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any
3667 revocations or changes thereto may be accepted.

3668

3669 **Commentary to Section 607.0729:**

3670 This new section of the FBCA adopts the current version of s. 7.29 of the Model Act dealing with
3671 inspectors of election. Section 7.29(a) of the Model Act applies this provision to all companies
3672 with a class of shares registered pursuant to section 12 of the Securities Exchange Act of 1934 and
3673 to "any other corporation" that appoints an inspector to act at a meeting of directors (compared to
3674 s. 231 of the DGCL, which, in covering this subject, only applies this provision to public
3675 companies). This statute follows the approach taken on this issue in the Model Act. However, the
3676 provision has been changed to a requirement to faithfully execute the duties of an inspector with
3677 strict impartiality rather than a provision that requires an inspector to "certify in writing" that they
3678 will faithfully execute the duties of inspector with strict impartiality. While best practices might
3679 be to arrange for a certification in writing, requiring a written certification was viewed as a
3680 potential trap for companies that may not get it technically right, even though their inspectors
3681 appropriately execute their duties.

3682 Subsection (5) is believed to reflect the current law on this topic.

3683 New subsection (6) laying out the impact of the closing of the polls at a shareholders meeting, has
3684 been added. The language is derived from s. 7.08(d) of the Model Act and is consistent with a
3685 similar provision in s. 231 of the DGCL.

3686

3687 607.0730 Voting trusts.

3688

3689 (1) One or more shareholders may create a voting trust, conferring on a trustee the right to
3690 vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions
3691 of the trust (which may include anything consistent with its purpose) and transferring their shares
3692 to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names
3693 and addresses of all voting trust beneficial owners ~~of beneficial interests in the trust~~, together with
3694 the number and class of shares each transferred to the trust, and deliver copies of the list and
3695 agreement to the corporation's at its principal office. After filing a copy of the list and agreement
3696 in the corporation's principal office, such copy shall be open to inspection by any shareholder of
3697 the corporation (subject to the requirements of s. 607.1602(3)) or by any beneficiary of the trust
3698 under the agreement, during business hours.

3699 (2) A voting trust becomes effective on the date the first shares subject to the trust are
3700 registered in the trustee's name.

3701

3702 **Commentary to Section 607.0730:**

3703 Subsection (1) was modified to include clean-up language from s. 7.30 of the Model Act ("shall
3704 prepare a list of the names and addresses of all voting trust beneficial owners". This change uses
3705 the new definition of "voting trust beneficial owner" contained in s. 607.01401(78).

3706 Although not in the corollary section of the Model Act, the language in the last sentence of
3707 subsection (1), dealing with the requirement that a copy of the trust needs to be made available to
3708 beneficial holders of an interest in the trust and, subject to the requirements of Section 607.0602(3),
3709 to shareholders of the company, has been retained.

3710 The language in the first sentence of section (c) of Model Act Section 7.30, which provides that
3711 the duration of a voting trust shall be as set forth in the voting trust agreement, has not been added.
3712 The question of whether a voting trust without an expiration date can continue indefinitely is left
3713 to the courts to decide.

3714 Since Florida law has not included a ten-year limitation on the duration of a voting trust since this
3715 statute was modified back in 1998, the transition language contained in s. 7.30(c) of the Model Act
3716 has not been added to this section of the FBCA.

3717

3718 607.0731 Shareholders' Voting agreements.

3719 (1) Two or more shareholders may provide for the manner in which they will vote their shares
3720 by signing an agreement for that purpose. A ~~shareholders'~~voting agreement created under this
3721 section is not subject to the provisions of s. 607.0730.

3722 (2) A ~~shareholders'~~voting agreement created under this section is specifically enforceable.

3723 (3) A transferee of shares in a corporation the shareholders of which have entered into an
3724 agreement authorized by subsection (1) shall be bound by such agreement if the transferee takes
3725 shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice
3726 of any such agreement or any ~~such~~renewal thereof if the existence of such agreement ~~thereof~~ is
3727 noted on the face or back of the certificate or certificates representing such shares or on the
3728 information statement for uncertificated shares required by s. 607.0626(2).

3729

3730 **Commentary to Section 607.0731:**

3731 The name of this section has been changed to "Voting Agreements," since this section only deals
3732 with voting agreements and the current heading ("Shareholders' Agreements") is misleading and
3733 creates confusion with s. 607.0732. A corresponding change has been made to the language in
3734 subsections (1) and (2) to change the words "shareholders' agreement" in each subsection to
3735 "voting agreements."

3736 The language in subsection (3), dealing with the issue of whether transferees take their shares
3737 subject to a voting agreement, has been retained, even though this language is not in the
3738 corresponding section of the Model Act. There is a concern that taking this subsection out could
3739 possibly be misconstrued by judges as a change in the law, when confronted with addressing
3740 whether a holder in due course who is not aware of a voting agreement should take free of the
3741 agreement. However, the language has been modernized.

3742 Users of the statute are reminded that as a matter of good practice, legends with respect to voting
3743 agreements placed on stock certificates should be carefully worded so that the legend not only
3744 covers the particular agreement, but also all extensions, amendments or renewals of such
3745 agreement.

3746

3747 607.0732 Shareholder agreements.

3748 (1) An agreement among the shareholders of a corporation ~~with 100 or fewer shareholders at~~
3749 ~~the time of the agreement,~~ that complies with this section, is effective among the shareholders and
3750 the corporation, even though it is inconsistent with one or more other provisions of this chapter, if
3751 it:

3752 (a) Eliminates the board of directors or limits or restricts the discretion or powers of the
3753 board of directors;

3754 (b) Governs the authorization or making of distributions regardless of whether ~~or not~~
3755 they are in proportion to ownership of shares, subject to the limitations in s. 607.06401;

3756 (c) Establishes who shall be directors or officers of the corporation, or their terms of
3757 office or manner of selection or removal;

3758 (d) Governs, in general or in regard to specific matters, the exercise or division of voting
3759 power by the shareholders and directors or by or among any of them, including use of
3760 weighted voting rights or director proxies;

3761 (e) Establishes the terms and conditions of any agreement for the transfer or use of
3762 property or the provision of services between the corporation and any shareholder, director,
3763 officer, or employee of the corporation or among any of them;

3764 (f) Transfers to any shareholder or other person any authority to exercise the corporate
3765 powers or to manage the business and affairs of the corporation, including the resolution of
3766 any issue about which there exists a deadlock among directors or shareholders; ~~or~~

3767 (g) Requires dissolution of the corporation at the request of one or more of the
3768 shareholders or upon the occurrence of a specified event or contingency;

3769 (h) Imposes liability on a shareholder for the attorneys' fees or expenses of the
3770 corporation or any other party in connection with an internal corporate claim, as defined in s.
3771 607.0208(4);

3772 (i) Establishes a mechanism for breaking a deadlock among the directors or
3773 shareholders of the corporation or for addressing the occurrence or existence of a shareholder
3774 asserted oppressive action; or

3775 (j) Otherwise governs the exercise of the corporate powers or the management of the
3776 business and affairs of the corporation or the relationship between the shareholders, the
3777 directors, ~~and~~ ~~or~~ the corporation, or among any of them, and is not contrary to public policy.
3778 ~~For purposes of this paragraph, agreements contrary to public policy include, but are not~~
3779 ~~limited to, agreements that reduce the duties of care and loyalty to the corporation as required~~
3780 ~~by ss. 607.0830 and 607.0832, exculpate directors from liability that may be imposed under~~

3781 ~~s. 607.0831, adversely affect shareholders' rights to bring derivative actions under s.~~
3782 ~~607.07401, or abrogate appraisal dissenters' rights under ss. 607.1301-607.1320.~~

3783 (2) An agreement authorized by this section shall be:

3784 (a) 1. Set forth in the articles of incorporation or bylaws and approved by all
3785 persons who are shareholders at the time the agreement; or

3786 2. Set forth in a written agreement that is signed by all persons who are
3787 shareholders at the time of the agreement and such written agreement is made known
3788 to the corporation; and-

3789 (b) Subject to termination or amendment only by all persons who are shareholders
3790 at the time of the termination or amendment, unless the agreement provides otherwise
3791 ~~with respect to termination and with respect to amendments that do not change the~~
3792 ~~designation, rights, preferences, or limitations of any of the shares of a class or series.~~

3793 (3) The existence of an agreement authorized by this section shall be noted conspicuously on
3794 the front or back of each certificate for outstanding shares or on the information statement required
3795 with respect to uncertificated shares by s. 607.0626(2). If at the time of the agreement the
3796 corporation has shares outstanding which are represented by certificates, the corporation shall
3797 recall such certificates and issue substitute certificates that comply with this subsection. The failure
3798 to note the existence of the agreement on the certificate or information statement shall not affect
3799 the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at
3800 the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to
3801 rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the
3802 agreement if its existence is noted on the certificate or information statement for the shares in
3803 compliance with this subsection and, if the shares are not represented by a certificate, the
3804 information statement is delivered to the purchaser at or before ~~prior to~~ the time of the purchase of
3805 the shares. An action to enforce the right of rescission authorized by this subsection must be
3806 commenced within the earlier of 90 days after discovery of the existence of the agreement or 2
3807 years after the time of purchase of the shares.

3808 (4) An agreement authorized by this section shall cease to be effective when shares of the
3809 corporation are registered pursuant to section 12 of the Securities Exchange Act of 1934 ~~are listed~~
3810 ~~on a national securities exchange or regularly quoted in a market maintained by one or more~~
3811 ~~members of a national or affiliated securities association.~~ If the agreement ceases to be effective
3812 for any reason, the board of directors may, if the agreement is contained or referred to in the
3813 corporation's articles of incorporation or bylaws, adopt an amendment to the articles of
3814 incorporation or bylaws, without shareholder action, to delete the agreement and any references to
3815 it.

3816 (5) An agreement authorized by this section that limits or restricts the discretion or powers
3817 of the board of directors shall relieve the directors of, and impose upon the person or persons in
3818 whom such discretion or powers are vested, liability for acts or omissions imposed by law on
3819 directors to the extent that the discretion or powers of the directors are limited by the agreement.

3820 (6) The existence or performance of an agreement authorized by this section shall not be a
3821 ground for imposing personal liability on any shareholder for the acts or debts of the corporation
3822 even if the agreement or its performance treats the corporation as if it were a partnership or results
3823 in failure to observe the corporate formalities otherwise applicable to the matters governed by the
3824 agreement.

3825 (7) Incorporators or subscribers for shares may act as shareholders with respect to an
3826 agreement authorized by this section if no shares have been issued when the agreement is made.

3827 (8) This section shall not limit or invalidate agreements that are otherwise valid or authorized
3828 without regard to this section, including shareholder agreements between or among some or all of
3829 the shareholders or agreements between or among the corporation and one or more shareholders.

3830

3831 **Commentary to Section 607.0732:**

3832 Subsection (1) currently limits the use of this section to corporations that have 100 or fewer
3833 shareholders at the time of the agreement. The comparable Model Act provision does not contain
3834 this limitation. The 100 or fewer shareholder limitation has been removed based on the belief that
3835 the limitation is an artificial limitation on the definition of what is a closely held entity and that, in
3836 an era of providing flexibility for corporations and other entities to agree upon how they will be
3837 governed and operate, this distinction no longer makes sense.

3838 New subsection (1)(i) has been added to make clear that when shareholders have agreed in a
3839 shareholders agreement complying with this section to either a deadlock resolution mechanism or
3840 a provision for addressing a shareholder asserted oppressive action which expressly deals with
3841 how such conduct will be handled, then such provision will be followed in lieu of judicial
3842 dissolution. These types of provisions are more fully set forth in s. 607.1430(4) and (5) of the
3843 FBCA. It is the view of the Subcommittee that these types of provisions are not contrary to public
3844 policy.

3845 Subsection (1)(h) (now (j)) has been modified to remove the examples of provisions that are
3846 contrary to public policy. These examples are not in subsection (a)(8) of the corollary section of
3847 the Model Act. Whether particular provisions of a shareholders' agreement are contrary to public
3848 policy is a decision to be made by the courts.

3849 Although the limits of this subsection of the Model Act are left uncertain, the commentary to the
3850 2016 version of the Model Act provides that provisions of the Act may not be overridden if they
3851 reflect core principles of public policy with respect to corporate affairs. For example, a provision of
3852 a shareholder agreement that purports to eliminate all of the standards of conduct established under
3853 s. 607.0830 applicable to full-functioning directors may be viewed as contrary to public policy and
3854 thus not validated under subsection (1)(h) (now (j)). On the other hand, a provision that modifies,
3855 limits or reduces standards of conduct under certain circumstances may be acceptable.

3856 Further, the validity of some provisions may depend upon the circumstances. For example, a
3857 provision of a shareholder agreement that limits inspection rights under s. 607.1602 or the right to
3858 financial statements under s. 607.1620 might, as a general matter, be valid, but that provision might
3859 not be given effect if it prevented shareholders from obtaining information necessary to determine
3860 whether directors of the corporation have satisfied the applicable standards of conduct under s.
3861 607.0830.

3862 This change is not intended to suggest that one or more of the items that were previously enumerated
3863 in subsection (1)(h) (now (j)) as agreements that are contrary to public policy should no longer be
3864 considered to be contrary to public policy. Rather, as noted above, whether any such agreements are
3865 contrary to public policy will be determined by the courts based on the particularities of each
3866 agreement and the circumstances, and in some cases these items may be contrary to public policy
3867 and in other circumstances they may not.

3868 Subsection (8) was added to make clear that a shareholder agreement which is not executed by all
3869 persons who are shareholders at the time the agreement is entered into may still be enforceable
3870 against the shareholders who are parties to such agreement and against the corporation under
3871 certain circumstances. This is in addition to the two sections of the FBCA that expressly permit
3872 enforcement of these types of agreements: (i) Sections 607.0731 (Voting Agreements) and (ii)
3873 Section 607.0627 (Restriction on Transfer of Shares and Other Securities). The addition of
3874 subsection (8) with respect to shareholder agreements that do not cover the topics contained in
3875 Section 607.0731(1) is not considered a change in the law and reflects what is considered to be the
3876 current state of the common law on this issue. It is added to eliminate any ambiguity in that regard
3877 and to provide express supporting language.

3878 Practitioners are cautioned that if they want certainty as to whether an agreement covering one or
3879 more of the topics contained in s. 607.0732(1) is enforceable, they should follow the requirements
3880 of this section of the FBCA.

3881 A shareholder agreement otherwise validated by s. 607.0732 is not and will generally not be legally
3882 binding on the state, on creditors, or on other third parties. For example, an agreement that dispenses
3883 with the need to make corporate filings required by the FBCA would be ineffective. Similarly, an
3884 agreement among shareholders that provides that only the president has authority to enter into contracts
3885 for the corporation would not, without more, be binding against third parties – and ordinary principles
3886 of agency, including the concept of apparent authority, would continue to apply.

3887

3888 607.07401—Shareholders’ derivative actions.

3889 ~~(1) A person may not commence a proceeding in the right of a domestic or foreign~~
3890 ~~corporation unless the person was a shareholder of the corporation when the transaction~~
3891 ~~complained of occurred or unless the person became a shareholder through transfer by operation~~
3892 ~~of law from one who was a shareholder at that time.~~

3893 ~~(2) A complaint in a proceeding brought in the right of a corporation must be verified and~~
3894 ~~allege with particularity the demand made to obtain action by the board of directors and that the~~
3895 ~~demand was refused or ignored by the board of directors for a period of at least 90 days from the~~
3896 ~~first demand unless, prior to the expiration of the 90 days, the person was notified in writing that~~
3897 ~~the corporation rejected the demand, or unless irreparable injury to the corporation would result~~
3898 ~~by waiting for the expiration of the 90-day period. If the corporation commences an investigation~~
3899 ~~of the charges made in the demand or complaint, the court may stay any proceeding until the~~
3900 ~~investigation is completed.~~

3901 ~~(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the court~~
3902 ~~finds that one of the groups specified below has made a determination in good faith after~~
3903 ~~conducting a reasonable investigation upon which its conclusions are based that the maintenance~~
3904 ~~of the derivative suit is not in the best interests of the corporation. The corporation shall have the~~
3905 ~~burden of proving the independence and good faith of the group making the determination and the~~
3906 ~~reasonableness of the investigation. The determination shall be made by:~~

3907 ~~(a) A majority vote of independent directors present at a meeting of the board of~~
3908 ~~directors, if the independent directors constitute a quorum;~~

3909 ~~(b) A majority vote of a committee consisting of two or more independent directors~~
3910 ~~appointed by a majority vote of independent directors present at a meeting of the board of~~
3911 ~~directors, whether or not such independent directors constitute a quorum; or~~

3912 ~~(c) A panel of one or more independent persons appointed by the court upon motion by~~
3913 ~~the corporation.~~

3914 ~~(4) A proceeding commenced under this section may not be discontinued or settled without~~
3915 ~~the court’s approval. If the court determines that a proposed discontinuance or settlement will~~
3916 ~~substantially affect the interest of the corporation’s shareholders or a class, series, or voting group~~
3917 ~~of shareholders, the court shall direct that notice be given to the shareholders affected. The court~~
3918 ~~may determine which party or parties to the proceeding shall bear the expense of giving the notice.~~

3919 ~~(5) On termination of the proceeding, the court may require the plaintiff to pay any~~
3920 ~~defendant’s reasonable expenses, including reasonable attorney’s fees, incurred in defending the~~
3921 ~~proceeding if it finds that the proceeding was commenced without reasonable cause.~~

3922 ~~(6) The court may award reasonable expenses for maintaining the proceeding, including~~
3923 ~~reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding~~
3924 ~~who receives any relief, whether by judgment, compromise, or settlement, and require that the~~
3925 ~~person account for the remainder of any proceeds to the corporation; however, this subsection does~~
3926 ~~not apply to any relief rendered for the benefit of injured shareholders only and limited to a~~
3927 ~~recovery of the loss or damage of the injured shareholders.~~

3928 ~~(7) For purposes of this section, "shareholder" includes a beneficial owner whose shares are~~
3929 ~~held in a voting trust or held by a nominee on his or her behalf.~~

3930

3931 **Commentary to Section 607.07401:**

3932 The FBCA includes all of the derivative action sections in a single statutory section. On the other
3933 hand, the Model Act breaks this topic into multiple sections (ss. 7.41-7.47). The revisions follow
3934 the approach of the Model Act and thus break the derivative action provisions into multiple
3935 sections in a manner similar to the Model Act.

3936 Florida's corporate statute follows the Model Act and its LLC and partnership statutes follow the
3937 Uniform Acts, and the Model Act and the respective Uniform Acts often differ in procedure and
3938 substance for valid reasons. In many instances in the various Florida entity statutes, these
3939 differences have been respected, in whole or in part; yet in certain other instances where the same
3940 concept is addressed and where deemed appropriate, efforts have been made to harmonize the
3941 approach by using the same language with the same general structure. The process sections of the
3942 derivative action provisions of the FBCA are an example of provisions where efforts have been
3943 made to harmonize the FBCA with the most recent uniform act adopted in Florida (FRLLCA). On
3944 the other hand, there are other sections within the FBCA derivative action provisions where,
3945 because of the different nature of the different types of entities, trying to achieve harmonization of
3946 language and approach could actually end up defeating the intended differences of the respective
3947 entities (for example, in Section 607.0742). In those cases, the language and structure were not
3948 harmonized, even though the subject matter of the provision was comparable. As a general matter,
3949 wherever possible, efforts were made to follow the model on which the FBCA is based (the Model
3950 Act) and not to stray from that model unless there was a compelling reason to do so.

3951

3952 607.0741 Standing.

3953 (1) A shareholder may not commence a derivative proceeding unless the shareholder is a
3954 shareholder at the time the action is commenced and:

3955 (a) Was a shareholder when the conduct giving rise to the action occurred; or

3956 (b) Whose status as a shareholder devolved on the person through transfer or by
3957 operation of law from one who was a shareholder when the conduct giving rise to the action
3958 occurred.

3959 (2) In ss. 607.0741 through 607.0747, the term "shareholder" means a record shareholder, a
3960 beneficial shareholder, and an unrestricted voting trust beneficial owner.

3961

3962 **Commentary to Section 607.0741:**

3963 Under s. 607.0741(1), a person may not commence a derivative action proceeding unless the
3964 person was a shareholder of the corporation when the transaction complained of occurred or unless
3965 the person became a shareholder through transfer by operation of law from one who was a
3966 shareholder at that time. Section 7.41 of the Model Act provides that a shareholder may not
3967 commence or maintain a derivative action proceeding unless the shareholder was a shareholder of
3968 the corporation at the time of the act or omission complained of or became a shareholder through
3969 transfer by operation of law from one who was a shareholder at that time. Section 7.41 also adds
3970 a requirement that "the shareholder must fairly and adequately represent the interests of the
3971 corporation in enforcing the rights of the corporation" to maintain a derivative action proceeding.
3972 Section 605.0803 of FRLCA is substantively similar to the current FBCA section regarding who
3973 is a proper plaintiff, except that it adds the requirement that the member must also be a member at
3974 the time the action is commenced.

3975 The revised standing provision does not add any specific language to the effect that a shareholder
3976 must remain a shareholder throughout the derivative action proceeding in order to continue to
3977 proceed with an otherwise properly brought derivative action. Imposing any such condition to
3978 continuing to maintain such an action should be based on the equities in each respective situation
3979 and thus should be left to the courts to decide. Further, the Model Act concept contained in s.
3980 7.41(b) requiring that the shareholder fairly and adequately represent the interests of the
3981 corporation in enforcing the rights of the corporation was not included in the statute out of a
3982 concern that this additional standing requirement is an invitation to litigation that would be costly
3983 and would unduly delay the process, thus operating as an inappropriate hindrance to derivative
3984 actions. Any such determination should be based on the equities in each respective situation and
3985 thus should be left to the courts to decide.

3986 The revised standing provision does not adopt the "maintain" language from s. 7.41 of the Model
3987 Act because the concept is implicit in the current statute and tends to give courts more leeway.

3988 An expanded definition of "shareholder" for purposes of the derivative action provisions of the
3989 FBCA has been added.

3990

3991 607.0742 Complaint; Demand and Excuse.

3992 A complaint in a proceeding brought in the right of a corporation must be verified and allege
3993 with particularity:

3994 (1) The demand, if any, made to obtain the action desired by the shareholder from the board
3995 of directors; and

3996 (2) Either:

3997 (a) If such a demand was made, that the demand was refused, rejected, or ignored by
3998 the board of directors prior to the expiration of 90 days from the date the demand was made;
3999 or

4000 (b) If such a demand was made, why irreparable injury to the corporation or
4001 misapplication or waste of corporate assets causing material injury to the corporation would
4002 result by waiting for the expiration of a 90-day period from the date the demand was made; or

4003 (c) The reason(s) for the shareholder not making the effort to obtain the desired action
4004 from the board of directors or comparable authority.

4005

4006 **Commentary to Section 607.0742:**

4007 Under current s. 607.07401(2), a derivative proceeding cannot be brought unless the complainant
4008 alleges that demand was made to obtain action of the Board of Directors and the demand was
4009 refused or ignored by the Board of Directors for a period of at least 90 days from the first demand,
4010 unless irreparable injury to the corporation would result from waiting the 90 days. The Model Act
4011 continues to include a required universal demand before a derivative action may be brought. On
4012 the other hand, FRLICA, in Section 605.0802(2), contemplates that if making a demand on the
4013 other members (in a member-managed LLC) or on the other managers (in a manager managed
4014 LLC) would be futile or would cause irreparable injury to the company, then such demand shall
4015 not be required in order to maintain a derivative proceeding against the LLC. FRLICA provision
4016 follows RULLCA on this issue. Further, while not in the DGCL, the futility concept, as an
4017 alternative to a demand requirement, has been adopted as a matter of judicial policy by the
4018 Delaware courts, and whether and to what extent Florida courts choose to adopt the applicable
4019 Delaware standards remains to be seen.

4020 In making a decision as to whether to add "demand futility" to the FBCA, consideration was given
4021 to the following items:

- 4022 • the reasons why futility might or might not be an appropriate excuse to demand in the LLC
4023 context and in the corporate context;
4024
- 4025 • the reasons why futility was not adopted in the FBCA when it was originally adopted in
4026 1989 and why it has not been added to the FBCA as the Delaware law on the subject has
4027 continued to develop;
4028
- 4029 • whether because of acknowledged harmonization efforts to rationalize among entity
4030 statutes in Florida, either demand futility should be added to the FBCA or FRLICA should
4031 be modified to remove demand futility; and
4032
- 4033 • while many states have a universal demand requirement in their respective corporate
4034 statutes, a substantial number of states, including Delaware, recognize the concept of
4035 demand futility (in one form or another) as a valid excuse for making demand under certain
4036 circumstances.

4037 The Subcommittee was also aware that, notwithstanding that the existing derivative action statute
4038 has a universal demand requirement, some courts sitting in Florida have recognized futility in
4039 circumstances where the demand is to be directed to the directors alleged to be acting
4040 inappropriately.

4041 After analyzing all of these factors, the revised demand provision allows a complaining
4042 shareholder to argue that demand would be futile by alleging the reasons for the shareholder not

4043 making the effort to obtain the action desired. The language used in the statute is largely derived
4044 from existing s. 607.07401(2), but adds the opportunity to allege the reasons for not making the
4045 demand and leaves it to the courts to determine, under such circumstances, whether demand would
4046 be considered futile.

4047 If demand is made, the demand need not set forth the basis for the demand in detail, since the
4048 corporation can contact the shareholder for clarification if there are any questions, but the demand
4049 must set forth facts concerning share ownership and must be sufficiently specific to apprise the
4050 corporation of the action sought to be taken and the grounds for that action so that the demand can
4051 be evaluated.

4052

4053 607.0743 Stay of proceedings.

4054 If the corporation commences an inquiry into the allegations made in any demand or the
4055 complaint, the court may stay any derivative proceeding for such period as the court deems
4056 appropriate.

4057

4058 **Commentary to Section 607.0743:**

4059 The language is largely identical to the last sentence of subsection (2) of prior s. 607.07401, with
4060 modifications to recognize that demand may not always be made.

4061

4062 607.0744 Dismissal.

4063 (1) A derivative proceeding may be dismissed, in whole or in part, by the court on motion by
4064 the corporation if a group specified in subsections (2) or (3) has determined in good faith, after
4065 conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the
4066 derivative proceeding is not in the best interests of the corporation, the corporation having in all
4067 cases the burden of proof regarding the qualifications, good faith and reasonable inquiry of the
4068 group making the determination.

4069 (2) Unless a panel is appointed pursuant to subsection (3), the determination required in
4070 subsection (1) shall be made by:

4071 (a) A majority of qualified directors present at a meeting of the board of directors if the
4072 qualified directors constitute a quorum; or

4073 (b) A majority vote of a committee consisting of two or more qualified directors
4074 appointed by majority vote of qualified directors present at a meeting of the board of directors,
4075 regardless of whether such qualified directors constitute a quorum.

4076 (3) Upon motion by the corporation, the court may appoint a panel consisting of one or more
4077 disinterested and independent individuals to make a determination required in subsection (1).

4078 (4) This s. 607.0744 does not prevent the court from:

4079 (a) Enforcing a person's rights under the corporation's articles of incorporation, bylaws
4080 or this chapter, including the person's rights to information under s. 607.1602; or

4081 (b) Exercising its equitable or other powers, including granting extraordinary relief in
4082 the form of a temporary restraining order or preliminary injunction.

4083

4084 **Commentary to Section 607.0744:**

4085 Section 607.07401(3) currently states that a court may dismiss a derivative proceeding under
4086 certain circumstances. Similarly, s. 605.0804(5) of FRLCA gives the court discretion to dismiss
4087 a derivative action based on the recommendation of a disinterested litigation committee in a
4088 situation where the committee is disinterested and independent and the committee has acted in
4089 good faith, independently and with reasonable care. Both of these provisions are different from
4090 the Model Act, which requires a court to dismiss the derivative action on the recommendation of
4091 a disinterested special litigation committee (s. 7.44 – "A derivative proceeding shall be
4092 dismissed...." under certain enumerated circumstances).

4093 Given the complexities that may exist within derivative actions, and the multiplicity of issues, and
4094 to maintain consistency with the approach taken in both the current FBCA and in the recently-
4095 enacted FRLCA, maintaining court discretion with regard to a motion to dismiss is warranted.
4096 The use of the more discretionary term "may" does not preclude a court from granting a motion
4097 where it finds the report to be well-founded. See, e.g. *Atkins v. Topp Telecom, Inc.*, 874 So. 2d 626
4098 (4th DCA 2004). However, there often may be circumstances where a court should not be bound
4099 to accept or reject in toto the report of a special litigation committee, and Florida cases have not
4100 revealed any problem with the current standard that grants judicial discretion.

4101 Subsections (1), (2) and (3) are largely based on s. 7.44 of the Model Act.

4102 New subsection (4) is adapted from s. 605.0804(1) of FRLCA.

4103 Although the "group" referred to in this section as making the determination as to whether the
4104 maintenance of the derivative proceeding is in the best interests of the corporation is not referred
4105 to herein as a "special litigation committee," it is recognized that some practitioners and some
4106 courts may well use that nomenclature to define or identify the group making the determination.
4107 In all respects, any such use of the term "special litigation committee" to refer to the group making
4108 the determination does not change the application or meaning of this provision.

4109

4110 607.0745 Discontinuance or settlement; notice.

4111 (1) A derivative action on behalf of a corporation may not be discontinued or settled without
4112 the court’s approval.

4113 (2) If the court determines that a proposed discontinuance or settlement will substantially
4114 affect the interest of the corporation’s shareholders or a class, series, or voting group of
4115 shareholders, the court shall direct that notice be given to the shareholders affected. The court
4116 may determine which party or parties to the derivative action shall bear the expense of giving the
4117 notice.

4118

4119 **Commentary to Section 607.0745:**

4120 This provision is substantially the same as s. 607.07401(4). The language is modeled on the
4121 language in s. 605.0806 of FRLCA and, except as noted below, is substantively similar to s. 7.45
4122 of the Model Act.

4123 The language in the last sentence of subsection (2) which allows the court to determine which
4124 party or parties to the derivative action shall bear the expense of giving the notice is not in the
4125 corresponding Model Act provision, but is in the current Florida statute, and has been carried
4126 forward.

4127

4128 607.0746 Proceeds and expenses.

4129 On termination of the derivative proceeding the court may:

4130

4131 (1) order the corporation to pay from the amount recovered in the derivative proceeding by
4132 the corporation the plaintiff's reasonable expenses, including reasonable attorneys' fees and costs,
4133 incurred in the derivative proceeding if it finds that, in the derivative proceeding, the plaintiff was
4134 successful in whole or in part; or

4135

4136 (2) order the plaintiff to pay any defendant's reasonable expenses, including reasonable
4137 attorneys' fees and costs, incurred in defending the proceeding if it finds that the proceeding was
4138 commenced or maintained without reasonable cause or for an improper purpose.

4139

4140 **Commentary to Section 607.0746:**

4141 The current Florida derivative action statute on this subject includes the following language:

4142 (6) The court may award reasonable expenses for maintaining the proceeding, including
4143 reasonable attorney’s fees, to a successful plaintiff or to the person commencing the
4144 proceeding who receives any relief, whether by judgment, compromise, or settlement, and
4145 require that the person account for the remainder of any proceeds to the corporation; however,
4146 this subsection does not apply to any relief rendered for the benefit of injured shareholders
4147 only and limited to a recovery of the loss or damage of the injured shareholders.

4148 The substance of s. 607.0746 as drafted is, for the most part, similar to the existing statute, but is
4149 different than Model Act s. 7.46 (which states that any payment to plaintiff requires a "substantial
4150 benefit" to the corporation). "Substantial" is an ambiguous term and could well lead to extensive
4151 argumentation. Settlements of derivative actions often deal principally with procedural matters,
4152 and may involve only a small amount of monetary recovery and non-monetary elements.
4153 Defendants may argue that the term "substantial" precludes a plaintiff from recovering expenses
4154 in many instances. As a result, such arguments should be avoided and, instead, judicial discretion
4155 should be allowed.

4156 While not covered in the current statute, the language in Model Act s. 7.46(2) allowing the
4157 plaintiffs to pay the defendant's fees if the action was filed without reasonable cause or for an
4158 improper purpose has been added.

4159 Subsection (3) of s. 7.46 of the Model Act has not been added to the FBCA. The Model Act
4160 language, which addresses other abuses in the conduct of derivative litigation, is believed
4161 unnecessary, since these types of abuses are believed to be already addressed under applicable
4162 rules of civil procedure and other Florida statutory provisions.

4163

4164 607.0747 Applicability to foreign corporations.

4165 In any derivative proceeding in the right of a foreign corporation brought in the courts of this
4166 state, the matters covered by this subchapter shall be governed by the laws of the jurisdiction of
4167 incorporation of the foreign corporation except for ss. 607.0743, 607.0745 and 607.0746.

4168

4169 **Commentary to Section 607.0747:**

4170 There is currently no analogous provision in the FBCA. The section carve outs relate to judicial
4171 discretionary decisions that are appropriately governed by Florida local standards and do not
4172 implicate the internal affairs doctrine.

4173

4174 607.0748 Shareholder action to appoint custodian or receiver.

4175

4176 (1) A circuit court may appoint one or more persons to be custodians or receivers of and for
4177 a corporation in a proceeding by a shareholder where it is established that:

4178

4179 (a) The directors are deadlocked in the management of the corporate affairs, the
4180 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
4181 threatened or being suffered; or

4182

4183 (b) The directors or those in control of the corporation are acting fraudulently and
4184 irreparable injury to the corporation is threatened or being suffered.

4185

4186 (2) The court:

4187

4188 (a) May issue injunctions, appoint a temporary custodian or temporary receiver with
4189 all the powers and duties the court directs, take other action to preserve the corporate assets
4190 wherever located, and carry on the business of the corporation until a full hearing is held;

4191

4192 (b) Shall hold a full hearing, after notifying all parties to the proceeding and any
4193 interested persons designated by the court, before appointing a custodian or receiver; and

4194

4195 (c) Has jurisdiction over the corporation and all of its property, wherever located.

4196

4197 (3) The court may appoint an individual or domestic or foreign corporation (authorized to
4198 transact business in this state) as a custodian or receiver and may require the custodian or receiver
4199 to post bond, with or without sureties, in an amount the court directs.

4200

4201 (4) The court shall describe the powers and duties of the custodian or receiver in its appointing
4202 order, which may be amended from time to time. Among other powers,

4203

4204 (a) A custodian may exercise all of the powers of the corporation, through or in place of
4205 its board of directors, to the extent necessary to manage the business and affairs of the
4206 corporation; and

4207

4208 (b) A receiver (i) may dispose of all or any part of the assets of the corporation wherever
4209 located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in
4210 the receiver's own name as receiver in all courts of this state.

4211

4212 (5) The court during a custodianship may redesignate the custodian a receiver, and during a
4213 receivership may redesignate the receiver a custodian, if doing so is in the best interests of the
4214 corporation.

4215

4216 (6) The court from time to time during the custodianship or receivership may order
4217 compensation paid and expense disbursements or reimbursements made to the custodian or
4218 receiver from the assets of the corporation or proceeds from the sale of its assets.

4219

4220 **Commentary to Section 607.0748:**

4221 Section 607.0748 is based on Section 7.48 of the Model Act. Section 607.0748 provides a basis
4222 for shareholders of any corporation to obtain the appointment of a receiver or custodian in two
4223 situations arising outside the context of seeking a judicial dissolution: (i) when directors are
4224 deadlocked in the management of the corporate affairs, the shareholders are unable to break the
4225 deadlock and irreparable injury to the corporation is threatened or is being suffered, or (ii) when
4226 the directors or those in control of the corporation are acting fraudulently and irreparable injury to
4227 the corporation is threatened or being suffered.

4228 This section is also designed to provide guidance to the courts relative to the latitude of the court's
4229 authority to make such appointments in these situations. Without this section, the express statutory
4230 power and authority to appoint a receiver or custodian is only available ancillary to an action for
4231 judicial dissolution (although Florida courts, through common law equitable powers, may be able
4232 to fashion, and have from time to time fashioned, such a remedy under current law).

4233 Section 607.0748 is in addition to other shareholder remedies provided by this Chapter or
4234 otherwise available under principles of law or equity, including common law principles relating to
4235 the appointment of custodians and receivers, and could, but only for example, be relied upon by a
4236 shareholder of a nonpublic corporation in lieu of involuntary dissolution under s. 607.1430(1)(b).

4237 The Model Act provision upon which this statute is based is itself based on Section 226 of the
4238 DGCL.

4239

4240 607.0749 Provisional director.

4241 (1) In a proceeding by a shareholder, a provisional director may be appointed in the
4242 discretion of the court if it appears that such action by the court will remedy a situation in which
4243 the directors are deadlocked in the management of the corporate affairs and the shareholders are
4244 unable to break the deadlock. A provisional director may be appointed notwithstanding the
4245 absence of a vacancy on the board of directors, and such director shall have all the rights and
4246 powers of a duly elected director, including the right to notice of and to vote at meetings of
4247 directors, until such time as the provisional director is removed by order of the court or, unless
4248 otherwise ordered by a court, removed by a vote of the shareholders sufficient either to elect a
4249 majority of the board of directors or, if greater than majority voting is required by the articles of
4250 incorporation or the bylaws, to elect the requisite number of directors needed to take action. A
4251 provisional director shall be an impartial person who is neither a shareholder nor a creditor of the
4252 corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications,
4253 if any, may be determined by the court.

4254 (2) A provisional director shall report from time to time to the court concerning the matter
4255 complained of, or the status of the deadlock, if any, and of the status of the corporation's
4256 business, as the court shall direct. No provisional director shall be liable for any action taken or
4257 decision made, except as directors may be liable under s. 607.0831. In addition, the provisional
4258 director shall submit to the court, if so directed, recommendations as to the appropriate
4259 disposition of the action. Whenever a provisional director is appointed, any officer or director of
4260 the corporation may, from time to time, petition the court for instructions clarifying the duties
4261 and responsibilities of such officer or director.

4262 (3) In any proceeding under this section, the court shall allow reasonable compensation to
4263 the provisional director for services rendered and reimbursement or direct payment of reasonable
4264 costs and expenses, which amounts shall be paid by the corporation.

4265

4266 **Commentary to Section 607.0749:**

4267 Section 607.0749 is new and is not a Model Act provision. This section is a corollary to s. 607.1435
4268 of the FBCA dealing with the appointment of a provisional director outside the context of seeking
4269 a judicial dissolution when the directors are deadlocked in the management of the corporate affairs
4270 and the shareholders are unable to break the deadlock. Without this section, the express statutory
4271 power and authority to appoint a provisional director is only available ancillary to an action for
4272 judicial dissolution (although Florida courts, through common law equitable powers, may be able
4273 to fashion, and have from time to time fashioned, such a remedy under current law).

4274

4275 Section 7.49 of the Model Act – Judicial determination of corporate offices and review of
4276 elections and shareholder votes

4277
4278 Section 7.49 of the Model Act establishes procedures for judicial resolution of disputes with respect
4279 to the identity of the corporation's directors or officers, the identity of the members of any committee
4280 of its board of directors, the validity of nominations for director or the results or validity of
4281 shareholder votes. It confers subject matter jurisdiction on the specified court to resolve these
4282 disputes. That jurisdiction may be exercised either in a new proceeding or by an application made in
4283 an already pending proceeding. Model Act s. 7.49 also requires an expedited review of disputes to
4284 prevent them from immobilizing the corporation. There is currently no comparable provision in the
4285 FBCA.

4286 The Subcommittee believes that Florida courts in equity have always had the power to deal with
4287 (and have dealt with) election disputes of the type covered by this section. As a result, the decision
4288 was made not to include this Model Act section in the FBCA.

4289

ARTICLE 8

DIRECTORS AND OFFICERS

4290 607.0801 Requirement for and duties of board of directors.

4291 (1) Except as may be provided in an agreement authorized under s. 607.0732(1), each
4292 corporation must have a board of directors.

4293 (2) All corporate powers shall be exercised by or under the authority of the board of directors
4294 of the corporation, and the business and affairs of the corporation shall be managed by or under
4295 the direction of, and subject to the oversight of, its board of directors, subject to any limitation set
4296 forth in the articles of incorporation or in an agreement authorized under s. 607.0732.

4297

4298 **Commentary to Section 607.0801:**

4299 No substantive changes have been made.

4300

4301 607.0802 Qualifications of directors.

4302 (1) Directors must be natural persons who are 18 years of age or older but need not be
4303 residents of this state or shareholders of the corporation unless the articles of incorporation or
4304 bylaws so require. The articles of incorporation or bylaws may prescribe additional qualifications
4305 for directors or nominees for directors.

4306 (2) A qualification for nomination for director prescribed before a person’s nomination shall
4307 apply to such person at the time of nomination. A qualification for nomination for director
4308 prescribed after a person’s nomination shall not apply to such person with respect to such
4309 nomination.

4310 (3) A qualification for director prescribed before a director has been elected or appointed
4311 may apply only at the time an individual becomes a director or may apply during a director’s term.
4312 A qualification prescribed after a director has been elected or appointed shall not apply to that
4313 director before the end of that director's term.

4314 (42) In the event that the eligibility to serve as a member of the board of directors of a
4315 condominium association, cooperative association, homeowners’ association, or mobile home
4316 owners’ association is restricted to membership in such association and membership is appurtenant
4317 to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a
4318 qualified beneficiary as defined in s. 736.0103 of a trust which owns a unit, parcel, or mobile home
4319 shall be deemed a member of the association and eligible to serve as a director of the condominium
4320 association, cooperative association, homeowners’ association, or mobile home owners’
4321 association, provided that said beneficiary occupies the unit, parcel, or mobile home.

4322

4323 **Commentary to Section 607.0802:**

4324 The language in the last sentence of s. 8.02(a) of the Model Act, which provides that "qualifications
4325 must be reasonable as applied to the corporation and must be lawful," has not been added to the
4326 FBCA. Similarly, s. 802(b) of the Model Act, which limits the qualifications that may be adopted
4327 under particular circumstances, was not added. Determinations as to what particular qualifications
4328 are appropriate or inappropriate under particular circumstances should be left to the courts to
4329 decide.

4330 The language in subsection (2) follows the exact wording contained in s. 8.02(d) of the Model Act;
4331 however, the reference to a "person's nomination" in the second sentence presumes that such
4332 person's nomination was proper, even though the word "proper" is not expressly set forth.

4333 Although new subsection (2) and (3) are being added to incorporate the language from subsections
4334 (d) and (e) of s. 8.02 of the Model Act, the intent of these additions is to follow the plain language
4335 of the added sections. In that regard, a disagreement is noted with respect to the aspect of the
4336 commentary to this section of the Model Act which states that if a director meets a qualification at
4337 the beginning of his or her term, but later circumstances change and such director no longer meets
4338 such qualification, such director would no longer be entitled to continue as a director from and
4339 after such date. The determination of whether such a director should be allowed to continue to
4340 hold the director position under such circumstances should be left to the corporation and to the
4341 courts to determine, rather than there being a hard and fast rule of that director automatically losing
4342 the right to continue as a director.

4343

4344 607.0803 Number of directors.

4345 (1) A board of directors must consist of one or more individuals, with the number specified
4346 in or fixed in accordance with the articles of incorporation or bylaws.

4347 (2) The number of directors may be increased or decreased from time to time by amendment
4348 to, or in the manner provided in, the articles of incorporation or the bylaws.

4349 (3) Directors are elected at the first annual shareholders’ meeting and at each annual
4350 shareholders’ meeting thereafter, unless elected by written consent in lieu of an annual
4351 shareholders’ meeting as permitted by s. 607.0704 or unless their terms are staggered under s.
4352 607.0806.

4353

4354 **Commentary to Section 607.0803:**

4355 The changes are non-substantive clarifying changes based on changes made in the 2016 version of
4356 the Model Act.

4357

4358 607.0804 Election of directors by certain voting groups; special voting rights of certain
4359 directors if applicable.

4360 The articles of incorporation may confer upon holders of any voting group the right to elect
4361 one or more directors who shall serve for such term and have such voting powers as are stated in
4362 the articles of incorporation. The terms of office and voting powers of the directors elected in the
4363 manner provided in the articles of incorporation may be greater than or less than those of any other
4364 director or class of directors. If the articles of incorporation provide that directors elected by the
4365 holders of a voting group shall have more or less than one vote per director on any matter, every
4366 reference in this chapter ~~æt~~ to a majority or other proportion of directors shall refer to a majority
4367 or other proportion of the votes of such directors. Further, if a shareholders' agreement meeting
4368 the requirements of s. 607.0732 provides that directors shall have more or less than one vote per
4369 director on any matter, every reference in this chapter to a majority or other proportion of directors
4370 shall refer to a majority or other proportion of the votes of such directors.

4371

4372 **Commentary to Section 607.0804:**

4373 Despite certain differences between language in the current version of s. 8.04 of the Model Act
4374 and s. 607.0804 of the FBCA, no conforming changes were made. The FBCA's reference to
4375 "voting group", as defined in s. 607.01401(77) of the FBCA, is believed to be more appropriate
4376 than the Model Act's use of the term "class." Although the FBCA language is considered more
4377 precise, the Model Act language and the FBCA language on this subject are believed to mean
4378 essentially the same thing.

4379 Although the concept of weighted proportional director voting (if permitted in the articles of
4380 incorporation) in s. 8.04 of the FBCA does not appear in the Model Act, it has been in the FBCA
4381 for more than 20 years (and was originally adopted based upon section 141(d) of the DGCL) and
4382 such concept should continue to remain in this section of the FBCA.

4383 The title to this section is being changed to reflect the fact that this section not only addresses the
4384 authorization of election of certain directors by separate voting groups but also the authority for
4385 such designated directors to maintain voting rights that are "weighted" if permitted in the articles
4386 of incorporation. It is important to recognize that this provision in s. 607.0804 authorizes certain
4387 specific changes to traditional corporate norms that can be implemented without the need to follow
4388 the requirements and conditions of s. 607.0732 of the FBCA.

4389 To eliminate any ambiguity, language is being added to make it clear that if a shareholders'
4390 agreement has been adopted in compliance with s. 607.0732 which changes the weight of director
4391 votes, then all references in Chapter 607 to a majority or other proportion of directors shall refer
4392 to a majority or other proportion of the votes of such directors.

4393

4394 607.0805 Terms of directors generally.

4395 (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting
4396 at which directors are elected.

4397 (2) The terms of all other directors expire at the next annual shareholders' meeting following
4398 their election, except to the extent (i) provided in s. 607.0806, (ii) provided in s. 607.1023 if a
4399 bylaw electing to be governed by that section is in effect or (iii) that a shorter term is specified in
4400 the articles of incorporation in the event of a director nominee failing to receive a specified vote
4401 for election, unless their terms are staggered under s. 607.0806.

4402 (3) A decrease in the number of directors does not shorten an incumbent director's term.

4403 (4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting
4404 at which directors are elected.

4405 (5) Except to the extent otherwise provided in the articles of incorporation or under s.
4406 607.1023, if a bylaw electing to be governed by that section is in effect, dDespite the expiration of
4407 a director's term, the director continues to serve until his or her successor is elected and qualifies
4408 or until there is a decrease in the number of directors.

4409

4410 **Commentary to Section 607.0805:**

4411 Clarifying language was added to subsection (2) to address when the term of directors expire if
4412 director terms are staggered under s. 607.0806. Based on subsections 8.05 (b) and (e) of the Model
4413 Act, a cross reference has been added to each of the corresponding subsections in this s. 607.0805
4414 to provide that s. 607.0805 shall not apply to the extent provided in s. 607.1023 of the FBCA.

4415

4416 607.0806 Staggered terms for directors.

4417 (1) ~~The directors of any corporation organized under this act may, by the articles of~~
4418 ~~incorporation, the or by an initial bylaws, or by a bylaw adopted by a vote of the shareholders,~~
4419 ~~may provide for staggering the terms of directors by dividing the total number of directors be~~
4420 ~~divided into one, two, or three groups, with each group containing half or one-third of the total, as~~
4421 ~~near as may be practicable. In that event, the terms of the first group expire at the first annual~~
4422 ~~shareholders' meeting after their election, the terms of the second group expire at the second annual~~
4423 ~~shareholders' meeting after their election, and the terms of the third group, if any, expire at the~~
4424 ~~third annual shareholders' meeting after their election. At each annual shareholders meeting held~~
4425 ~~thereafter, directors shall be elected for a term of two years or three years, as the case may be, to~~
4426 ~~succeed those whose terms expire. classes with the number of directors in each class being as~~
4427 ~~nearly equal as possible; the term of office of those of the first class to expire at the annual meeting~~
4428 ~~next ensuing; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each~~
4429 ~~annual election held after such classification and election, directors shall be chosen for a full term,~~
4430 ~~as the case may be, to succeed those whose terms expire. If the directors have staggered terms,~~
4431 ~~then any increase or decrease in the number of directors shall be so apportioned among the classes~~
4432 ~~as to make all classes as nearly equal in number as possible.~~

4433 (2) In the case of any Florida corporation in existence prior to July 1, 1990, directors of such
4434 corporation divided into four classes may continue to serve staggered terms as the articles of
4435 incorporation or bylaws of such corporation provided immediately prior to the effective date of
4436 this act, unless and until the articles of incorporation or bylaws are amended to alter or terminate
4437 such classes.

4438

4439 **Commentary to Section 607.0806:**

4440 The changes are not intended to be and should not in any way be viewed as substantive changes.
4441 Rather, these changes are wordsmithing designed to (i) eliminate a reference (i.e., to the word
4442 "one"), which makes no sense under the circumstances of a staggered board, and (ii) clarify the
4443 applicable terms of office and specified dates of expiration of term upon the initial classification
4444 and then upon subsequent annual elections when a staggered board is in place. The language is
4445 modeled after the language in s. 8.06 of the Model Act.

4446 The language in s. 607.0806(1) of the FBCA dealing with apportioning increase or decreases in
4447 the number of directors among classes to make classes as nearly equal in number as possible was
4448 retained, even though such language is not included in s. 8.06 of the Model Act. Although such
4449 language may be implicit in the Model Act language, because this language has been in the FBCA
4450 for many years, the language dealing with this subject has been retained.

4451

4452 607.0807 Resignation of directors.

4453 (1) A director may resign at any time by delivering written notice of resignation to the board
4454 of directors or its chair or to the secretary of the corporation.

4455 (2) A resignation is effective when the notice of resignation is delivered unless the notice of
4456 resignation specifies a later effective date or an effective date determined upon the subsequent
4457 happening of an event or events. If a resignation is made effective at a later date or upon the
4458 subsequent happening of an event or events, the board of directors may fill the pending vacancy
4459 before the effective date occurs if the board of directors provides that the successor does not take
4460 office until the effective date.

4461 (3) A resignation that specifies a later effective date or that is conditioned upon the
4462 subsequent happening of an event or events or upon failing to receive a specified vote for election
4463 as a director may provide that the resignation is irrevocable.

4464

4465 **Commentary to Section 607.0807:**

4466 The FBCA requirement that any resignation must be in writing was continued, although such
4467 requirement of a writing is not included in either the corresponding Model Act provision or the
4468 corresponding DGCL provision. The language in s. 607.0807(1) of the FBCA was modified to
4469 better coordinate with language in the corresponding Model Act provision and for clarity by using
4470 the words "notice of resignation " (as opposed to simply using the word "notice" or simply using
4471 the word "resignation").

4472 The language additions in subsections (2) and (3) are derived from s. 8.07(b) of the Model Act and
4473 are intended to update and modernize these sections. These changes are clarifying and not
4474 substantive. However, one of those changes (i.e., adding the Model Act language that a resignation
4475 "conditioned upon failing to receive a specified vote for as a director" can be irrevocable) has
4476 somewhat of a substantive aspect; this change is designed to coordinate with the majority voting
4477 (as provided in s. 607.0728) issue for public companies that adopt such provisions.

4478

4479 607.0808 Removal of directors by shareholders.

4480 (1) The shareholders may remove one or more directors with or without cause unless the
4481 articles of incorporation provide that directors may be removed only for cause.

4482 (2) If a director is elected by a voting group of shareholders, only the shareholders of that
4483 voting group may participate in the vote to remove him or her.

4484 (3) A director may be removed if the number of votes cast to remove exceeds the number of
4485 votes cast not to remove the director, except to the extent the articles of incorporation or bylaws
4486 require a greater number; provided that if cumulative voting is authorized, a director may not be
4487 removed if, in the case of a meeting, the number of votes sufficient to elect the director under
4488 cumulative voting is voted against removal and, if action is taken by less than unanimous written
4489 consent, voting shareholders entitled to the number of votes sufficient to elect the director under
4490 cumulative voting do not consent to the removal. ~~If cumulative voting is not authorized, a director~~
4491 may be removed only if the number of votes cast to remove exceeds the number of votes cast not
4492 to remove the director.

4493 (4) A director may be removed by the shareholders only at a meeting of shareholders called
4494 for the purpose of removing the director and the meeting notice must state that, ~~provided the notice~~
4495 of the meeting states that the purpose, or one of the purposes of the meeting is the removal of the
4496 director is a purpose of the meeting.

4497

4498 **Commentary to Section 607.0808:**

4499 The changes to subsections (3) and (4) are non-substantive clarifying changes based on changes
4500 to the Model Act made in the 2016 version of the Model Act.

4501

4502 607.08081 Removal of directors by judicial proceedings.

4503 (1) The circuit court in the applicable county may remove a director from office, and may order
4504 other relief, including barring the director from reelection for a period prescribed by the court, in a
4505 proceeding commenced by or in the right of the corporation if the court finds that:

4506 (a) The director engaged in fraudulent conduct with respect to the corporation or its
4507 shareholders, grossly abused the position of director, or intentionally inflicted harm on the
4508 corporation; and

4509 (b) Considering the director’s course of conduct and the inadequacy of other available
4510 remedies, removal or such other relief would be in the best interest of the corporation.

4511 (2) A shareholder proceeding on behalf of the corporation under subsection (a) shall comply
4512 with all of the requirements of ss. 607.0741 through 607.0747, except s. 607.0741(1).

4513

4514 **Commentary to Section 607.08081:**

4515

4516 The section is modeled after Model Act s. 8.09. This Model Act section was originally adopted in
4517 2001 and the language was substantially revised in the 2016 version of the Model Act. It is intended
4518 to apply in limited circumstances where other remedies are inadequate to address serious
4519 misconduct by a director and it is impracticable for shareholders to invoke the usual remedy of
4520 removal under s. 8.08 of the Model Act (s. 607.0808). While there was a general view that courts
4521 already have this power in equity and in an injunction proceeding, having this power expressly set
4522 forth in the statute is considered a good policy decision, particularly when more than 30 states
4523 (including Delaware, in DGCL section 225(c)) have included some form of judicial remedy to
4524 remove directors in their statute.

4525 This new section is not intended to restrict a court from exercising its equitable powers under
4526 particular circumstances.

4527

4528 607.0809 Vacancy on board.

4529 (1) Unless the articles of incorporation provide otherwise, if ~~Whenever~~ a vacancy occurs on
4530 a board of directors, including a vacancy resulting from an increase in the number of directors;~~it~~
4531 ~~may be filled by the affirmative vote of a majority of the remaining directors, though less than a~~
4532 ~~quorum of the board of directors, or by the shareholders, unless the articles of incorporation~~
4533 ~~provide otherwise.~~

4534 (a) the shareholders may fill the vacancy;

4535 (b) the board of directors may fill the vacancy; or

4536 (c) if the directors remaining in office are less than a quorum, the vacancy may be filled
4537 by the affirmative vote of a majority of all the directors then remaining in office.

4538 (2) If the vacant office was held by a director elected by a voting group of shareholders,
4539 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled
4540 by the shareholders, and only the remaining directors elected by that voting group, even if less
4541 than a quorum, are entitled to fill the vacancy if it is filled by the directors. ~~Whenever the holders~~
4542 ~~of shares of any voting group are entitled to elect a class of one or more directors by the provisions~~
4543 ~~of the articles of incorporation, vacancies in such class may be filled by holders of shares of that~~
4544 ~~voting group or by a majority of the directors then in office elected by such voting group or by a~~
4545 ~~sole remaining director so elected. If no director elected by such voting group remains in office,~~
4546 ~~unless the articles of incorporation provide otherwise, directors not elected by such voting group~~
4547 ~~may fill vacancies as provided in subsection (1).~~

4548 (3) A vacancy that ~~will~~ may occur at a specified later date (~~under s. 607.0807(2)~~ by reason
4549 of a resignation effective at a later date under s. 607.0807(2) or otherwise) ~~or upon the subsequent~~
4550 ~~happening of an event or events or otherwise~~) may be filled before the vacancy occurs, but the new
4551 director may not take office until the vacancy occurs.

4552

4553 **Commentary to Section 607.0809:**

4554 With one exception, the changes to this section are non-substantive clarifying changes based on
4555 changes to the Model Act made in the 2016 version of the Model Act.

4556 Subsection (2) now provides that if a particular director is to be elected by a particular voting
4557 group, only the remaining directors elected by that particular voting group or the shareholders in
4558 that particular voting group may fill that director vacancy. Thus, if there are no remaining directors
4559 elected by that voting group, the other remaining directors no longer have the ability to fill the
4560 vacancy (and, in that case, only the shareholders in the particular voting group will be able to fill
4561 the vacancy).

4562

4563 607.08101 Compensation of directors.

4564 Unless the articles of incorporation or bylaws provide otherwise, the board of directors may
4565 fix the compensation of directors.

4566

4567 **Commentary to Section 607.08101:**

4568 No changes have been made to this section of the FBCA.

4569

4570 607.0820 Meetings.

4571 (1) The board of directors may hold regular or special meetings in or out of this state.

4572 (2) A majority of the directors present, whether or not a quorum exists, may adjourn any
4573 meeting of the board of directors to another time and place. Unless the bylaws otherwise provide,
4574 notice of any such adjourned meeting shall be given to the directors who were not present at the
4575 time of the adjournment and, unless the time and place of the adjourned meeting are announced at
4576 the time of the adjournment, to the other directors.

4577 (3) Meetings of the board of directors may be called by the chair of the board or by the
4578 president unless otherwise provided in the articles of incorporation or the bylaws.

4579 (4) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
4580 may permit any or all directors to participate in any a regular or special meeting of the board of
4581 directors ~~by, or conduct the meeting~~ through the use of, any means of communication by which all
4582 directors participating may simultaneously hear each other during the meeting. A director
4583 participating in a meeting by this means is deemed to be present in person at the meeting.

4584

4585 **Commentary to Section 607.0820:**

4586 Although minor clean up changes were made to this section to conform the language to certain of
4587 the language in the 2016 version of the Model Act, no substantive changes are have been made.
4588 Although subsections (2) and (3) of s. 607.0820 of the FBCA (which deal with who may call a
4589 meeting of the board and with respect to adjournments of board meetings) are not contained in the
4590 Model Act, because these subsections have been in the FBCA since 1989, they are retained in the
4591 statute.

4592

4593 607.0821 Action by directors without a meeting.

4594 (1) Unless the articles of incorporation or bylaws provide otherwise, action required or
4595 permitted by this ~~chapter~~ act to be taken at a board of directors' meeting or committee meeting
4596 may be taken without a meeting if the action is taken by all members of the board or of the
4597 committee. The action must be evidenced by one or more written consents describing the action
4598 taken, ~~and~~ signed by each director or committee member and delivered to the corporation.

4599 (2) Action taken under this section is effective when the last director signs the consent and
4600 delivers the consent to the corporation, unless the consent specifies a different effective date. A
4601 director's consent may be withdrawn by a revocation signed by the director and delivered to the
4602 corporation prior to delivery to the corporation of unrevoked written consents signed by all the
4603 directors.

4604 (3) A consent signed under this section has the effect of a meeting vote and may be described
4605 as such in any document.

4606

4607 **Commentary to Section 607.0821:**

4608 The concept of required delivery of the board consent to the corporation has been added to the
4609 statute in subsections (1) and (2). This is not intended to be a substantive change, since the concept
4610 of delivery was believed to be implicit under existing law.

4611 The last sentence of s. 8.21(b) of the Model Act has been added to s. 607.0821(2) of the FBCA.
4612 This sentence deals with revocation of consents before a board action by written consent becomes
4613 effective (i.e., upon delivery of unrevoked written consents signed by all directors).

4614 The revised statute does not specify where and how delivery to the corporation of a written consent
4615 shall be made. This issue is left to the determination of courts as to whether delivery was
4616 appropriate under particular circumstances. Cross references are noted to (i) s. 607.08401(3)
4617 providing that the board or the bylaws shall delegate to one or more officers the responsibility for
4618 authenticating records of the corporation, (ii) s. 607.0141, which defines the term "notice," and
4619 (iii) s. 607.1601, which requires the corporation to keep a record of items such as written consents
4620 of directors. However, based on concepts of apparent authority, delivery to the corporation's
4621 secretary or the corporation's president should, in most cases, be considered proper delivery to the
4622 corporation.

4623

4624 607.0822 Notice of meetings.

4625 (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the
4626 board of directors may be held without notice of the date, time, place, or purpose of the meeting.

4627 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
4628 special meetings of the board of directors must be preceded by at least 2 days' notice of the date,
4629 time, and place of the meeting. The notice need not describe the purpose of the special meeting
4630 unless required by the articles of incorporation or bylaws.

4631

4632 **Commentary to Section 607.0822:**

4633 No changes have been made to this section of the FBCA.

4634

4635 607.0823 Waiver of notice.

4636 Notice of a meeting of the board of directors need not be given to any director who signs a
4637 waiver of notice either before or after the meeting. Attendance of a director at a meeting shall
4638 constitute a waiver of notice of such meeting and a waiver of any and all objections to the date,
4639 time, place or purpose of the meeting, ~~the time of the meeting,~~ or the manner in which it has been
4640 called or convened, except when a director states, at the beginning of the meeting or promptly
4641 upon arrival at the meeting, any objection to holding the meeting or to the transaction of business
4642 because the meeting is not lawfully called or convened and where the director, after objecting,
4643 does not vote for or consent to action taken at the meeting.

4644

4645 **Commentary to Section 607.0823:**

4646 The statute has been clarified to reflect that a director’s attendance at a meeting constitutes a waiver
4647 of not only the place and time of the meeting, but also the date and purpose of the meeting, unless
4648 the director properly objects.

4649 The language contained in s. 8.23(a) of the Model Act requiring that a waiver be "filed with the
4650 minutes or corporate records" of the corporation in order for the waiver to be effective has not
4651 been added. Although such practice is considered good corporate practice and may even be an
4652 obligation of the corporation under s. 607.1601(1), this technical requirement for effectiveness of
4653 the waiver should not be mandated (leaving it to the corporation to determine whether it has
4654 received proper evidence of a waiver). However, whether or not such a requirement is included in
4655 the statutory language, since the corporation likely has the burden of proving that a waiver has
4656 been provided, it behooves the corporation to obtain the waiver in writing and place it in the
4657 corporation’s records.

4658 Clarifying language has been added (i) to allow for objecting to the holding of the meeting, in
4659 addition to the ability to object to the transaction of business at the meeting, and (ii) to require not
4660 only that the director object to the transaction of business at the meeting (for failure to give notice)
4661 at the start of the meeting, but also not to vote for or consent to the action(s) taken thereafter at the
4662 meeting. Through this change, s. 607.0823 of the FBCA is brought into conformity with the
4663 language in s. 8.23(b) of the Model Act. The Model Act commentary on this section provides that
4664 this additional provision presumes that a director has waived his or her objection to the meeting if
4665 he or she votes for or assents to the action taken at the meeting.

4666

4667 607.0824 Quorum and voting.

4668 (1) Unless the articles of incorporation or bylaws provide for a greater or lesser ~~require a~~
4669 ~~different number or unless otherwise expressly provided in this chapter~~, a quorum of a board of
4670 directors consists of a majority of the number of directors specified in or fixed in accordance with
4671 ~~prescribed by~~ the articles of incorporation or the bylaws.

4672 (2) The quorum of the board of directors specified in or fixed in accordance with the articles
4673 of incorporation or bylaws may not consist of less ~~authorize a quorum of a board of directors to~~
4674 ~~consist of less than a majority but no fewer than one-third of the~~ specified or fixed ~~prescribed~~
4675 number of directors ~~determined under the articles of incorporation or the bylaws.~~

4676 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors
4677 present is the act of the board of directors unless the articles of incorporation or bylaws require the
4678 vote of a greater number of directors or unless otherwise expressly provided in this chapter.

4679 (4) A director of a corporation who is present at a meeting of the board of directors when
4680 corporate action is taken is deemed to have assented to the action taken unless the director:

4681 (a) Objects at the beginning of the meeting (or promptly upon his or her arrival) to
4682 holding it or transacting specified business at the meeting; or

4683 (b) Votes against or abstains from the action taken.

4684

4685 **Commentary to Section 607.0824:**

4686 The changes in subsections (1) and (2) of s. 607.0824 of the FBCA bring this section of the FBCA
4687 into conformity with s. 8.24 of the 2016 version of the Model Act. The language in the Model Act
4688 provision is viewed as doing a better job than subsections (1) and (2) of existing s. 607.0824 of
4689 expressing the default rule regarding a quorum of the board of directors for the transaction of
4690 business.

4691 The revised language also provides greater clarity by including an exception, in the lead in portion
4692 of subsection (1) of s. 607.0824, for other sections of the FBCA that may, under certain
4693 circumstances, require a different quorum or voting of the board on a particular issue.

4694 The words "or a committee of the board of directors" contained in subsection (4) of s. 607.0824
4695 have been deleted. However, this is not a substantive change because this concept is now addressed
4696 generally in subsection (3) of s. 607.0825.

4697 The language of subsection (4)(b) of s. 607.0824 was retained and the requirement from the
4698 corresponding provision of the Model Act that a negative vote must be contained in a writing
4699 delivered by the director to the corporation to avoid the implicit assent to the action by a director
4700 who is present at a board meeting was not added.

4701

4702 607.0825 Committees.

4703 (1) ~~Unless this chapter, the articles of incorporation or the bylaws provide otherwise provide,~~
4704 ~~the board of directors, by resolution adopted by a majority of the full board of directors,~~ may
4705 ~~designate from among its members~~ establish an executive committee and one or more other board
4706 committees to perform functions of the board of directors. Such committees shall be composed
4707 exclusively of one or more directors, each of which, to the extent provided in such resolution or in
4708 the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the
4709 authority of the board of directors, except that no such committee shall have the authority to:

4710 (a) ~~Approve or recommend to shareholders actions or proposals required by this act to~~
4711 ~~be approved by shareholders~~

4712 (b) ~~Fill vacancies on the board of directors or any committee thereof.~~

4713 (c) ~~Adopt, amend, or repeal the bylaws.~~

4714 (d) ~~Authorize or approve the reacquisition of shares unless pursuant to a general~~
4715 ~~formula or method specified by the board of directors.~~

4716 (e) ~~Authorize or approve the issuance or sale or contract for the sale of shares, or~~
4717 ~~determine the designation and relative rights, preferences, and limitations of a voting group~~
4718 ~~except that the board of directors may authorize a committee (or a senior executive officer of~~
4719 ~~the corporation) to do so within limits specifically prescribed by the board of directors.~~

4720 (2) Unless this chapter, the articles of incorporation or bylaws provide otherwise, the
4721 establishment of a board committee, the appointment of members to it, the dissolution of a
4722 previously created board committee, and the removal of members from a previously created board
4723 committee must be approved by a majority of all the directors in office when the action is taken.

4724 (23) ~~Unless the articles of incorporation or bylaws provide otherwise, Sections ss. 607.0820,~~
4725 ~~6070.822, 607.0823 and through 607.0824 which govern meetings, notice and waiver of notice,~~
4726 ~~and quorum and voting requirements of the board of directors apply to board committees and their~~
4727 ~~members as well.~~

4728 (4) A board committee may exercise the powers of the board of directors under s. 607.0801,
4729 except that a board committee may not:

4730 (a) Authorize or approve the reacquisition of shares unless pursuant to a formula or
4731 method, or within limits, prescribed by the board of directors.

4732 (b) Approve, recommend to shareholders, or propose to shareholders action that this
4733 chapter requires be approved by shareholders.

4734 (c) Fill vacancies on the board of directors or on any board committee.

4735 (d) Adopt, amend, or repeal bylaws.

4736 (25) The establishment of, delegation of authority to, or action by a committee does not
4737 alone constitute compliance by a director with the standards of conduct described in s. 607.0830.

4738 ~~(36) Each committee must have two or more members who serve at the pleasure of the board~~
4739 ~~of directors. The board of directors, by resolution adopted in accordance with subsection (1), may~~
4740 ~~designate~~ appoint one or more directors as alternate members of any board such committee to fill
4741 a vacancy on the committee or who may act in the place and stead of to replace any absent or
4742 disqualified member of such committee or members at any meeting of such committee during the
4743 member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution
4744 creating the board committee so provide, the member or members present at any board committee
4745 meeting and not disqualified from voting, by unanimous action, may appoint another director to act
4746 in place of an absent or disqualified member during that member's absence or disqualification.

4747 ~~(4) Neither the designation of any such committee, the delegation thereto of authority, nor~~
4748 ~~action by such committee pursuant to such authority shall alone constitute compliance by any~~
4749 ~~member of the board of directors not a member of the committee in question with his or her~~
4750 ~~responsibility to act in good faith, in a manner he or she reasonably believes to be in the best~~
4751 ~~interests of the corporation, and with such care as an ordinarily prudent person in a like position~~
4752 ~~would use under similar circumstances.~~

4753

4754 **Commentary to Section 607.0825:**

4755 The language in subsection (1), in subsection (2), in the first sentence of subsection (3), and in
 4756 subsection (4) has been replaced with language from subsections (a), (b), (c), and (d), of s. 8.25 of
 4757 the Model Act, except to the extent discussed below. Of note, this change now allows board
 4758 committees to be comprised of only one member, unless a greater number is otherwise required in
 4759 the chapter (such as, for example, in ss. 607.0741 and 607.0832) or in the particular corporation's
 4760 articles of incorporation or bylaws. The prior law (s. 607.0825(3)) required at least two persons
 4761 to comprise each board committee.

4762 The matters that may not be delegated to a committee have been changed (i) to retain subsection
 4763 (1)(d) of the current statute relative to delegation to committees of the right to authorize and
 4764 approve reacquisition of shares (i.e., redemption payments), to redesignate it as subsection (4)(a)
 4765 and not to extend that exception to follow the language of subsection (e)(1) of s. 8.25 of the Model
 4766 Act (covering all "distributions"), (ii) to follow the second, third and fourth matters set forth in
 4767 subsection (d) of s. 8.25 of the Model Act (which is mostly a reordering of what already appeared
 4768 in subsection (1)(a) through (c) of the current statute), except that the limited override for filling
 4769 committee vacancies reflected in the Model Act is added. By retaining subsection (1)(d) of the
 4770 current statute (now subsection (4)(a)) relative to delegation to committees of the right to authorize
 4771 and approve reacquisition of shares (i.e., redemption payments) and not covering all
 4772 "distributions," a board of a Florida corporation continues to have the ability to delegate to a
 4773 committee of the board the right to approve a dividend distribution (subject to any limitations and
 4774 restrictions applicable to the board itself), without the board having to approve the particular
 4775 distribution or to approve any formula or other parameters with respect to any distribution before
 4776 it is authorized by a committee.

4777 The Florida only provision, subsection (1)(e), limiting the ability to delegate to a board committee
 4778 the issuance or sale of shares, or the designation of relative rights, preferences, and limitations of
 4779 a voting group, other than in situations where limits on such issuances are specifically prescribed
 4780 by the board of directors has been eliminated. The removal of this exception also eliminates the
 4781 ability to delegate all such issuances (within proscribed limits) to a senior executive officer of the
 4782 corporation. This provision is not in the Model Act, the DGCL or the corporate statutes of many
 4783 other states, including New York, California and Texas.

4784 Old subsection (4) has been deleted. The duties of members of board committees are left to the
 4785 provisions governing the duties of directors under s. 607.0830. A cross reference to this effect has
 4786 been added in new subsection (5).

4787 By way of clarifying language from s. 8.25 of the Model Act, this section confirms the intent of
 4788 prior s. 607.0825 to the effect that this section relates only to board committees exercising one or
 4789 more board functions. This section does not apply to other committees set up by the board that
 4790 may include officers, employees, or others who are not board members and that might be created

4791 to deal with non-board issues or to make recommendations for the board or a board committee to
4792 consider. Moreover, it does not limit the board’s power to designate non-board member observers
4793 to attend meetings of board committees. However, no such non-board member observer can be a
4794 voting member of a board committee.

4795

4796 607.0826 Submission of matters for a shareholder vote.

4797 A corporation may agree to submit a matter to a vote of its shareholders even if, after
4798 approving the matter, the board of directors determines it no longer recommends the matter.

4799

4800 **Commentary to Section 607.0826:**

4801 This section, which is new to the FBCA, follows the language of Model Act s. 8.26 added in 2008.
4802 This section expressly authorizes a corporation to enter into an agreement (such as a merger
4803 agreement) with a "force the vote" provision. The Model Act commentary notes, however, that
4804 this provision is not intended to relieve the board of directors from its duty to carefully consider a
4805 proposed transaction and the interests of its shareholders. Thirteen states, including Delaware,
4806 have statutes similar to s. 8.26. Of these states, six (i.e., Connecticut, Georgia, Maine,
4807 Massachusetts, Mississippi and Washington) are Model Act states.

4808

4809 607.0830 General standards for directors.

4810 (1) Each member of the board of directors, when discharging the duties of a director,
4811 including in discharging his or her duties as a member of a board committee, shall act:~~A director~~
4812 ~~shall discharge his or her duties as a director, including his or her duties as a member of a~~
4813 ~~committee:~~

4814 (a) In good faith; and

4815 (b) ~~With the care an ordinarily prudent person in a like position would exercise~~
4816 ~~under similar circumstances; and~~

4817 (c)~~—~~In a manner he or she reasonably believes to be in the best interests of the
4818 corporation.

4819 (2) The members of the board of directors or a board committee, when becoming
4820 informed in connection with a decision-making function or devoting attention to an oversight
4821 function, shall discharge their duties with the care that an ordinary prudent person in a like position
4822 would reasonably believe appropriate under similar circumstances. ~~In discharging his or her~~
4823 ~~duties, a director is entitled to rely on information, opinions, reports, or statements, including~~
4824 ~~financial statements and other financial data, if prepared or presented by:~~

4825 (a) ~~One or more officers or employees of the corporation whom the director~~
4826 ~~reasonably believes to be reliable and competent in the matters presented;~~

4827 (b) ~~Legal counsel, public accountants, or other persons as to matters the director~~
4828 ~~reasonably believes are within the persons' professional or expert competence; or~~

4829 (c) ~~A committee of the board of directors of which he or she is not a member if the~~
4830 ~~director reasonably believes the committee merits confidence.~~

4831 (3) In discharging board or board committee duties, a director who does not have
4832 knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the
4833 persons specified in subsection (5)(a) or subsection (5)(b) to whom the board may have delegated,
4834 formally or informally by course of conduct, the authority or duty to perform one or more of the
4835 board's functions that are delegable under applicable law.

4836 (4) In discharging board or board committee duties, a director who does not have
4837 knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or
4838 statements, including financial statements and other financial data, prepared or presented by any
4839 of the persons specified in subsection (5).

4840 (5) A director is entitled to rely, in accordance with subsection (3) or (4), on:

4841 (a) One or more officers or employees of the corporation whom the director
4842 reasonably believes to be reliable and competent in the functions performed or the
4843 information, opinions, reports or statements provided;

4844 (b) Legal counsel, public accountants, or other persons retained by the corporation
4845 or by a committee of the board of the corporation as to matters involving skills or
4846 expertise the director reasonably believes are matters (i) within the particular person's
4847 professional or expert competence or (ii) as to which the particular person merits
4848 confidence; or

4849 (c) A committee of the board of directors of which the director is not a member if
4850 the director reasonably believes the committee merits confidence.

4851 (36) In discharging board or board committee ~~his or her~~ duties, a director may consider
4852 such factors as the director deems relevant, including the long-term prospects and interests of the
4853 corporation and its shareholders, and the social, economic, legal, or other effects of any action on
4854 the employees, suppliers, customers of the corporation or its subsidiaries, the communities and
4855 society in which the corporation or its subsidiaries operate, and the economy of the state and the
4856 nation.

4857 ~~(4) A director is not acting in good faith if he or she has knowledge concerning the matter~~
4858 ~~in question that makes reliance otherwise permitted by subsection (2) unwarranted.~~

4859 ~~(5) A director is not liable for any action taken, as a director, if he or she performed the~~
4860 ~~duties of his or her office in compliance with this section.~~

4861

4862 **Commentary to Section 607.0830:**

4863 This Section has been modified to follow the organization and the wording of Model Act s. 8.30,
4864 although for the most part the change in language does not change the substance of standards
4865 applicable to directors.

4866 Unlike s. 8.30(a) of the Model Act, s. 607.0830(1) retains the clarifying reference from the prior
4867 Florida statute that these standards apply to directors whether they are acting as members of the
4868 board or as members of a committee of the board. The applicability to service as a board committee
4869 member is believed to be implicit under the Model Act provision, but this express concept was
4870 retained because it was included in the prior Florida statute and there was concern that deleting it
4871 might be interpreted as taking that standard and its protections away from directors when acting in
4872 their capacity as a committee member of a board committee.

4873 The "prudent person" standard of care in subsection (1) of the existing statute was replaced in
4874 subsection (2) with a standard of care that "a person in a like position would reasonably believe
4875 appropriate under similar circumstances" standard, thus incorporating into the standard the concept
4876 of a "reasonable belief" under the circumstances. The new language is derived from the Model
4877 Act provision, and is not believed to change the standard in any meaningful way, but rather to give
4878 better guidance to courts about how to consider this standard under various circumstances and to
4879 allow courts to consider case law in other Model Act states that have adopted this Model Act
4880 provision as their standard of care for directors.

4881 The provisions that previously appeared in subsection (2) are now found, with substantially similar
4882 language, in subsections (3), (4) and (5).

4883 Subsection 8.30(c) of the Model Act, which was added to the Model Act in 2005, was not adopted
4884 for inclusion in the FBCA. Subsection (c), dealing with a director's obligations of disclosure to
4885 the board under various circumstances, was one of several Model Act changes that flowed from
4886 the Enron/WorldCom scandals, and the work of the ABA Task Force on Corporate Responsibility
4887 and the group addressing revisions to the conflict of interest provisions of the Model Act. This
4888 concept of disclosure is believed to already be the standard in Florida. Silence on this issue will
4889 allow Florida courts the latitude to determine the scope of a director's obligation to disclose under
4890 each particular circumstance that may arise from time to time.

4891 In subsection (5)(b), language not found in the Model Act is added in an effort to more clearly
4892 recognize that, under certain circumstances, a committee of the board, rather the corporation itself,
4893 may engage its own legal counsel, accountants and/or other advisors.

4894 Old subsection (5) has been removed, based on the view that the topic is adequately covered in s.
4895 607.0831 and that the language in this section is ambiguous. However, the elimination of old
4896 subsection (5) is not intended to be a substantive change in the law. See s. 607.0831(1)(a).

4897 607.0831 Liability of directors.

4898 (1) A director is not personally liable for monetary damages to the corporation or any other
4899 person for any statement, vote, decision to take or not to take action, or any failure to take any
4900 action, or failure to act, regarding corporate management or policy, as by a director, unless:

4901 (a) The director breached or failed to perform his or her duties as a director; and

4902 (b) The director's breach of, or failure to perform, those duties constitutes any of the
4903 following:

4904 1. A violation of the criminal law, unless the director had reasonable cause to
4905 believe his or her conduct was lawful or had no reasonable cause to believe his or her
4906 conduct was unlawful. A judgment or other final adjudication against a director in any
4907 criminal proceeding for a violation of the criminal law estops that director from contesting
4908 the fact that his or her breach, or failure to perform, constitutes a violation of the criminal
4909 law; but does not estop the director from establishing that he or she had reasonable cause
4910 to believe that his or her conduct was lawful or had no reasonable cause to believe that
4911 his or her conduct was unlawful;

4912 2. A circumstance under which the a transaction at issue is one from which the
4913 director derived an improper personal benefit, either directly or indirectly;

4914 3. A circumstance under which the liability provisions of s. 607.0834 are
4915 applicable;

4916 4. In a proceeding by or in the right of the corporation to procure a judgment in its
4917 favor or by or in the right of a shareholder, conscious disregard for the best interest of the
4918 corporation, or willful or intentional misconduct; or

4919 5. In a proceeding by or in the right of someone other than the corporation or a
4920 shareholder, recklessness or an act or omission which was committed in bad faith or with
4921 malicious purpose or in a manner exhibiting wanton and willful disregard of human
4922 rights, safety, or property.

4923 (2) For the purposes of this section, the term "recklessness" means the action, or omission
4924 to act, in conscious disregard of a risk:

4925 (a) Known, or so obvious that it should have been known, to the director; and

4926 (b) Known to the director, or so obvious that it should have been known, to be so great
4927 as to make it highly probable that harm would follow from such action or omission.

4928 (3) A director is deemed not to have derived an improper personal benefit from any
4929 transaction if the transaction and the nature of any personal benefit derived by the director are not
4930 prohibited by state or federal law or regulation and, without further limitation:

4931 (a) In an action other than a derivative suit regarding a decision by the director to
4932 approve, reject, or otherwise affect the outcome of an offer to purchase the stock of, or to
4933 effect a merger of, the corporation, the transaction and the nature of any personal benefits
4934 derived by a director are disclosed or known to all directors voting on the matter, and the
4935 transaction was authorized, approved, or ratified by at least two directors who comprise a
4936 majority of the disinterested directors (whether or not such disinterested directors constitute a
4937 quorum);

4938 (b) ~~The transaction and the nature of any personal benefits derived by a director are~~ was
4939 authorized, approved or ratified as set forth in s. 607.0832(3)(a)1. or 2.; ~~disclosed or known~~
4940 ~~to the shareholders entitled to vote, and the transaction was authorized, approved, or ratified~~
4941 ~~by the affirmative vote or written consent of such shareholders who hold a majority of the~~
4942 ~~shares, the voting of which is not controlled by directors who derived a personal benefit from~~
4943 ~~or otherwise had a personal interest in the transaction; or~~

4944 (c) The transaction was fair and reasonable to the corporation at the time it was
4945 authorized, approved or ratified by the board, a committee, or the shareholders,
4946 notwithstanding that a director received a personal benefit.

4947 (4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the
4948 existence of other circumstances under which a director will be deemed not to have derived an
4949 improper benefit.

4950

4951 **Commentary to Section 607.0831:**

4952 This section does not follow the structure and approach of Model Act s. 8.31. Rather, it continues
4953 with the structure and approach of the current s. 607.0831; however, certain language and concepts
4954 from Model Act s. 8.31 have been incorporated into the changes to this section. Two of the key
4955 reasons for staying with the current statute as the base was the consensus that the provisions of the
4956 current statute (i) work well and (ii) are grafted by cross-reference into other Florida statutes such
4957 as Florida's not-for-profit statute (Chapter 617).

4958 In that regard:

4959 1. The phrase "is not personally liable for monetary damages" has not been removed
4960 even though such language does not appear in Model Act s. 8.31. The phrase was retained in
4961 order to be clear that this provision is about monetary damages and not about equitable relief.

4962 2. The words "or any other person" were not changed to the language in the Model Act
4963 corollary, "or its shareholders". The 1989 commentary to the proposed FBCA included this
4964 provision and expressly stated that this provision was intentionally adopted to limit personal
4965 liability of directors to third parties in the manner set forth in the statute when they are acting
4966 in their capacity as directors.

4967 3. The phrase "regarding corporate management or policy" was deleted as being too
4968 limiting.

4969 4. The reference to "by a director" was changed to "as a director" to match the Model
4970 Act approach and to make it clear that the exculpation is available only when the director is
4971 acting in the capacity of a director.

4972 5. The description of decisions and actions that are covered by the exculpation
4973 provision in this Section was changed to match the Model Act approach (i.e., "to take or not
4974 take action or any failure to take action") because the Model Act approach was viewed as
4975 being clearer. Similar language has been added in s. 607.0830(7).

4976 6. The burden of proof language in the Model Act language providing that a director
4977 has no liability unless "the party asserting liability establishes that:" has not been added and
4978 leaves the issue of who has the burden of proof in appropriate circumstances to the courts.

4979 The language in Model Act subsections 8.31(b)(1), (2) and (3) was not added to the statute.

4980 Revised s. 607.0831 retains the "self-executing" nature of the existing Florida statute under which
4981 a director is generally not personally liable to the corporation, instead of following the Model Act's
4982 "opt-in" language. Because the exculpation in s. 607.0831 remains self-executing, the provisions
4983 in the Model Act language cross referencing to the ability to add authorization language in a
4984 corporation's Articles of Incorporation in s. 8.31(a)(1) was not added.

4985 In subsection (3)(b), rather than repeating how an interested party transaction is to be approved,
4986 the statute provides a cross reference to the applicable standard for approval contained in s.
4987 607.0832(3)(a)1. or 2.

4988

4989 607.0832 Director conflicts of interest.

4990 (1) ~~No contract or other transaction between a corporation and one or more of its directors~~
4991 ~~or any other corporation, firm, association, or entity in which one or more of its directors are~~
4992 ~~directors or officers or are financially interested shall be either void or voidable because of such~~
4993 ~~relationship or interest, because such director or directors are present at the meeting of the board~~
4994 ~~of directors or a committee thereof which authorizes, approves, or ratifies such contract or~~
4995 ~~transaction, or because his or her or their votes are counted for such purpose, if:~~

4996 (a) ~~The fact of such relationship or interest is disclosed or known to the board of~~
4997 ~~directors or committee which authorizes, approves, or ratifies the contract or transaction by a~~
4998 ~~vote or consent sufficient for the purpose without counting the votes or consents of such~~
4999 ~~interested directors;~~

5000 (b) ~~The fact of such relationship or interest is disclosed or known to the shareholders~~
5001 ~~entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or~~
5002 ~~written consent; or~~

5003 (c) ~~The contract or transaction is fair and reasonable as to the corporation at the time it~~
5004 ~~is authorized by the board, a committee, or the shareholders.~~

5005 (2) ~~For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized,~~
5006 ~~approved, or ratified if it receives the affirmative vote of a majority of the directors on the board~~
5007 ~~of directors, or on the committee, who have no relationship or interest in the transaction described~~
5008 ~~in subsection (1), but a transaction may not be authorized, approved, or ratified under this section~~
5009 ~~by a single director. If a majority of the directors who have no such relationship or interest in the~~
5010 ~~transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose~~
5011 ~~of taking action under this section. The presence of, or a vote cast by, a director with such~~
5012 ~~relationship or interest in the transaction does not affect the validity of any action taken under~~
5013 ~~paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in that~~
5014 ~~subsection, but such presence or vote of those directors may be counted for purposes of~~
5015 ~~determining whether the transaction is approved under other sections of this act.~~

5016 (3) ~~For purposes of paragraph (1)(b), a conflict of interest transaction is authorized,~~
5017 ~~approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under~~
5018 ~~this subsection. Shares owned by or voted under the control of a director who has a relationship or~~
5019 ~~interest in the transaction described in subsection (1) may not be counted in a vote of shareholders~~
5020 ~~to determine whether to authorize, approve, or ratify a conflict of interest transaction under~~
5021 ~~paragraph (1)(b). The vote of those shares, however, is counted in determining whether the~~
5022 ~~transaction is approved under other sections of this act. A majority of the shares, whether or not~~
5023 ~~present, that are entitled to be counted in a vote on the transaction under this subsection constitutes~~
5024 ~~a quorum for the purpose of taking action under this section.~~

5025 (1) As used in this section, the following terms and definitions apply:

5026 (a) A director is "indirectly" a party to a transaction if that director has a material
5027 financial interest in or is a director, officer, member, manager, or partner of a person, other
5028 than the corporation, who is a party to the transaction.

5029 (b) A director has an "indirect material financial interest" if a family member has
5030 a material financial interest in the transaction, other than having an indirect interest as a
5031 shareholder of the corporation, or if the transaction is with an entity, other than the
5032 corporation, which has a material financial interest in the transaction and controls, or is
5033 controlled by, the director or another person specified in this subsection.

5034 (c) "Director's conflict of interest transaction" means a transaction between a
5035 corporation and one or more of its directors, or another entity in which one or more of the
5036 corporation's directors is directly or indirectly a party to the transaction, other than being
5037 an indirect party as a result of being a shareholder of the corporation, and has a direct or
5038 indirect material financial interest or other material interest.

5039 (d) "Fair to the corporation" means that the transaction, as a whole, is beneficial
5040 to the corporation and its shareholders, taking into appropriate account whether it is:

5041 1. Fair in terms of the director's dealings with the corporation in connection
5042 with that transaction; and

5043 2. Comparable to what might have been obtainable in an arm's length
5044 transaction.

5045 (e) "Family member" includes (i) the director's spouse, or (ii) a child, stepchild,
5046 parent, step parent, grandparent, sibling, step sibling or half sibling of the director or the
5047 director's spouse.

5048 (f) "Material financial interest" and "other material interest" means a financial or
5049 other interest in the transaction that would reasonably be expected to impair the objectivity
5050 of the director's judgment when participating in the action on the authorization of the
5051 transaction.

5052 (2) If a director's conflict of interest transaction is fair to the corporation at the time it is
5053 authorized, approved, effectuated, or ratified:

5054 (a) Such transaction is not void or voidable; and

5055 (b) The fact that the transaction is a director's conflict of interest transaction is
5056 not grounds for any equitable relief, an award of damages or other sanctions,

5057 because of that relationship or interest, because such director or directors are present at the meeting
5058 of the board of directors or a committee thereof which authorizes, approves, or ratifies such
5059 transaction, or because his or her or their votes are counted for such purpose.

5060 (3)

5061 (a) In a proceeding (i) challenging the validity of a director’s conflict of interest
5062 transaction or (ii) seeking equitable relief, award of damages or other sanctions with respect
5063 to a director’s conflict of interest transaction, the person challenging the validity or seeking
5064 equitable relief, award of damages or other sanctions has the burden of proving the lack of
5065 fairness of the transaction if:

5066 1. The material facts of the transaction and the director’s interest in the transaction
5067 were disclosed or known to the board of directors or committee which authorizes,
5068 approves, or ratifies the transaction and the transaction was authorized, approved or
5069 ratified by a vote of a majority of the qualified directors even if the qualified directors
5070 constitute less than a quorum of the board or the committee; however, the transaction
5071 cannot be authorized, approved, or ratified under this subsection solely by a single
5072 director; or

5073 2. The material facts of the transaction and the director’s interest in the transaction
5074 were disclosed or known to the shareholders who voted upon such transaction and the
5075 transaction was authorized, approved, or ratified by a majority of the votes cast by
5076 disinterested shareholders or by the written consent of disinterested shareholders
5077 representing a majority of the votes that could be cast by all disinterested shareholders.
5078 Shares owned by or voted under the control of a director who has a relationship or interest
5079 in the director’s conflict of interest transaction shall not be considered shares owned by a
5080 disinterested shareholder and thus may not be counted in a vote of shareholders to
5081 determine whether to authorize, approve, or ratify a director’s conflict of interest
5082 transaction under this subsection (3)(a)2. The vote of those shares, however, is counted
5083 in determining whether the transaction is approved under other sections of this chapter.
5084 A majority of the shares, whether or not present, that are entitled to be counted in a vote
5085 on the transaction under this subsection constitutes a quorum for the purpose of taking
5086 action under this section.

5087 (b) If neither of the conditions provided in paragraph (a) has been satisfied, the person
5088 defending or asserting the validity of a director’s conflict of interest transaction has the burden
5089 of proving its fairness in a proceeding challenging the validity of the transaction.

5090 (4) The presence of or a vote cast by a director with an interest in the transaction does not
5091 affect the validity of an action taken under paragraph (3)(a) if the transaction is otherwise
5092 authorized, approved, or ratified as provided in subsection (3), but the presence or vote of the

5093 director may be counted for purposes of determining whether the transaction is approved under
5094 other sections of this chapter.

5095 (5) In addition to other grounds for challenge, a party challenging the validity of the
5096 transaction is not precluded from asserting and proving that a particular director or shareholder
5097 was not disinterested on grounds of financial or other interest for purposes of the vote on, consent
5098 to, or approval of the transaction.

5099 (6) Where directors' action under this section does not otherwise satisfy a quorum or voting
5100 requirement applicable to the authorization of the transaction by directors as required by the
5101 articles of incorporation, the bylaws, this chapter or any other provision of law, an action to satisfy
5102 those authorization requirements, whether as part of the same action or by way of another action,
5103 must be taken by the board of directors or a committee in order to authorize the transaction. In
5104 such action, the vote or consent of directors who are not disinterested may be counted.

5105 (7) Where shareholders' action under this section does not satisfy a quorum or voting
5106 requirement applicable to the authorization of the transaction by shareholders as required by the
5107 articles of incorporation, the bylaws, this chapter or any other provision of law, an action to satisfy
5108 those authorization requirements, whether as part of the same action or by way of another action,
5109 must be taken by the shareholders in order to authorize the transaction. In such action, the vote or
5110 consent of shareholders who are not disinterested shareholders may be counted.

5111

5112 **Commentary to Section 607.0832:**

5113 Section 607.0832 is revised to follow the approach taken in and to parallel the language appearing
5114 in s. 605.04092 of FRLCA, in an effort to harmonize the two entity statutes and because the
5115 FRLCA provision does a good job of answering the two key questions that need to be covered
5116 by the director conflicts of interest transactions section of the FBCA, as follows:

5117 (i) can an unfair conflict of interest transaction that is approved by disinterested directors or
5118 disinterested shareholders get clearance under the statute; and
5119

5120 (ii) if, under all circumstances, the conflict of interest transaction must be fair, should
5121 approval by disinterested directors or disinterested shareholders shift the burden of proof to the
5122 persons challenging the transaction.
5123

5124 Current s. 607.0832 can be read to provide that an "unfair" director conflict of interest transaction
5125 would not be void or voidable if it were approved by disinterested directors or disinterested
5126 shareholders. The revised statute expressly removes that ambiguity from the statute.

5127 The changes made to this section are as follows:

5128 1. Following the approach taken by s. 605.04092, and based on a view that "contracts"
5129 are a subset of "transactions," the "contracts and other transactions" language has not been
5130 retained; instead all references are instead to just "transactions." The removal of the references
5131 to "contracts" is not intended to be a substantive change; but rather is consistent with the belief
5132 that "contracts" are a subset of "transactions" and thus the references to "contracts" are
5133 considered superfluous. Furthermore, the removal of the references to "contracts" eliminates
5134 the risk that the transactions (including contracts) covered by s. 607.0832 of FBCA should be
5135 in any way different from the transactions (including contracts) covered by s. 605.04092 of
5136 FRLCA.

5137 2. With respect to "indirect interests," the FRLCA construct is followed. Section
5138 607.0832 defines an "indirect interest" as one where the "director has an indirect material
5139 financial interest in or is a director, officer, member, manager or partner of a person, other
5140 than the corporation, who is a party to the transaction."

5141 3. The word "control," which is defined in the Model Act, is not being defined in s.
5142 607.0832, following the approach taken in the predecessor s. 607.0832 and in s. 605.04092 of
5143 FRLCA.

5144 4. In subsection (3), the words "at the time it is authorized" are continued to be used
5145 rather than the Model Act concept of "relevant time."

5146

5147 5. The word "material" as set forth in s. 605.04092 of FRLCA is used in s. 607.0832.
5148 Although it could be argued that the Model Act definition may be better worded, it is believed
5149 that the FRLCA terminology is perfectly acceptable; using the FRLCA terminology
5150 respects consistency and avoids the potential that a court might give undue meaning to
5151 differences in wording, where no difference in meaning was intended.

5152 6. A definition of the term "related person" has not been added. Instead, the term
5153 "indirect material financial interest" is defined and used in this statute.

5154 7. A definition of the phrase "fair to the corporation" is added, mirroring the defined
5155 phrase as it currently appears in s. 605.04092.

5156 8. A decision was made not to define what is meant by "required disclosure," based on
5157 the view that the concept of required disclosure is already built into the language of s.
5158 605.04092(4), which language has now been mirrored in s. 607.0832.

5159 9. A decision was made to leave it to the courts to determine who may challenge an
5160 interested director transaction and not to expressly address this subject in the statute. Both the
5161 predecessor s. 607.0832 and s. 605.04092 of FRLCA are silent on this issue; however, s.
5162 605.04092, because of the way the burden of proof is now defined, might imply that there is
5163 a broader group of persons who could seek to challenge a conflict of interest transaction.

5164 10. In an attempt to streamline the language used throughout the statute, a definition of
5165 "director's conflict of interest transaction" has been added, but the approach taken is different
5166 from the approach taken in the Model Act. By adding this definition and using this term in
5167 subsection 607.0832(3), the confusion created in parallel subsections 605.04092(4)(a) and (b)
5168 by the cross references used in those subsections is eliminated, with clarity provided as to
5169 which transactions are being referenced.

5170 11. Although not defined, the term "disinterested shareholder" has been used, and
5171 continues to be used, throughout the statute. With respect to board approval, the statute now
5172 uses the defined term "qualified directors."

5173 12. In securing approval from "qualified directors," s. 607.0832 continues to require that
5174 more than one qualified director on the board or board committee considering the transaction
5175 must approve the transaction in order for the transaction to be approved under subsection
5176 607.0832(4)(a)1.

5177 13. In subsection (3)(a)1., the vote to approve the transaction must be by "a majority of
5178 the qualified directors." However, because the reference did not deal with the possibility that
5179 director votes might be weighted under s. 607.0804, there was some confusion as to how the
5180 majority was to be determined in cases where director votes were weighted under s. 607.0804.
5181 The issue was resolved by adding language to s. 607.0804 of the FBCA to make it clear that

5182 if a shareholders' agreement has been adopted in compliance with s. 607.0732 which changes
5183 the weight of director votes, then all references in Chapter 607 to a majority or other
5184 proportion of directors shall refer to a majority or other proportion of the votes of such
5185 directors. Based on this change, it was determined that there was no need to also make a
5186 change in s. 607.0824(3).

5187

5188 607.0833 Loans to officers, directors, and employees; guaranty of obligations.

5189 Any corporation may lend money to, guarantee any obligation of, or otherwise assist any
5190 officer, director, or employee of the corporation or of a subsidiary, whenever, in the judgment of
5191 the board of directors, such loan, guaranty, or assistance may reasonably be expected to benefit
5192 the corporation. The loan, guaranty, or other assistance may be with or without interest and may
5193 be unsecured or secured in such manner as the board of directors shall approve, including, ~~without~~
5194 ~~limitation~~, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed
5195 to deny, limit, or restrict the powers of guaranty or warranty of any corporation at common law or
5196 under any statute. Loans, guarantees, or other types of assistance are subject to s. 607.0832.

5197

5198 **Commentary to Section 607.0833:**

5199 This subsection is identical to DGCL Section 143 and was in the predecessor Florida corporate
5200 statute adopted prior to the adoption of the FBCA (old s. 607.141). Although this provision does
5201 not appear in the Model Act, this provision is retained in the FBCA.

5202

5203 607.0834 Directors' liability for unlawful distributions.

5204 (1) A director who votes for or assents to a distribution made in violation of s. 607.06401,
5205 s. 607.1410(1) or the articles of incorporation is personally liable to the corporation for the amount
5206 of the distribution that exceeds what could have been distributed without violating s. 607.06401,
5207 s. 607.1410(1), or the articles of incorporation if it is established that the director did not perform
5208 his or her duties in compliance with s. 607.0830. In any proceeding commenced under this section,
5209 a director has all of the defenses ordinarily available to a director.

5210 (2) A director held liable under subsection (1) for an unlawful distribution is entitled to
5211 contribution:

5212 (a) From every other director who could be liable under subsection (1) for the unlawful
5213 distribution; and

5214 (b) From each shareholder for the amount the shareholder accepted knowing the
5215 distribution was made in violation of s. 607.06401 or the articles of incorporation.

5216 (3) A proceeding under this section is barred unless it is commenced:

5217 (a) Within ~~2~~ two years after the date on which the effect of the distribution was measured
5218 under s. 607.06401(6) or (8);

5219 (b) Within two years after the date as of which the violation of s. 607.06401 occurred as
5220 the consequence of disregard of a restriction in the articles of incorporation;

5221 (c) Within two years after the date on which the distribution of assets to shareholders
5222 under s. 607.1410(1) was made; or

5223 (c) With regard to contribution or recoupment under subsection (2) above, within one
5224 year after the liability of the claimant has been finally adjudicated under subsection (1).

5225

5226 **Commentary to Section 607.0834:**

5227 The changes to subsection (3) (adding new subsections (b) and (c)) follow s. 8.33(c)(1) and (2) of
5228 the Model Act that was added to the Model Act in 2000. Subsection (3)(b) adds a two-year statute
5229 of limitations based upon the date on which the violation of s. 607.06401 occurs in circumstances
5230 where the violation is in disregard of a restriction contained in the articles of incorporation. For
5231 actions brought under s. 607.0834(2) for contribution or recoupment, subsection (3)(d) establishes
5232 a one year statute of limitation from when the liability of the claimant has been finally adjudicated
5233 under subsection (1). Addressing the issue of whether there was an overlap between subsections
5234 (3)(a), (b), (c) and (d), it was determined that because the word "or" is used at the end of subsection
5235 (3)(b), the applicable statute of limitations becomes the last to expire of the three applicable
5236 periods.

5237

5238 607.08401 Required officers.

5239 (1) A corporation shall have the officers described in its bylaws or appointed by the board
5240 of directors in accordance with the bylaws.

5241 (2) The board of directors may appoint one or more individuals to act as the officers of the
5242 corporation. A duly appointed officer may appoint one or more officers or assistant officers if
5243 authorized by the bylaws or the board of directors.

5244 (3) The bylaws or the board of directors shall ~~delegate~~ assign to one of the officers
5245 responsibility for preparing minutes of the directors' and shareholders' meetings and for
5246 authenticating the records of the corporation required to be kept under sections 607.1601(1) and
5247 607.1601(5).

5248 (4) The same individual may simultaneously hold more than one office in a corporation.

5249

5250 **Commentary to Section 607.08401:**

5251 The first sentence of subsection (1) was left unchanged, despite the fact that there is a slight
5252 difference in its wording as compared to s. 8.40 of the Model Act. No change was made because
5253 it is believed that the language is substantively the same and because the language in subsection
5254 (1) has been in place since before adoption of the FBCA in 1989.

5255 Following s. 8.40(b) of the Model Act, a new sentence was added to subsection (2) to make clear
5256 that officers of a corporation must be natural persons meeting the same requirements as exist in s.
5257 607.0802(1) for directors. This sentence was in the Model Act when the FBCA was adopted in
5258 1989 and was not added to the statute, presumably because its substance was considered implicit
5259 in the Florida statute as written. However, the Subcommittee has come to learn that some
5260 corporations have listed entities as officers on sunbiz.com. As a result, this change is being made
5261 to make explicitly clear that officers of a corporation must be individuals.

5262 The word "delegate" in subsection (3) was changed to "assign" to be consistent with the wording
5263 used in the Model Act and because the change in wording was viewed as being more reflective of
5264 how such obligations are imposed on officers.

5265 Similarly, to be consistent with the wording of the Model Act and to make clear which of the
5266 records identified in Chapter 607 are to be the subject of authentication, subsection (3) was further
5267 changed. It was noted that the Delaware statute does not provide expressly for the appointment of
5268 an officer to authenticate records, since as a practical matter when records must be authenticated
5269 an officer will be assigned to handle that function even if not required by the statute. However,
5270 since this provision for authentication has been in this section of the FBCA since 1989, the decision
5271 was made to leave this concept of assigning the "authentication" function in the statute, but to add
5272 the parallel qualifying language from the Model Act.

5273

5274 607.0841 Duties of officers.

5275 Each officer has the authority and shall perform the duties set forth in the bylaws or, to the
5276 extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of
5277 any officer authorized by the bylaws or the board of directors to prescribe the duties of other
5278 officers.

5279

5280 **Commentary to Section 607.0841:**

5281 While the Model Act, in s. 8.41, uses the term "function" instead of "duties" in the four places
5282 where the word appears in this section, since the corollary section of the DGCL uses the term
5283 "duties" in this context, and since this provision has been in the FBCA in this form since 1989 and
5284 is believed adequate to describe the duties (or functions) of officers, the Model Act wording has
5285 not been added to this section of the FBCA.

5286

5287 607.08411 General standards for officers.

5288 (1) An officer, when performing in such capacity, has the duty to act:

5289 (a) In good faith; and

5290 (b) In a manner the officer reasonably believes to be in the best interests of the
5291 corporation.

5292 (2) An officer, when becoming informed in connection with a decision-making function,
5293 shall discharge his or her duties with the care that an ordinary prudent person in a like position
5294 would reasonably believe appropriate under similar circumstances.

5295 (3) The duty of an officer includes the obligation:

5296 (a) To inform the superior officer to whom, or the board of directors or the committee to
5297 which, the officer reports of information about the affairs of the corporation known to the
5298 officer, within the scope of the officer's functions, and known or should be known to the
5299 officer to be material to such superior officer, board or committee; and

5300 (b) To inform his or her superior officer, or another appropriate person within the
5301 corporation, or the board of directors, or a committee thereof, of any actual or probable
5302 material violation of law involving the corporation or material breach of duty to the
5303 corporation by an officer, employee, or agent of the corporation, that the officer believes has
5304 occurred or is likely to occur.

5305 (4) In discharging his or her duties, an officer who does not have knowledge that makes
5306 reliance unwarranted is entitled to rely on the performance by any of the persons specified in
5307 subsection (6) to whom the responsibilities were properly delegated, formally or informally by
5308 course of conduct.

5309 (5) In discharging his or her duties, an officer who does not have knowledge that makes
5310 reliance unwarranted is entitled to rely on information, opinions, reports or statements, including
5311 financial statements and other financial data, prepared or presented by any of the persons
5312 specified in subsection (6).

5313 (6) An officer is entitled to rely, in accordance with subsection (4) or (5), on:

5314 (a) One or more other officers of the corporation or one or more employees of the
5315 corporation whom the officer reasonably believes to be reliable and competent in the
5316 functions performed or the information, opinions, reports or statements provided;

5317 (b) Legal counsel, public accountants, or other persons retained by the corporation as to
5318 matters involving skills or expertise the officer reasonably believes are matters (i) within the

5319 particular person's professional or expert competence or (ii) as to which the particular person
5320 merits confidence.
5321

5322 **Commentary to Section 607.08411:**

5323 While this new section of the FBCA is modeled after s. 8.42 of the Model Act, it includes language
5324 intended to make it consistent with the language used in s. 607.0830 (general standards for
5325 directors).

5326 Section 8.42 first became part of the Model Act in 1984 and was amended in 1999 and again in
5327 2005. This section was excluded from the FBCA as adopted in 1989. The following commentary
5328 explained the rationale for the omission of this section in 1989:

5329 "Currently, Florida does not have a statute dictating standards of conduct for officers.
5330 These standards are currently imposed under common law and general contract law.
5331 Although Georgia has recently adopted a statute that is similar to Model Act Section 8.42,
5332 the Committee believes there is no need to adopt a similar statute at this time".

5333 Today, 28 of the 34 Model Act jurisdictions, including Georgia, Massachusetts, North Carolina,
5334 Oregon, Pennsylvania, Washington DC, and Washington State, have adopted either the 1984 or
5335 updated versions of this Model Act provision. Further, the current version of the Model Act is far
5336 more robust than it was in the 1984 version of the Model Act, and the commentary is lengthy and
5337 detailed on this topic.

5338 As a result, this provision has been added to the FBCA. It provides clear guidance to its audience
5339 (counselors to corporate officers and directors) with as little as possible left to interpretation,
5340 including a roadmap for courts as to the duties of officers. It replaces common law principles of
5341 an agent's duties, which arguably do not provide clear guidance. Further, the more specific
5342 guidance provided by this section could be helpful in determining an officer's entitlement to
5343 indemnification and in providing offensive and defensive arguments when an officer is named as
5344 a defendant in litigation (derivative or otherwise). Other aspects of this new provision that are
5345 considered to be of some significance are the specific requirements for "up the line" reporting and
5346 transparency, and the very specific (and corporate structure-related) definitions of reasonable
5347 "reliance", the latter of which is not necessarily believed to be part of traditional agency rules.

5348 In some cases, the failure to observe relevant standards of conduct may give rise to an officer's
5349 liability to the corporation or its shareholders. A court review of challenged conduct will involve
5350 an evaluation of the particular facts and circumstances in light of applicable law. In this connection,
5351 a court may consider whether the relevant principles of s. 607.0831, such as duties to deal fairly
5352 with the corporation and its shareholders and the challenger's burden of establishing proximately
5353 caused harm, should be taken into account. In addition, a court may find that the business judgment
5354 rule applies to decisions within an officer's discretionary authority. Liability to others can also
5355 arise from an officer's own acts or omissions (*e.g.*, violations of law or tort claims) and, in some
5356 cases, an officer with supervisory responsibilities can have risk exposure in connection with the
5357 acts or omissions of others.

5358 607.0842 Resignation and removal of officers.

5359 (1) An officer may resign at any time by delivering a written notice to the corporation. A
5360 resignation is effective as provided in s. 607.0141(5) when the notice is delivered unless the notice
5361 provides for a delayed effectiveness, including effectiveness determined upon a future event or
5362 events specifies a later effective date. If effectiveness of a resignation is stated to be delayed and
5363 the corporation board of directors or appointing officer made effective at a later date accepts the
5364 delay future effective date, the its board of directors or the appointing officer may fill the pending
5365 vacancy before the delayed effectiveness effective date if the board of directors or the appointing
5366 officer provides that the successor does not take office until the vacancy occurs effective date.

5367 (2) ~~A board of directors may remove any officer at any time with or without cause. Any~~
5368 ~~officer or assistant officer, if appointed by another officer, may likewise be removed by such~~
5369 ~~officer.~~ An officer may be removed at any time with or without cause by: (i) the board of directors,
5370 (ii) the appointing officer, unless the bylaws or the board of directors provide otherwise, or (iii)
5371 any other officer, if authorized by the bylaws or the board of directors.

5372 (3) In this section, "appointing officer" means the officer (including any successor to that
5373 officer) who appointed the officer resigning or being removed.

5374

5375 **Commentary to Section 607.0842:**

5376 Changes to this section of the FBCA update this section for wording changes made in Model Act
5377 s. 8.43 in 2000. These changes are believed to be better wording and clarifying/cleanup changes,
5378 but are not intended to change the substance of the statute.

5379

5380 607.0843 Contract rights of officers.

5381 (1) The appointment of an officer does not itself create contract rights.

5382 (2) An officer’s removal does not affect the officer’s contract rights, if any, with the
5383 corporation. An officer’s resignation does not affect the corporation’s contract rights, if any, with
5384 the officer.

5385

5386 **Commentary to Section 607.0843:**

5387 A minor language change was made to conform subsection (1) to the 2016 version of the Model
5388 Act. Otherwise, no changes were made.

5389

5390 607.0850 Definitions. Indemnification of officers, directors, employees, and agents.

5391 (1) ~~A corporation shall have power to indemnify any person who was or is a party to any~~
 5392 ~~proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that~~
 5393 ~~he or she is or was a director, officer, employee, or agent of the corporation or is or was serving~~
 5394 ~~at the request of the corporation as a director, officer, employee, or agent of another corporation,~~
 5395 ~~partnership, joint venture, trust, or other enterprise against liability incurred in connection with~~
 5396 ~~such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he~~
 5397 ~~or she reasonably believed to be in, or not opposed to, the best interests of the corporation and,~~
 5398 ~~with respect to any criminal action or proceeding, had no reasonable cause to believe his or her~~
 5399 ~~conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or~~
 5400 ~~conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a~~
 5401 ~~presumption that the person did not act in good faith and in a manner which he or she reasonably~~
 5402 ~~believed to be in, or not opposed to, the best interests of the corporation or, with respect to any~~
 5403 ~~criminal action or proceeding, had reasonable cause to believe that his or her conduct was~~
 5404 ~~unlawful.~~

5405 (2) ~~A corporation shall have power to indemnify any person, who was or is a party to any~~
 5406 ~~proceeding by or in the right of the corporation to procure a judgment in its favor by reason of~~
 5407 ~~the fact that the person is or was a director, officer, employee, or agent of the corporation or is or~~
 5408 ~~was serving at the request of the corporation as a director, officer, employee, or agent of another~~
 5409 ~~corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts~~
 5410 ~~paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense~~
 5411 ~~of litigating the proceeding to conclusion, actually and reasonably incurred in connection with~~
 5412 ~~the defense or settlement of such proceeding, including any appeal thereof. Such indemnification~~
 5413 ~~shall be authorized if such person acted in good faith and in a manner he or she reasonably~~
 5414 ~~believed to be in, or not opposed to, the best interests of the corporation, except that no~~
 5415 ~~indemnification shall be made under this subsection in respect of any claim, issue, or matter as to~~
 5416 ~~which such person shall have been adjudged to be liable unless, and only to the extent that, the~~
 5417 ~~court in which such proceeding was brought, or any other court of competent jurisdiction, shall~~
 5418 ~~determine upon application that, despite the adjudication of liability but in view of all~~
 5419 ~~circumstances of the case, such person is fairly and reasonably entitled to indemnity for such~~
 5420 ~~expenses which such court shall deem proper.~~

5421 (3) ~~To the extent that a director, officer, employee, or agent of a corporation has been~~
 5422 ~~successful on the merits or otherwise in defense of any proceeding referred to in subsection (1)~~
 5423 ~~or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be~~
 5424 ~~indemnified against expenses actually and reasonably incurred by him or her in connection~~
 5425 ~~therewith.~~

5426 (4) ~~Any indemnification under subsection (1) or subsection (2), unless pursuant to a~~
 5427 ~~determination by a court, shall be made by the corporation only as authorized in the specific case~~

5428 upon a determination that indemnification of the director, officer, employee, or agent is proper in
5429 the circumstances because he or she has met the applicable standard of conduct set forth in
5430 subsection (1) or subsection (2). Such determination shall be made:

5431 (a) — By the board of directors by a majority vote of a quorum consisting of directors
5432 who were not parties to such proceeding;

5433 (b) — If such a quorum is not obtainable or, even if obtainable, by majority vote of a
5434 committee duly designated by the board of directors (in which directors who are parties may
5435 participate) consisting solely of two or more directors not at the time parties to the
5436 proceeding;

5437 (c) — By independent legal counsel:

5438 1. — Selected by the board of directors prescribed in paragraph (a) or the committee
5439 prescribed in paragraph (b); or

5440 2. — If a quorum of the directors cannot be obtained for paragraph (a) and the
5441 committee cannot be designated under paragraph (b), selected by majority vote of the
5442 full board of directors (in which directors who are parties may participate); or

5443 (d) — By the shareholders by a majority vote of a quorum consisting of shareholders
5444 who were not parties to such proceeding or, if no such quorum is obtainable, by a majority
5445 vote of shareholders who were not parties to such proceeding.

5446 (5) — Evaluation of the reasonableness of expenses and authorization of indemnification
5447 shall be made in the same manner as the determination that indemnification is permissible.
5448 However, if the determination of permissibility is made by independent legal counsel, persons
5449 specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize
5450 indemnification.

5451 (6) — Expenses incurred by an officer or director in defending a civil or criminal proceeding
5452 may be paid by the corporation in advance of the final disposition of such proceeding upon
5453 receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or
5454 she is ultimately found not to be entitled to indemnification by the corporation pursuant to this
5455 section. Expenses incurred by other employees and agents may be paid in advance upon such
5456 terms or conditions that the board of directors deems appropriate.

5457 (7) — The indemnification and advancement of expenses provided pursuant to this section
5458 are not exclusive, and a corporation may make any other or further indemnification or
5459 advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw,
5460 agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or
5461 her official capacity and as to action in another capacity while holding such office. However,
5462 indemnification or advancement of expenses shall not be made to or on behalf of any director,

5463 officer, employee, or agent if a judgment or other final adjudication establishes that his or her
5464 actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

5465 (a) — A violation of the criminal law, unless the director, officer, employee, or agent had
5466 reasonable cause to believe his or her conduct was lawful or had no reasonable cause to
5467 believe his or her conduct was unlawful;

5468 (b) — A transaction from which the director, officer, employee, or agent derived an
5469 improper personal benefit;

5470 (c) — In the case of a director, a circumstance under which the liability provisions of s.
5471 607.0834 are applicable; or

5472 (d) — Willful misconduct or a conscious disregard for the best interests of the
5473 corporation in a proceeding by or in the right of the corporation to procure a judgment in its
5474 favor or in a proceeding by or in the right of a shareholder.

5475 (8) — Indemnification and advancement of expenses as provided in this section shall
5476 continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to
5477 be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and
5478 administrators of such a person, unless otherwise provided when authorized or ratified.

5479 (9) — Unless the corporation's articles of incorporation provide otherwise, notwithstanding
5480 the failure of a corporation to provide indemnification, and despite any contrary determination of
5481 the board or of the shareholders in the specific case, a director, officer, employee, or agent of the
5482 corporation who is or was a party to a proceeding may apply for indemnification or advancement
5483 of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another
5484 court of competent jurisdiction. On receipt of an application, the court, after giving any notice
5485 that it considers necessary, may order indemnification and advancement of expenses, including
5486 expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it
5487 determines that:

5488 (a) — The director, officer, employee, or agent is entitled to mandatory indemnification
5489 under subsection (3), in which case the court shall also order the corporation to pay the
5490 director reasonable expenses incurred in obtaining court-ordered indemnification or
5491 advancement of expenses;

5492 (b) — The director, officer, employee, or agent is entitled to indemnification or
5493 advancement of expenses, or both, by virtue of the exercise by the corporation of its power
5494 pursuant to subsection (7); or

5495 (c) — The director, officer, employee, or agent is fairly and reasonably entitled to
5496 indemnification or advancement of expenses, or both, in view of all the relevant

5497 circumstances, regardless of whether such person met the standard of conduct set forth in
5498 subsection (1), subsection (2), or subsection (7).

5499 (10) ~~For purposes of this section, the term "corporation" includes, in addition to the~~
5500 ~~resulting corporation, any constituent corporation (including any constituent of a constituent)~~
5501 ~~absorbed in a consolidation or merger, so that any person who is or was a director, officer,~~
5502 ~~employee, or agent of a constituent corporation, or is or was serving at the request of a~~
5503 ~~constituent corporation as a director, officer, employee, or agent of another corporation,~~
5504 ~~partnership, joint venture, trust, or other enterprise, is in the same position under this section with~~
5505 ~~respect to the resulting or surviving corporation as he or she would have with respect to such~~
5506 ~~constituent corporation if its separate existence had continued.~~

5507 (11) ~~For purposes of this section:~~

5508 (a) ~~The term "other enterprises" includes employee benefit plans;~~

5509 (b) ~~The term "expenses" includes counsel fees, including those for appeal;~~

5510 (c) ~~The term "liability" includes obligations to pay a judgment, settlement, penalty,~~
5511 ~~fine (including an excise tax assessed with respect to any employee benefit plan), and~~
5512 ~~expenses actually and reasonably incurred with respect to a proceeding;~~

5513 (d) ~~The term "proceeding" includes any threatened, pending, or completed action, suit,~~
5514 ~~or other type of proceeding, whether civil, criminal, administrative, or investigative and~~
5515 ~~whether formal or informal;~~

5516 (e) ~~The term "agent" includes a volunteer;~~

5517 (f) ~~The term "serving at the request of the corporation" includes any service as a~~
5518 ~~director, officer, employee, or agent of the corporation that imposes duties on such persons,~~
5519 ~~including duties relating to an employee benefit plan and its participants or beneficiaries;~~
5520 ~~and~~

5521 (g) ~~The term "not opposed to the best interest of the corporation" describes the actions~~
5522 ~~of a person who acts in good faith and in a manner he or she reasonably believes to be in the~~
5523 ~~best interests of the participants and beneficiaries of an employee benefit plan.~~

5524 (12) ~~A corporation shall have power to purchase and maintain insurance on behalf of any~~
5525 ~~person who is or was a director, officer, employee, or agent of the corporation or is or was~~
5526 ~~serving at the request of the corporation as a director, officer, employee, or agent of another~~
5527 ~~corporation, partnership, joint venture, trust, or other enterprise against any liability asserted~~
5528 ~~against the person and incurred by him or her in any such capacity or arising out of his or her~~
5529 ~~status as such, whether or not the corporation would have the power to indemnify the person~~
5530 ~~against such liability under the provisions of this section.~~

5531 In ss. 607.0850 through 607.0859:

5532 (1) "Agent" includes a volunteer.

5533 (2) "Corporation" includes, in addition to the resulting corporation, any constituent
5534 corporation (including any constituent of a constituent) absorbed in a merger, so that any person
5535 who is or was a director or officer of a constituent corporation, or is or was serving at the request
5536 of a constituent corporation as a director or officer, member, manager, partner, trustee, employee
5537 or agent of another corporation, limited liability company, partnership, joint venture, trust, or other
5538 enterprise, is in the same position under this section with respect to the resulting or surviving
5539 corporation as he or she would have been with respect to such constituent corporation if its separate
5540 existence had continued.

5541 (3) "Director" or "officer" means an individual who is or was a director or officer,
5542 respectively, of a corporation or who, while a director or officer of the corporation, is or was
5543 serving at the corporation's request as a director or officer, manager, partner, trustee, employee or
5544 agent of another domestic or foreign corporation, limited liability company, partnership, joint
5545 venture, trust, employee benefit plan, or another enterprise or entity. A director or officer is
5546 considered to be serving an employee benefit plan at the corporation's request if the individual's
5547 duties to the corporation or such plan also impose duties on, or otherwise involve services by, the
5548 individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer"
5549 includes, unless the context requires otherwise, the estate, heirs, executors, administrators and
5550 personal representatives of a director or officer.

5551 (4) "Expenses" includes reasonable counsel fees and expenses, including those incurred in
5552 connection with any appeal.

5553 (5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including
5554 an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred
5555 with respect to a proceeding.

5556 (6) "Party" means an individual who was, is, or is threatened to be made, a defendant or
5557 respondent in a proceeding.

5558 (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding,
5559 whether civil, criminal, administrative, arbitative, or investigative and whether formal or
5560 informal.

5561 (8) "Serving at the corporation's request" includes any service as a director, officer,
5562 employee, or agent of the corporation that imposes duties on such persons, including duties relating
5563 to an employee benefit plan and its participants or beneficiaries.

5564 **Commentary to Section 607.0850:**

5565 Subsection (2) is derived from the definition of corporation in s. 607.0850(10).

5566 Subsections (1), (4), (5), (7) and (8) are derived from existing s. 607.0850(11).

5567 The definition of "official capacity" from s. 8.50 of the Model Act was not included because the
5568 proposal does not include different standards for indemnification when a director is acting in an
5569 official capacity or otherwise.

5570 The last sentence of subsection (3) states that "[D]irector" or "officer" includes, unless the
5571 context requires otherwise, the estate, heirs, executors, administrators and personal
5572 representatives of a director or officer. Although this adds slightly to the list of parties who
5573 receive the benefits of indemnity that are currently included in s. 607.0850(8), the changes are
5574 believed to be consistent with the intent of the current statute.

5575 While a definition of "expenses" was added in s. 607.01401(32) (including within that definition
5576 the concept of reasonableness of such expenses), the definition of expenses in subsection (4)
5577 deals with reasonable expenses of counsel, so it is retained.

5578

5579 607.0851 Permissible indemnification.

5580 (1) Except as otherwise provided in this section and in s. 607.0859, and not in limitation of
5581 indemnification permitted under s. 607.0858(1), a corporation may indemnify an individual who
5582 is a party to a proceeding because the individual is or was a director or officer against liability
5583 incurred in the proceeding if:

5584 (a) The director or officer acted in good faith; and

5585 (b) The director or officer acted in a manner he or she reasonably believed to be in, or
5586 not opposed to, the best interests of the corporation; and

5587 (c) In the case of any criminal proceeding, the director or officer had no reasonable cause
5588 to believe his or her conduct was unlawful.

5589 (2) The conduct of a director or officer with respect to an employee benefit plan for a purpose
5590 the director or officer reasonably believed to be in the best interest of the participants in, and the
5591 beneficiaries of, the plan is conduct that satisfies the requirement of subsection (1)(b).

5592 (3) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
5593 plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the director
5594 or officer did not meet the relevant standard of conduct described in this section.

5595 (4) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify an
5596 officer or director in connection with a proceeding by or in the right of the corporation except for
5597 expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors,
5598 the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred
5599 in connection with the defense or settlement of such proceeding, including any appeal thereof,
5600 where such person acted in good faith and in a manner he or she reasonably believed to be in, or
5601 not opposed to, the best interests of the corporation.

5602

5603 **Commentary to Section 607.0851:**

5604 The Model Act leaves indemnity of employees and agents to the laws of agency. Although the
 5605 Florida statute in effect prior to this revision included employees and agents in the applicable
 5606 sections of s. 607.0850 that provided for permissible and mandatory indemnification, the new
 5607 structure of which this new section is a part follows the Model Act structure and elects to cover
 5608 employees and agents under the laws of agency. Notwithstanding, this change is not believed or
 5609 intended to substantively cut back on the power of a corporation to indemnify its employees or
 5610 agents. Section 607.0858(6) states that nothing in s. 607.0850-607.0859 limits the power of the
 5611 corporation to indemnify agents and employees.

5612 Section 8.56 of the Model Act provides for indemnification of officers. However, the new structure
 5613 of which this new section is a part includes officers as covered persons directly in the applicable
 5614 sections of s. 607.0851, s. 607.0852 and s. 607.0853, thus eliminating the need for inclusion of a
 5615 parallel of Model Act s. 8.56.

5616 Section 8.51(a)(2) of the Model Act, dealing with indemnity beyond the statutory provisions that
 5617 is included in the corporation's articles of incorporation, has not been included. Further, s.
 5618 607.0202 of the FBCA does not include the Model Act language which would expressly authorize
 5619 indemnity beyond the statutory provisions, only in circumstances where authorization is set forth
 5620 in the corporation's articles of incorporation.

5621 This section acknowledges that, subject to the limitations contained in s. 607.0859(1), s.
 5622 607.0858(1) allows the corporation to provide any other or further indemnification or advancement
 5623 of expenses beyond that permitted in the statute. However, in comparison to the corollary Model
 5624 Act provisions, s. 607.0858(1), consistent with the Florida statute in effect prior to this revision,
 5625 allows this expanded indemnification to be included in the corporation's articles of incorporation,
 5626 in its bylaws or in any agreement, or to be approved by a vote of shareholders or disinterested
 5627 directors, or otherwise. See commentary to s. 607.0858(1).

5628 The statute does not follow the Model Act construct that creates a different standard of what needs
 5629 to be established for indemnification of directors when they are acting in an "official capacity"
 5630 compared to when they are not acting in an "official capacity." Under s. 8.51(a)(1)(ii) of the Model
 5631 Act, if a director is acting in his or her official capacity, to obtain indemnification he or she must
 5632 establish that he or she reasonably believed that his or her conduct was in the best interest of the
 5633 corporation, and in all other cases, to obtain indemnification, he or she must establish that he or
 5634 she reasonably believed that his or her conduct was at least not opposed to the best interests of the
 5635 corporation.

5636

5637 607.0852 Mandatory indemnification.

5638 A corporation shall indemnify an individual who is or was a director or officer who was
5639 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the
5640 individual was a party because he or she is or was a director or officer of the corporation against
5641 expenses incurred by the individual in connection with the proceeding.

5642

5643 **Commentary to Section 607.0852:**

5644 The standard for statutory mandatory indemnification under the new structure of which this new
 5645 section is a part follows the Model Act requirement that an officer or director must be "wholly
 5646 successful" to be entitled to mandatory indemnification. This is in contrast with the "successful"
 5647 standard in s. 607.0850(3) that was in effect prior to this revision. The commentary to s. 8.52 of
 5648 the Model Act provides:

5649 A defendant is "wholly successful" only if the entire proceeding is disposed of on a basis
 5650 which does not involve a finding of liability. A director who is precluded from mandatory
 5651 indemnification by this requirement may still be entitled to permissible indemnification
 5652 under section 8.51(a) [s. 607.0851(1)] or court-ordered indemnification under section
 5653 8.54(a)(3) [s. 607.0854(1)(c)].

5654 Under the structure of the statute, those corporations that desire to continue to be obligated to
 5655 provide mandatory indemnification based on some other standard, such as the "successful"
 5656 standard in s. 607.0850(3) that was in effect prior to this revision, are entitled to do so by way of
 5657 provisions in articles, bylaws, agreements or otherwise, consistent with the authorization in new s.
 5658 607.0858, but subject to the restrictions provided for in new s. 607.0859.

5659 In *Banco Industrial de Venezuela C.A., Miami Agency v. De Saad*, 68 S.3d 895 (Fla. 2011), the
 5660 Florida Supreme Court, in *dicta*, grafted a good faith requirement into s. 607.0850(3) dealing with
 5661 mandatory indemnification, despite the fact that no such express requirement appears to be
 5662 required under the current statute in the context of mandatory indemnification. The *Banco* case
 5663 appeared to base its grafting of the good faith requirement, in significant part, on the cross
 5664 reference in s. 607.0850(3) to subsections (1) and (2) of s. 607.0850.

5665 Because of the concerns about the *Banco* court's reading of the intent of the cross reference, a
 5666 comparable cross reference to s. 607.0851 has not been included in s. 607.0852. The decision not
 5667 to bring forward such cross reference is designed to more clearly reflect that any such cross
 5668 reference was intended to merely identify the type of proceeding to which mandatory
 5669 indemnification applied and not to link to the good faith requirement that applies to permissive
 5670 indemnification. It is also believed that the change in the standard for mandatory indemnification
 5671 from "successful" to "wholly successful" makes it unlikely that a situation such as the *Banco* case
 5672 will arise in the future. However, if there were to be such a case where, for technical reasons, a
 5673 defendant (who had not necessarily acted in good faith) were to have been wholly successful by
 5674 virtue of some procedural grounds rather than on the merits, it is the view of the Subcommittee
 5675 that such defendant would have a right to mandatory indemnification, with no requirement under
 5676 s. 607.0853 to demonstrate good faith on the part of the defendant. As set forth in the Model Act
 5677 commentary to s. 8.52:

5678 While this standard may result in an occasional defendant becoming entitled to indemnification
5679 because of procedural defenses not related to the merits, *e.g.* the statute of limitations or
5680 disqualification of the plaintiff, it is unreasonable to require a defendant with a valid procedural
5681 defense to undergo a possible prolonged and expensive trial on the merits in order to establish
5682 eligibility for mandatory indemnification.

5683

5684 607.0853 Advance for expenses.

5685 (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or
5686 reimburse expenses incurred in connection with the proceeding by an individual who is a party to
5687 the proceeding because that individual is or was a director or an officer if the director or officer
5688 delivers to the corporation a signed written undertaking of the director or officer to repay any funds
5689 advanced if

5690 (a) The director or officer is not entitled to mandatory indemnification under s.
5691 607.0852, and

5692 (b) It is ultimately determined under s. 607.0854 or s. 607.0855 that the director has not
5693 met the relevant standard of conduct described in s. 607.0851 or the director or officer is not
5694 entitled to indemnification by virtue of s. 607.0859.

5695 (2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of
5696 the director or officer but need not be secured and may be accepted without reference to the
5697 financial ability of the director or officer to make repayment.

5698 (3) Authorizations under this section shall be made:

5699 (a) By the board of directors:

5700 1. If there are two or more qualified directors, by a majority vote of all of the
5701 qualified directors (a majority of whom shall for such purpose constitute a quorum) or by
5702 a majority of the members of a committee appointed by such vote and comprised of two
5703 or more qualified directors; or

5704 2. If there are fewer than two qualified directors, by the vote necessary for action
5705 by the board of directors under s. 607.0824(3), in which authorization vote directors who
5706 are not qualified directors may participate; or

5707 (b) By the shareholders, but shares owned by or voted under the control of a director or
5708 officer who at the time of the authorization is not a qualified director or an officer who is a
5709 party to the proceeding may not be counted as a vote in favor of the authorization.

5710

5711 **Commentary to Section 607.0853:**

5712 Subsection (2) is intended to mean that the undertaking may, but need not, be secured and may,
5713 but need not, be accepted without reference to the financial ability of the director or officer to make
5714 the repayment. It is up to the board of directors to decide whether these issues should or should
5715 not be considered in agreeing to advance expenses in the proper exercise of their fiduciary duties.

5716 Subsection (3) expressly provides that a decision to advance expenses on behalf of a director or
5717 officer is to be made by the board of directors or the shareholders. Although the statute in effect
5718 prior to this revision (s. 607.0850(6)) does not specifically state who makes this decision, it is
5719 believed to be implied under the statute in effect prior to this revision.

5720 The provisions in Model Act s. 8.53(c), which establish how advancement of expenses is to be
5721 determined when there are directors who are parties to the proceeding at the time of authorization,
5722 has been included in the statute to clearly reflect how this decision is to be made under different
5723 circumstances. The language on shareholder votes in subsection (3)(b) is modeled on the language
5724 in the Model Act, and not the language in s. 607.0850(4)(d) that was in effect prior to this revision.
5725 Further, the term "qualified director" as defined in s. 607.0143 is used to reflect true independent
5726 directors making the decision as to advancement of expenses.

5727 Model Act s. 8.53(a)(1) regarding advancement of expenses if the proceeding involves conduct
5728 for which liability has been eliminated under a provision of the articles of incorporation as
5729 authorized by s. 2.02 of the Model Act has not been included. See Commentary regarding s.
5730 607.0851 above.

5731

5732 607.0854 Court-ordered indemnification and advance for expenses.

5733 (1) Unless the corporation’s articles of incorporation provide otherwise, notwithstanding the
5734 failure of a corporation to provide indemnification, and despite any contrary determination of the
5735 board of directors or of the shareholders in the specific case, a director or officer of the corporation
5736 who is a party to a proceeding because he or she is or was a director or officer may apply for
5737 indemnification or an advance for expenses, or both, to a court having jurisdiction over the
5738 corporation that is conducting the proceeding, or to a circuit court of competent jurisdiction. After
5739 receipt of an application and after giving any notice it considers necessary, the court may:

5740 (a) Order indemnification if the court determines that the director or officer is entitled to
5741 mandatory indemnification under s. 607.0852;

5742 (b) Order indemnification or advance for expenses if the court determines that the
5743 director or officer is entitled to indemnification or advance for expenses pursuant to a
5744 provision authorized by s. 607.0858(1); or

5745 (c) Order indemnification or advance for expenses if the court determines, in view of all
5746 the relevant circumstances, that it is fair and reasonable:

5747 1. To indemnify the director or officer, or

5748 2. To advance expenses to the director or officer;

5749 even if, in the case of subsection (1) and (2) above, he or she has not met the relevant
5750 standard of conduct set forth in s. 607.0851(1), failed to comply with s. 607.0853 or was
5751 adjudged liable in a proceeding referred to in s. 607.0859, but if the director or officer was
5752 adjudged so liable, indemnification shall be limited to expenses incurred in connection with
5753 the proceeding.

5754 (2) If the court determines that the director or officer is entitled to indemnification under
5755 subsection (1)(a) or to indemnification or advance for expenses under subsection (1)(b), it shall
5756 also order the corporation to pay the director's or officer's expenses incurred in connection with
5757 obtaining court-ordered indemnification or advance for expenses. If the court determines that the
5758 director or officer is entitled to indemnification or advance for expenses under subsection (1)(c),
5759 it may also order the corporation to pay the director's or officer's expenses to obtain court-ordered
5760 indemnification or advance for expenses.

5761

5762 **Commentary to Section 607.0854:**

5763 The lead in language that has been added to subsection (1) is derived from existing s. 607.0850(9).
5764 Further, language has been added to subsection (1) to make clear that the corporation must be a
5765 party to the proceeding in which indemnification is ordered (which, while not expressly stated in
5766 the statute that was in effect prior to this revision, is believed to be the rule under that statute).

5767 In subsection (1), the word "shall" in Model Act s. 8.54 was changed to "may" based on the view
5768 that such action is within the discretion of the court.

5769 Subsection (2) is consistent with existing s. 607.0850(9).

5770

5771 607.0855 Determination and authorization of indemnification.

5772 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5773 director or officer under s. 607.0851 unless authorized for a specific proceeding after a
5774 determination has been made that indemnification is permissible because the director or officer
5775 has met the relevant standard of conduct set forth in s. 607.0851.

5776 (2) The determination shall be made:

5777 (a) If there are two or more qualified directors, by the board of directors by a majority
5778 vote of all of the qualified directors (a majority of whom shall for such purposes constitute a
5779 quorum), or by a majority of the members of a committee of two or more qualified directors
5780 appointed by such a vote; or

5781 (b) By independent special legal counsel:

5782 1. Selected in the manner prescribed in paragraph (a); or

5783 2. If there are fewer than two qualified directors, selected by the board of directors
5784 (in which selection directors who are not qualified directors may participate); or

5785 (c) By the shareholders, but shares owned by or voted under the control of a director or
5786 officer who, at the time of the determination, is not a qualified director or an officer who is a
5787 party to the proceeding may not be counted as votes in favor of the determination.

5788 (3) Authorization of indemnification shall be made in the same manner as the determination
5789 that indemnification is permissible, except that if the determination of permissibility has been
5790 made by independent special legal counsel under subsection (2)(b), any authorization of
5791 indemnification associated with such determination shall be made by either such independent
5792 special legal counsel or by those who otherwise would be entitled to select independent special
5793 legal counsel under subsection (2)(b).

5794

5795 **Commentary to Section 607.0855:**

5796 This section combines the substance and the wording of Model Act s. 8.55 with the existing
5797 language contained in s. 607.0850(4) and (5) of the FBCA. It uses the term "qualified director" as
5798 defined in s. 607.0143 so that the decision is clearly made by independent directors.

5799

5800 Model Act § 8.56 Indemnification of officers.

5801 This section of the Model Act has not been included since officers remain within the scope of
5802 coverage under ss. 607.0851, 607.0852 and 607.0853. See commentary to s. 607.0851.

5803

5804 607.0857 Insurance.

5805 A corporation shall have the power to purchase and maintain insurance on behalf of and for
5806 the benefit of an individual who is or was a director or officer of the corporation, or who, while a
5807 director or officer of the corporation, is or was serving at the corporation's request as a director,
5808 officer, manager, member, partner, trustee, employee, or agent of another domestic or foreign
5809 corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or
5810 other enterprise or entity, against liability asserted against or incurred by the individual in that
5811 capacity or arising from his or her status as a director or officer, whether or not the corporation
5812 would have power to indemnify or advance expenses to the individual against the same liability
5813 under this chapter.

5814

5815 **Commentary to Section 607.0857:**

5816 The language contained in s. 607.0850(12) that was in effect prior to this revision has been largely
5817 followed in this s. 607.0857. Minor changes have been made to add limited liability companies to
5818 the types of entities to which a director or officer can be serving at the corporation's request and to
5819 eliminate employees and agents from the coverage of this provision (with respect to this second
5820 issue, see the commentary to s. 607.0851).

5821

5822 607.0858 Variation by corporate action; Application of subchapter.

5823 (1) The indemnification provided pursuant to s. 607.0851 and 607.0852 and the advancement
5824 of expenses provided pursuant to s. 607.0853 are not exclusive, and a corporation may, by a
5825 provision in its articles of incorporation, bylaws or any agreement, or by vote of shareholders or
5826 disinterested directors, or otherwise, obligate itself in advance of the act or omission giving rise to
5827 a proceeding to provide any other or further indemnification or advancement of expenses to any
5828 of its directors or officers. Any such obligatory provision shall be deemed to satisfy the
5829 requirements for authorization referred to in s. 607.0853(3) and in s. 607.0855(3). Any such
5830 provision that obligates the corporation to provide indemnification to the fullest extent permitted
5831 by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse
5832 expenses in accordance with s. 607.0853 to the fullest extent permitted by law, unless the provision
5833 specifically provides otherwise.

5834 (2) A right of indemnification or to advance for expenses created by this chapter or under
5835 subsection (1) and in effect at the time of an act or omission shall not be eliminated or impaired
5836 with respect to such act or omission by an amendment of the articles of incorporation or bylaws or
5837 a resolution of the directors or shareholders, adopted after the occurrence of such act or omission,
5838 unless, in the case of a right created under subsection (1), the provision creating such right and in
5839 effect at the time of such act or omission explicitly authorizes such elimination or impairment after
5840 such act or omission has occurred.

5841 (3) Any provision pursuant to subsection (1) shall not obligate the corporation to indemnify
5842 or advance for expenses to a director or officer of a predecessor of the corporation, pertaining to
5843 conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for
5844 indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of
5845 the board of directors or shareholders of a predecessor of the corporation in a merger or in a
5846 contract to which the predecessor is a party, existing at the time the merger takes effect, shall be
5847 governed by s. 607.1106(1)(d).

5848 (4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation,
5849 limit any of the rights to indemnification or advance for expenses created by or pursuant to this
5850 chapter.

5851 (5) Sections 607.0850-607.0859 do not limit a corporation's power to pay or reimburse
5852 expenses incurred by a director, an officer, an employee or an agent in connection with appearing
5853 as a witness in a proceeding at a time when he or she is not a party.

5854 (6) Sections 607.0850-607.0859 do not limit a corporation's power to indemnify, advance
5855 expenses to or provide or maintain insurance on behalf of or for the benefit of an individual who
5856 is or was an employee or agent.

5857 **Commentary to Section 607.0858:**

5858 This statute follows the construct of s. 8.57(f) of the Model Act and leaves the issue of
5859 indemnification of employees and agents to the laws of agency and related principles. See the
5860 commentary to s. 607.0851.

5861 The wording of s. 607.0850(7) that was in effect prior to this revision, which sets forth how a
5862 corporation may obligate itself to provide indemnification beyond the provisions contained in s.
5863 607.0851-607.0853, has been retained in s. 607.0858(1) rather than following the more limited
5864 corollary provision contained in the Model Act. However, even under this subsection, as in the
5865 FBCA provision that was in effect prior to this revision, indemnification cannot be provided under
5866 the circumstances described in s. 607.0859.

5867 The elimination of the wording from s. 607.0850 that was in effect prior to this revision, which
5868 references both acting in an official capacity or acting in any other capacity, is not intended in any
5869 way to limit the ability of a corporation to vary or expand indemnification. The broad language
5870 contained in subsection (1) is intended to operate as broadly as the language in s. 607.0850 that
5871 was in effect prior to this revision, thus allowing a corporation to indemnify and to advance
5872 expenses for an action taken by a director or officer, in whatever capacity (whether official or
5873 otherwise). No substantive change from the broad authorization provided in the statute that was in
5874 effect prior to this revision is intended.

5875

5876 607.0859 Overriding restrictions on indemnification.

5877 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5878 director or officer under s. 607.0851 or s. 607.0858 or advance expenses to a director or officer
5879 under s. 607.0853 or s. 607.0858 if a judgment or other final adjudication establishes that his or
5880 her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

5881 (a) Willful or intentional misconduct or a conscious disregard for the best interests of
5882 the corporation in a proceeding by or in the right of the corporation to procure a judgment in
5883 its favor or in a proceeding by or in the right of a shareholder; or

5884 (b) A transaction in which a director or officer derived an improper personal benefit; or

5885 (c) A violation of the criminal law, unless the director or officer had reasonable cause to
5886 believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct
5887 was unlawful; or

5888 (d) In the case of a director, a circumstance under which the liability provisions of s.
5889 607.0834 are applicable.

5890 (2) A corporation may provide indemnification or advance expenses to a director or an officer
5891 only as permitted by ss. 607.0850 - 607.0859.

5892

5893 **Commentary to Section 607.0859:**

5894 The limits of permitted indemnification are contained in subsection (1). They are derived from s.
5895 607.0850(7) that was in effect prior to this revision. These limits are intentionally not applicable
5896 to mandatory indemnification. It is believed that if a director or officer is able to satisfy the
5897 relatively high threshold conditions of being entitled to mandatory indemnification under s.
5898 607.0852, it is highly unlikely that the limitations set forth in s. 607.0859 will have been exceeded.
5899 The choice that has been made, consistent with s. 607.0850 that was in effect prior to this revision,
5900 was to always mandate indemnification where the requirements of s. 607.0852 are met, rather than
5901 to impose on the director or officer or on the corporation an obligation to further establish that
5902 none of the limits in s. 607.0859 were exceeded. It is recognized that, at least in theory, there
5903 could be those very rare cases where the facts would otherwise support having exceeded the limits
5904 in s. 607.0859, but meet the requirements for mandatory indemnification under s. 607.0852.

5905 In conformity with s. 8.59 of the Model Act, ss. 607.0850-607.8059 are expressly stated to be the
5906 exclusive source for the power of a corporation to indemnify or advance expenses to a director or
5907 officer. While this exclusivity was not expressly stated in the current statute, this is not believed
5908 to be a substantive change.

5909

5910 ARTICLE 9

5911 AFFILIATED TRANSACTIONS AND CONTROL-SHARE ACQUISITIONS

5912 **NOTE:** Article 9 of the FBCA was adopted in 1987 as part of a panoply of statutes designed to
5913 prevent perceived abuses in hostile takeovers of publicly held companies, with the aim of
5914 protecting Florida-based and their employees from unwanted hostile takeover attempts. It is not a
5915 Model Act provision. Article 9 includes two statutory provisions, (i) the "affiliated transaction"
5916 statute (s. 607.0901), and (ii) the control share acquisition statute (s. 607.0902). Each of these
5917 sections, or their counterpart in the statutes of other states, has withstood attacks on constitutional
5918 grounds.

5919 For reference, the other provisions added to the FBCA as part of these anti-takeover statutes
5920 included (a) s. 607.0624, validating shareholders' rights plans, and (b) s. 607.0830(3), the
5921 "stakeholders" or "other constituencies" provision.

5922
5923 607.0901 Affiliated transactions.

5924 (1) For purposes of this section:

5925 (a) "Affiliate" means a person who directly, or indirectly through one or more
5926 intermediaries, controls or is controlled by, or is under common control with, a specified
5927 person.

5928 (b) "Affiliated transaction," when used in reference to the corporation and any
5929 interested shareholder, means:

5930 1. Any merger or consolidation of the corporation or any subsidiary of the
5931 corporation with:

5932 a. The interested shareholder; or

5933 b. Any other corporation, partnership, limited liability company,
5934 or other entity (in each case, whether or not itself an interested shareholder)
5935 which is, or after such merger or consolidation would be, an affiliate or
5936 associate of the interested shareholder;

5937 2. Any sale, lease, exchange, mortgage, pledge, transfer, or other
5938 disposition (in one transaction or a series of transactions), except proportionately
5939 as a shareholder of such corporation, to or with the interested shareholder or any

5940 affiliate or associate of the interested shareholder, whether as part of a dissolution
5941 or otherwise, of assets of the corporation or any subsidiary of the corporation:

5942 a. Having an aggregate fair market value equal to 10 5 percent or
5943 more of the aggregate fair market value of all the assets, determined on a
5944 consolidated basis, of the corporation;

5945 b. Having an aggregate fair market value equal to 10 5 percent or
5946 more of the aggregate fair market value of all the outstanding shares of the
5947 corporation; or

5948 c. Representing 10 5 percent or more of the earning power or net
5949 income, determined on a consolidated basis, of the corporation;

5950 3. The issuance or transfer by the corporation or any subsidiary of the
5951 corporation (in one transaction or a series of transactions) of any shares of the
5952 corporation or any subsidiary of the corporation which have an aggregate fair
5953 market value equal to 105 percent or more of the aggregate fair market value of all
5954 the outstanding shares of the corporation to the interested shareholder or any
5955 affiliate or associate of the interested shareholder except:

5956 a. pursuant to the exercise, exchange or conversion of securities
5957 exercisable for, exchangeable for or convertible into shares of the
5958 corporation or any subsidiary of the corporation which were outstanding
5959 prior to the time that the interested shareholder became such;

5960 b. pursuant to a merger under s. 607.11045;

5961 c. pursuant to ~~warrants or rights to purchase stock offered, or a~~
5962 ~~dividend or distribution paid or made, or the exercise, exchange or~~
5963 conversion of securities exercisable for, exchangeable for or convertible
5964 into shares of the corporation which security is distributed, pro rata to all
5965 holders of a class or series of shares of such corporation subsequent to the
5966 time the interested shareholder became such ~~shareholders of the~~
5967 ~~corporation;~~

5968 d. pursuant to an exchange offer by the corporation to purchase
5969 shares of such corporation made on the same terms to all holders of said
5970 shares;

5971 e. any issuance or transfer of stock by the corporation;

5972 provided however, that in no case under items (c) through (e) of this subparagraph
5973 shall there be an increase in the interested shareholder's proportionate share of the

5974 shares of any class or series of the corporation or of the voting shares of the
5975 corporation.

5976 4. The adoption of any plan or proposal for the liquidation or dissolution
5977 of the corporation proposed by, or pursuant to any agreement, arrangement, or
5978 understanding (whether or not in writing) with, the interested shareholder or any
5979 affiliate or associate of the interested shareholder;

5980 5. Any reclassification of securities (including, without limitation, any
5981 stock split, stock dividend, or other distribution of shares in respect of shares, or
5982 any reverse stock split) or recapitalization of the corporation, or any merger or
5983 consolidation of the corporation with any subsidiary of the corporation, or any other
5984 transaction (whether or not with or into or otherwise involving the interested
5985 shareholder), with the interested shareholder or any affiliate or associate of the
5986 interested shareholder, which has the effect, directly or indirectly (in one
5987 transaction or a series of transactions during any 12-month period), of increasing
5988 by more than 10 5 percent the percentage of the outstanding voting shares of the
5989 corporation or any subsidiary of the corporation beneficially owned by the
5990 interested shareholder;

5991 6. Any receipt by the interested shareholder or any affiliate or associate of
5992 the interested shareholder of the benefit, directly or indirectly (except
5993 proportionately as a shareholder of the corporation), of any loans, advances,
5994 guaranties, pledges, or other financial assistance or any tax credits or other tax
5995 advantages (other than those expressly permitted in paragraphs (b)(3)1.- 5.)
5996 provided by or through the corporation or any subsidiary of the corporation.

5997 (c) "Announcement date," when used in reference to any affiliated transaction,
5998 means the date of the first general public announcement of the proposed affiliated
5999 transaction or of the intention to propose an affiliated transaction, or the date on which the
6000 proposed affiliated transaction or the intention to propose an affiliated transaction is first
6001 communicated generally to the shareholders of the corporation, whichever is earlier.

6002 (d) "Associate," when used to indicate a relationship with any person, means any
6003 entity, other than the corporation or any of its subsidiaries, of which such person is an
6004 officer, director, or partner or is, directly or indirectly, the beneficial owner of 20 40
6005 percent or more of any class of voting shares; any trust or other estate in which such person
6006 has at least a 20% a-substantial beneficial interest or as to which such person serves as
6007 trustee or in a similar fiduciary capacity; and any relative or spouse of such person, or any
6008 relative of such spouse, who has the same residence ~~home~~ as such person or who is an
6009 officer or director of the corporation or any of its affiliates.

6010 (e) A person is deemed to be a "beneficial owner" of voting shares as to which
6011 such person and such person's affiliates and associates, individually or in the aggregate,
6012 have or share directly, or indirectly through any contract, arrangement, understanding,
6013 relationship, or otherwise:

6014 1. Voting power, which includes the power to vote or to direct the voting
6015 of the voting shares;

6016 2. Investment power, which includes the power to dispose of or to direct
6017 the disposition of the voting shares; or

6018 3. The right to acquire the voting power or investment power, whether
6019 such right is exercisable immediately or only after the passage of time, pursuant to
6020 any contract, arrangement, or understanding, upon the exercise of conversion
6021 rights, exchange rights, warrants, or options, or otherwise; however, in no case shall
6022 a director of the corporation be deemed to be the beneficial owner of voting shares
6023 beneficially owned by another director of the corporation solely by reason of
6024 actions undertaken by such persons in their capacity as directors of the corporation.

6025 (f) "Control," including the terms "controlling," "controlled by" and "under
6026 common control with" means the possession, directly or indirectly, through the ownership
6027 of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the
6028 power to direct or cause the direction of the management and policies of a person. A person
6029 who is the owner of 20% or more of the outstanding voting shares of any corporation,
6030 partnership, unincorporated association or other entity shall be presumed to have control
6031 of such entity, in the absence of proof by a preponderance of the evidence to the contrary.
6032 Notwithstanding the foregoing, a person shall not be deemed to have control of an entity
6033 corporation if such person holds voting shares, in good faith and not for the purpose of
6034 circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for
6035 one or more beneficial owners who do not individually or as a group have control of such
6036 entity corporation.

6037 (g) "Determination date" means the date on which an interested shareholder
6038 became an interested shareholder.

6039 (h) Unless otherwise specified in the articles of incorporation initially filed with
6040 the ~~d~~Department of State, a "disinterested director" means as to any particular interested
6041 shareholder:

6042 1. Any member of the board of directors of the corporation who was a
6043 member of the board of directors before the later of January 1, 1987, or the
6044 determination date; and

6045 2. Any member of the board of directors of the corporation who was
6046 recommended for election by, or was elected to fill a vacancy and received the
6047 affirmative vote of, a majority of the disinterested directors then on the board.

6048 (i) "Exchange Act" means the Act of Congress known as the
6049 Securities Exchange Act of 1934, as the same has been or hereafter may be
6050 amended from time to time.

6051 (j) "Fair market value" means:

6052 1. In the case of shares, the highest closing sale price of a share quoted
6053 during the 30-day period immediately preceding the date in question on the
6054 composite tape for shares listed on the New York Stock Exchange; or, if such shares
6055 are not quoted on the composite tape on the New York Stock Exchange, the highest
6056 closing sale price quoted during such period on the New York Stock Exchange; or
6057 if such shares are not listed on such exchange, the highest closing sale price quoted
6058 during such period on the principal United States securities exchange registered
6059 under the Exchange Act on which such shares are listed; or, if such shares are not
6060 listed on any such exchange, the highest closing bid quotation with respect to a
6061 share during the 30-day period preceding the date in question on the National
6062 Association of Securities Dealers, Inc., automated quotations system or any other
6063 stock price quotation similar system then in general use; or, if no such quotations
6064 are available, the fair market value of a share on the date in question as determined
6065 (i) by a majority of disinterested directors or (ii) if, at such time there are no
6066 disinterested directors, by the board of directors of such corporation in good faith;
6067 and

6068 2. In the case of property other than cash or shares, the fair market value
6069 of such property on the date in question as determined by (i) a majority of the
6070 disinterested directors or (ii) if, at such time there are no disinterested directors, by
6071 the board of directors of such corporation in good faith.

6072 (k) "Interested shareholder" means any person who is the beneficial owner of
6073 more than 15 ~~40~~ percent of the outstanding voting shares of the corporation. However, the
6074 term "interested shareholder" shall not include the corporation or any of its subsidiaries;
6075 any savings, employee stock ownership, or other employee benefit plan of the corporation
6076 or any of its subsidiaries; ~~or~~ any fiduciary with respect to any such plan when acting in
6077 such capacity; or any person whose ownership of shares in excess of the 15% limitation set
6078 forth herein is the result of action taken solely by the corporation; provided that such person
6079 shall be an interested shareholder if thereafter such person acquires additional shares of
6080 voting shares of the corporation, except as a result of further corporate action not caused,
6081 directly or indirectly, by such person. For the purpose of determining whether a person is

6082 an interested shareholder, the number of voting shares deemed to be outstanding shall
6083 include shares deemed owned by the interested shareholder through application of
6084 subparagraph (e)3. but shall not include any other voting shares that may be issuable
6085 pursuant to any contract, arrangement, or understanding, upon the exercise of conversion
6086 rights, exchange rights, warrants, or options, or otherwise.

6087 (l) "Shares" means the units into which the proprietary interests in an entity are
6088 divided and includes:

6089 1. Any stock or similar security, any certificate of interest, any
6090 participation in any profit-sharing agreement, any voting trust certificate, or any
6091 certificate of deposit for shares; and

6092 2. Any security convertible, with or without consideration, into shares; or
6093 any warrant, call, or other option or privilege of buying shares without being bound
6094 to do so; or any other security carrying any right to acquire, subscribe to, or
6095 purchase shares.

6096 (m) "Subsidiary" means, as to any corporation, any other corporation of which it
6097 owns, directly or indirectly through one or more subsidiaries, a majority of the voting
6098 shares.

6099 (n) "Valuation date" means, if the affiliated transaction is voted upon by
6100 shareholders, the day before the date of the vote of shareholders or, if the affiliated
6101 transaction is not voted upon by shareholders, the date of the consummation of the affiliated
6102 transaction.

6103 (o) "Voting shares" means the outstanding shares of all classes or series of the
6104 corporation entitled to vote generally in the election of directors.

6105 (2) Except as provided in subsections (4) and (5), but notwithstanding any other
6106 provisions of this chapter, a corporation shall not engage in any affiliated transaction with any
6107 interested shareholder for a period of 3 years following the time that such shareholder became an
6108 interested shareholder, unless:

6109 (a) Prior to the time that such shareholder became an interested shareholder, the
6110 board of directors of the corporation approved either the affiliated transaction or the
6111 transaction which resulted in the shareholder becoming an interested shareholder; or

6112 (b) Upon consummation of the transaction which resulted in the shareholder
6113 becoming an interested shareholder, the interested shareholder owned at least 85% of the
6114 voting shares of the corporation outstanding at the time the transaction commenced,
6115 excluding for purposes of determining the voting shares outstanding (but not the
6116 outstanding voting shares owned by the interested shareholder) those shares owned (i) by

6117 persons who are directors and also officers and (ii) employee stock plans in which
6118 employee participants do not have the right to determine confidentially whether shares held
6119 subject to the plan will be tendered in a tender or exchange offer; or

6120 (c) At or subsequent to the time that such shareholder became an interested
6121 shareholder, the affiliated transaction is approved by the board of directors and authorized
6122 at an annual or special meeting of shareholders, and not by written consent, by the
6123 affirmative vote of at least two-thirds of the outstanding voting shares which are not owned
6124 by the interested shareholder.

6125 ~~in addition to any affirmative vote required by any other section of this act or by the articles~~
6126 ~~of incorporation, an affiliated transaction shall be approved by the affirmative vote of the~~
6127 ~~holders of two-thirds of the voting shares other than the shares beneficially owned by the~~
6128 ~~interested shareholder.~~

6129 (3) A majority of the disinterested directors shall have the power to determine for the
6130 purposes of this section:

6131 (a) Whether a person is an interested shareholder;

6132 (b) The number of voting shares beneficially owned by any person;

6133 (c) Whether a person is an affiliate or associate of another; and

6134 (d) Whether the securities to be issued or transferred by the corporation or any of
6135 its subsidiaries to any interested shareholder or any affiliate or associate of the interested
6136 shareholder have an aggregate fair market value equal to or greater than 10 ~~5~~ percent of the
6137 aggregate fair market value of all of the outstanding voting shares of the corporation or any
6138 of its subsidiaries.

6139 (4) The voting requirements set forth in subsection (2) do not apply to a particular affiliated
6140 transaction if all of the conditions specified in any one of the following paragraphs are met:

6141 (a) The affiliated transaction has been approved by a majority of the disinterested
6142 directors;

6143 (b) The corporation has not had more than 300 shareholders of record at any time
6144 during the 3 years preceding the announcement date;

6145 (c) The interested shareholder has been the beneficial owner of at least 80 percent
6146 of the corporation's outstanding voting shares for at least 3 ~~5~~ years preceding the
6147 announcement date;

6148 (d) The interested shareholder is the beneficial owner of at least 90 percent of the
6149 outstanding voting shares of the corporation, exclusive of shares acquired directly from the
6150 corporation in a transaction not approved by a majority of the disinterested directors;

6151 (e) The corporation is an investment company registered under the Investment
6152 Company Act of 1940; or

6153 (f) In the affiliated transaction, consideration shall be paid to the holders of each
6154 class or series of voting shares and all of the following conditions shall be met:

6155 1. The aggregate amount of the cash and the fair market value as of the
6156 valuation date of consideration other than cash to be received per share by holders
6157 of each class or series of voting shares in such affiliated transaction are at least
6158 equal to the highest of the following:

6159 a. If applicable, the highest per share price, including any
6160 brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by
6161 the interested shareholder for any shares of such class or series acquired by
6162 it within the 2-year period immediately preceding the announcement date
6163 or in the transaction in which it became an interested shareholder,
6164 whichever is higher;

6165 b. The fair market value per share of such class or series on the
6166 announcement date or on the determination date, whichever is higher;

6167 c. If applicable, the price per share equal to the fair market value
6168 per share of such class or series determined pursuant to sub-subparagraph
6169 b., multiplied by the ratio of the highest per share price, including any
6170 brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by
6171 the interested shareholder for any shares of such class or series acquired by
6172 it within the 2-year period immediately preceding the announcement date,
6173 to the fair market value per share of such class or series on the first day in
6174 such 2-year period on which the interested shareholder acquired any shares
6175 of such class or series; and

6176 d. If applicable, the highest preferential amount, if any, per share
6177 to which the holders of such class or series are entitled in the event of any
6178 voluntary or involuntary dissolution of the corporation.

6179 2. The consideration to be received by holders of outstanding shares shall be in
6180 cash or in the same form as the interested shareholder has previously paid for shares of the
6181 same class or series, and if the interested shareholder has paid for shares with varying forms
6182 of consideration, the form of the consideration shall be either cash or the form used to

6183 acquire the largest number of shares of such class or series previously acquired by the
6184 interested shareholder.

6185 3. During such portion of the 3-year period preceding the announcement date that
6186 such interested shareholder has been an interested shareholder, except as approved by a
6187 majority of the disinterested directors:

6188 a. There shall have been no failure to declare and pay at the regular date
6189 therefor any full periodic dividends, whether or not cumulative, on any outstanding
6190 shares of the corporation;

6191 b. There shall have been:

6192 (I) No reduction in the annual rate of dividends paid on any class
6193 or series of voting shares, except as necessary to reflect any subdivision of
6194 the class or series; and

6195 (II) An increase in such annual rate of dividends as necessary to
6196 reflect any reclassification, including any reverse stock split,
6197 recapitalization, reorganization, or similar transaction which has the effect
6198 of reducing the number of outstanding shares of the class or series; and

6199 c. Such interested shareholder shall not have become the beneficial owner
6200 of any additional voting shares except as part of the transaction which results in
6201 such interested shareholder becoming an interested shareholder.

6202 4. During such portion of the 3-year period preceding the announcement date that
6203 such interested shareholder has been an interested shareholder, except as approved by a
6204 majority of the disinterested directors, such interested shareholder shall not have received
6205 the benefit, directly or indirectly (except proportionately as a shareholder), of any loans,
6206 advances, guaranties, pledges, or other financial assistance or any tax credits or other tax
6207 advantages provided by the corporation, whether in anticipation of or in connection with
6208 such affiliated transaction or otherwise.

6209 5. Except as otherwise approved by a majority of the disinterested directors, a
6210 proxy or information statement describing the affiliated transaction and complying with
6211 the requirements of the Exchange Act and the rules and regulations thereunder has been
6212 mailed to holders of voting shares of the corporation at least 25 days before the
6213 consummation of such affiliated transaction, whether or not such proxy or information
6214 statement is required to be mailed pursuant to the Exchange Act or such rules or
6215 regulations.

6216 (5) The provisions of this section do not apply:

6217 (a) To any corporation the original articles of incorporation of which contain a
6218 provision expressly electing not to be governed by this section;

6219 (b) To any corporation which adopted an amendment to its articles of
6220 incorporation prior to _____, 20 [the date that is 18 months prior to the effective date
6221 of this act] ~~January 1, 1989~~, expressly electing not to be governed by this section, provided
6222 that such amendment does not apply to any affiliated transaction of the corporation with
6223 an interested shareholder whose determination date is on or prior to the effective date of
6224 such amendment;

6225 (c) To any corporation which adopts an amendment to its articles of incorporation
6226 or bylaws, approved by the affirmative vote of the holders, other than interested
6227 shareholders and their affiliates and associates, of a majority of the outstanding voting
6228 shares of the corporation, excluding the voting shares of interested shareholders and their
6229 affiliates and associates, expressly electing not to be governed by this section, provided
6230 that such amendment to the articles of incorporation or bylaws shall not be effective until
6231 18 months after such vote of the corporation's shareholders and shall not apply to any
6232 affiliated transaction of the corporation with an interested shareholder whose determination
6233 date is on or prior to the effective date of such amendment; or

6234 (d) To any affiliated transaction of the corporation with an interested shareholder
6235 of the corporation which became an interested shareholder inadvertently, if such interested
6236 shareholder, as soon as practicable, divests itself of a sufficient amount of the voting shares
6237 of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 20
6238 ~~40~~ percent or more of the outstanding voting shares of the corporation, and would not at
6239 any time within the 3 ~~5~~-year period preceding the announcement date with respect to such
6240 affiliated transaction have been an interested shareholder but for such inadvertent
6241 acquisition.

6242 (6) Any corporation that elected not to be governed by this section, either through a
6243 provision in its original articles of incorporation or through an amendment to its articles of
6244 incorporation or bylaws may elect to be bound by the provisions of this section by adopting an
6245 amendment to its articles of incorporation or bylaws that repeals the original article or the
6246 amendment. In addition to any requirements of this chapter ~~aet~~, or the articles of incorporation or
6247 bylaws of the corporation, any such amendment shall be approved by the affirmative vote of the
6248 holders of two-thirds of the voting shares other than shares beneficially owned by any interested
6249 shareholder.

6250

6251 **Commentary to s. 607.0901:**

6252 The purpose of s. 607.0901 is to deter coercive "two-step, front-end loaded" tender offers that are
6253 not approved by the disinterested directors of the target company (i.e., tender offers that are hostile
6254 and not friendly). It accomplishes this purpose by regulating the exercise, as opposed to the
6255 acquisition, of corporate control in a way that makes the acquisition unpalatable to the bidder.

6256 Section 607.0901 requires that any "affiliated transaction" with an "interested shareholder" receive
6257 the approval of either "disinterested directors" or a supermajority vote of disinterested
6258 shareholders, or, absent either such approval, that a statutory "fair price" be paid to the shareholders
6259 in the transaction. The shareholder vote requirement is in addition to any shareholder vote required
6260 under any other section of the FBCA or the corporation's articles of incorporation. For a publicly
6261 traded corporation, this supermajority vote will be difficult, if not impossible, to obtain because
6262 the votes of the shares beneficially owned by the "interested shareholder" are not counted. In
6263 addition, the "fair price" alternative to the special shareholder vote requirement is likewise difficult
6264 to satisfy because the formula for determining the price will often result in a higher price being
6265 paid to the non-tendering shareholder in any "back-end" or "affiliated transaction" that was paid
6266 in the "front-end" tender offer.

6267 Generally, s. 607.0901 will only apply to publicly held companies because of the 300-record
6268 shareholders condition in subsection 4(b). However, the section may also apply to private
6269 companies which, at any time in the prior three years preceding the affiliated transaction, had more
6270 than 300 shareholders.

6271 The changes in the definition of "affiliated transaction," including the changes to increase the
6272 threshold in subsection (2) from 5% to 10% are derived from changes made subsequent to the
6273 adoption of this statute in s. 203(c)(3)(ii) of the DGCL, and are similar to the corollary Maryland
6274 and Michigan statutes.

6275 The change to the definition of "associate" is derived from the corollary provision of the DGCL.

6276 Subsection (2), the heart of the affiliated transaction statute, has been expanded in order to follow
6277 DGCL s. 203(a) and thus to more clearly provide the exceptions to the affiliated transaction statute.
6278 While the changes appear extensive, they reflect an understanding of the exceptions that many
6279 corporate practitioners understood to be in the statute historically even though unstated.

6280

6281 607.0902 Control-share acquisitions.

6282 (1) "Control shares." As used in this section, "control shares" means shares that, except for
6283 this section, would have voting power with respect to shares of an issuing public corporation that,
6284 when added to all other shares of the issuing public corporation owned by a person or in respect
6285 to which that person may exercise or direct the exercise of voting power, would entitle that person,
6286 immediately after acquisition of the shares, directly or indirectly, alone or as a part of a group, to
6287 exercise or direct the exercise of the voting power of the issuing public corporation in the election
6288 of directors within any of the following ranges of voting power:

- 6289
- 6290 (a) One-fifth or more but less than one-third of all voting power.
 - 6291
 - 6292 (b) One-third or more but less than a majority of all voting power.
 - 6293
 - 6294 (c) A majority or more of all voting power.
 - 6295

6296 (2) "Control-share acquisition."

6297

- 6298 (a) As used in this section, "control-share acquisition" means the acquisition, directly
6299 or indirectly, by any person of ownership of, or the power to direct the exercise of voting
6300 power with respect to, issued and outstanding control shares.

6301

- 6302 (b) For purposes of this section, all shares, the beneficial ownership of which is acquired
6303 within 90 days before or after the date of the acquisition of the beneficial ownership of shares
6304 which result in a control share acquisition, and all shares the beneficial ownership of which is
6305 acquired pursuant to a plan to make a control-share acquisition shall be deemed to have been
6306 acquired in the same acquisition.

6307

- 6308 (c) For purposes of this section, a person who acquires shares in the ordinary course of
6309 business for the benefit of others in good faith and not for the purpose of circumventing this
6310 section has voting power only of shares in respect of which that person would be able to
6311 exercise or direct the exercise of votes without further instruction from others.

6312

- 6313 (d) The acquisition of any shares of an issuing public corporation does not constitute a
6314 control-share acquisition if the acquisition is consummated in any of the following
6315 circumstances:

- 6316
- 6317 1. Before July 2, 1987.
 - 6318
 - 6319 2. Pursuant to a contract existing before July 2, 1987.
 - 6320

6321 3. Pursuant to the laws of intestate succession or pursuant to a gift or
6322 testamentary transfer.

6323
6324 4. Pursuant to the satisfaction of a pledge or other security interest created in
6325 good faith and not for the purpose of circumventing this section.

6326
6327 5. Pursuant to a merger or share exchange effected in compliance with s.
6328 607.1101, s. 607.1102, s. 607.1103, s. 607.1104, or s. 607.1107, if the issuing public
6329 corporation is a party to the agreement of merger or plan of share exchange.

6330
6331 6. Pursuant to any savings, employee stock ownership, or other employee
6332 benefit plan of the issuing public corporation or any of its subsidiaries or any
6333 fiduciary with respect to any such plan when acting in such fiduciary capacity.

6334
6335 7. Pursuant to an acquisition of shares of an issuing public corporation if the
6336 acquisition has been approved by the board of directors of such issuing public
6337 corporation before acquisition.

6338
6339 (e) The acquisition of shares of an issuing public corporation in good faith and not for
6340 the purpose of circumventing this section by or from:

6341
6342 1. Any person whose voting rights had previously been authorized by
6343 shareholders in compliance with this section; or

6344
6345 2. Any person whose previous acquisition of shares of an issuing public
6346 corporation would have constituted a control-share acquisition but for paragraph (d),

6347
6348 does not constitute a control-share acquisition, unless the acquisition entitles any person,
6349 directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of voting
6350 power of the corporation in the election of directors in excess of the range of the voting power
6351 otherwise authorized.

6352
6353 (f) For the purpose of this section, persons shall not be deemed to be part of a "group"
6354 if such persons join together to exercise or direct the exercise of the voting power of an issuing
6355 public corporation (whether through a voting trust, a shareholder agreement, or through other
6356 arrangements), and the voting trustee of any voting trust shall not be deemed to be an
6357 "acquiring person" if such persons or all the parties to the voting trust:

6358
6359 1. Are related by blood or marriage or are the personal representatives or trustees
6360 of such persons; and

6361
6362 2. Such persons were shareholders (or the beneficial owners of shares) of the
6363 issuing public corporation (or were trustees, personal representatives, or heirs of such
6364 shareholders or beneficial owners) on July 1, 1987, and have continued to be shareholders
6365 (or the beneficial owners of shares) of the issuing public corporation (or have been trustees,
6366 personal representatives, or heirs of such shareholders or beneficial owners) since that time.
6367

6368 (3) "Interested shares." As used in this section, "interested shares" means the shares of an
6369 issuing public corporation in respect of which any of the following persons may exercise or direct
6370 the exercise of the voting power of the corporation in the election of directors:

6371 (a) An acquiring person or member of a group with respect to a control-share
6372 acquisition.
6373

6374 (b) Any officer of the issuing public corporation.
6375

6376 (c) Any employee of the issuing public corporation who is also a director of the
6377 corporation.
6378

6379 (4) "Issuing public corporation."
6380

6381 (a) As used in this section, "issuing public corporation" means a corporation that has:
6382

6383 1. One hundred or more shareholders;
6384

6385 2. Its principal place of business, its principal office, or substantial assets within
6386 this state; and
6387

6388 3. Either:
6389

6390 a. More than 10 percent of its shareholders resident in this state;
6391

6392 b. More than 10 percent of its shares owned by residents of this state; or
6393

6394 c. One thousand shareholders resident in this state.
6395

6396 (b) The residence of a shareholder is presumed to be the address appearing in the
6397 records of the corporation.
6398
6399

6400 (c) Shares held by banks (except as trustee or guardian), brokers, or nominees shall be
6401 disregarded for purposes of calculating the percentages or numbers described in this
6402 subsection.

6403
6404 (5) Law applicable to control-share voting rights. Unless the corporation’s articles of
6405 incorporation or bylaws provide that this section does not apply to control-share acquisitions of
6406 shares of the corporation before the control-share acquisition, control shares of an issuing public
6407 corporation acquired in a control-share acquisition have only such voting rights as are conferred
6408 by subsection (9).

6409
6410 (6) Notice of control-share acquisition. Any person who proposes to make or has made a
6411 control-share acquisition may at the person’s election deliver an acquiring person statement to the
6412 issuing public corporation at the issuing public corporation’s principal office. The acquiring person
6413 statement must set forth all of the following:

6414
6415 (a) The identity of the acquiring person and each other member of any group of which
6416 the person is a part for purposes of determining control shares.

6417
6418 (b) A statement that the acquiring person statement is given pursuant to this section.

6419
6420 (c) The number of shares of the issuing public corporation owned, directly or
6421 indirectly, by the acquiring person and each other member of the group.

6422
6423 (d) The range of voting power under which the control-share acquisition falls or would,
6424 if consummated, fall.

6425
6426 (e) If the control-share acquisition has not taken place:

6427
6428 1. A description in reasonable detail of the terms of the proposed control-share
6429 acquisition; and

6430
6431 2. Representations of the acquiring person, together with a statement, in
6432 reasonable detail of the facts upon which they are based, that the proposed control-share
6433 acquisition, if consummated, will not be contrary to law and that the acquiring person
6434 has the financial capacity to make the proposed control-share acquisition.

6435
6436 (7) Shareholder meeting to determine control-share voting rights.

6437
6438 (a) If the acquiring person so requests at the time of delivery of an acquiring person
6439 statement and gives an undertaking to pay the corporation’s expenses of a special meeting,

6440 within 10 days thereafter, the directors of the issuing public corporation or others authorized
6441 to call such a meeting under the issuing public corporation’s articles of incorporation or
6442 bylaws shall call a special meeting of shareholders of the issuing public corporation for the
6443 purpose of considering the voting rights to be accorded the shares acquired or to be acquired
6444 in the control-share acquisition.

6445
6446 (b) Unless the acquiring person agrees in writing to another date, the special meeting of
6447 shareholders shall be held within 50 days after receipt by the issuing public corporation of the
6448 request.

6449
6450 (c) If the acquiring person so requests in writing at the time of delivery of the acquiring
6451 person statement, the special meeting must not be held sooner than 30 days after receipt by
6452 the issuing public corporation of the acquiring person statement.

6453
6454 (d) If no request is made, the voting rights to be accorded the shares acquired in the
6455 control-share acquisition shall be presented to the next special or annual meeting of the
6456 shareholders.

6457
6458 (8) Notice of shareholder meeting.

6459
6460 (a) If a special meeting is requested, notice of the special meeting of shareholders shall
6461 be given as promptly as reasonably practicable by the issuing public corporation to all
6462 shareholders of record as of the record date set for the meeting, whether or not entitled to vote
6463 at the meeting.

6464
6465 (b) Notice of the special or annual shareholder meeting at which the voting rights are
6466 to be considered must include or be accompanied by each of the following:

6467
6468 1. A copy of the acquiring person statement delivered to the issuing public
6469 corporation pursuant to this section.

6470
6471 2. A statement by the board of directors of the corporation, authorized by its
6472 directors, of its position or recommendation, or that it is taking no position or making no
6473 recommendation, with respect to the proposed control-share acquisition.

6474
6475 (9) Resolution granting control-share voting rights.

6476
6477 (a) Control shares acquired in a control-share acquisition have the same voting rights as
6478 were accorded the shares before the control-share acquisition only to the extent granted by
6479 resolution approved by the shareholders of the issuing public corporation.

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(b) To be approved under this subsection, the resolution must be approved by:

1. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by the class or series, with the holders of the outstanding shares of a class or series being entitled to vote as a separate class if the proposed control-share acquisition would, if fully carried out, result in any of the changes described in s. 607.1004; and

2. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

(c) Any control shares that do not have voting rights because such rights were not accorded to such shares by approval of a resolution by the shareholders pursuant to paragraph (b) shall regain voting rights and shall no longer be deemed control shares upon a transfer to a person other than the acquiring person or associate or affiliate, as defined in s. 607.0901, of the acquiring person unless the acquisition of the shares by the other person constitutes a control-share acquisition, in which case the voting rights of the shares remain subject to the provisions of this section.

(10) Redemption of control-shares.

(a) If authorized in a corporation’s articles of incorporation or bylaws before a control-share acquisition has occurred, control shares acquired in a control-share acquisition with respect to which no acquiring person statement has been filed with the issuing public corporation may, at any time during the period ending 60 days after the last acquisition of control shares by the acquiring person, be subject to redemption by the corporation at the fair value thereof pursuant to the procedures adopted by the corporation.

(b) Control shares acquired in a control-share acquisition are not subject to redemption after an acquiring person statement has been filed unless the shares are not accorded full voting rights by the shareholders as provided in subsection (9).

6514 **Commentary to s. 607.0902:**

6515 Like the affiliated transaction section (s. 607.0901), the control-share acquisition section is
 6516 intended to deter hostile takeovers of publicly-held Florida corporations. It does this by regulating
 6517 the acquisition of control of an "issuing public corporation", which is defined in the section as a
 6518 corporation that has a more than 100 shareholders and a substantial nexus to Florida. The statute
 6519 is based on a similar statute adopted in Indiana that was held to be constitutional by the United
 6520 States Supreme Court in *CTS v. Dynamics Corporation of America*, 481 U.S. 69, 107 S. Ct. 1637,
 6521 95 L. Ed. 2d 67 (1987).

6522
 6523 Under s. 607.0902, "control shares" acquired in a "control-share acquisition" have voting rights
 6524 only if, and to the extent, granted in a resolution of the shareholders of the corporation approved
 6525 by (1) a majority of all the votes entitled to be cast by each class or series entitled, by virtue of s.
 6526 607.1004, to vote on the proposed control-share acquisition, and (2) a majority of all shares of
 6527 each class or series entitled to vote separately on the proposal, excluding all "interested shares".
 6528 "Interested shares" are shares that are owned by the acquiring person or persons, each officer of
 6529 the corporation, and each employee of the corporation who is also a director of the corporation.
 6530 These voting provisions are formidable obstacles to completion of a hostile takeover attempt.

6531
 6532 Subsection (2)(d)7., which was added in 1994, permits "friendly" acquisitions of a corporation,
 6533 or of a significant block of a corporation's issued shares (i.e. "control shares"), without the
 6534 necessity of complying with the convoluted shareholder voting requirements of the section. The
 6535 provision permits the board of directors of the corporation, by its approval of the transaction, to
 6536 remove the acquisition from the definition of "control-share acquisition", which takes the
 6537 acquisition out of the purview of the statute. The provision was further amended in 1997 to
 6538 require that any such board approval must come *before* the control share acquisition occurs.

6539
 6540 The definitions of "control shares" and "control-share acquisition" in the section limit the scope
 6541 of the section and create ambiguities that have not been resolved by amendment or court
 6542 construction. For example, the acquisition of, e.g. 12% of the voting shares, followed one year
 6543 later by the acquisition of an additional 8%, triggers the control share provisions, but it is not
 6544 clear whether the loss of voting rights applies to the entire 20% or only to the 8% portion that
 6545 triggered the provision. The definition of a control-share acquisition in s. 607.0902(2)(b) applies
 6546 to all shares acquired within 90 days and those acquired pursuant to a plan to make a control-
 6547 share acquisition. If neither of those elements is present, do previously acquired shares of less
 6548 than 20% lose their voting power when the acquiror subsequently exceeds the 20% threshold? It
 6549 could be argued that all shares become non-voting, as all shares are totaled for purposes of
 6550 determining the 20% threshold. On the other hand, if the earlier acquisitions were not control-
 6551 share acquisitions, and if the statute (as it does) permits voting power up to 19%, perhaps it is
 6552 only the latter-acquired shares that lose voting power. There appear to be arguments supporting
 6553 conflicting interpretations within the statutory provision.

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Subsection 10 grants a redemption right to the corporation with respect to control shares acquired in a control-share acquisition if either (i) no 'acquiring person statement' is filed by the acquiring person or (ii) if an acquiring person statement has been filed, the control shares are not accorded full voting rights by shareholders as provided in subs. (9). Subsection 10(b) is curiously worded and has raised interpretative issues, particularly with regard to the length of the permitted redemption period after the shareholders meeting in which the acquiring person's shares are not accorded full voting rights. This was the central issue in *H.T.E., Inc. v. Tyler Technologies, Inc.*, 217 F.Supp.2d 1255 (Dist. Ct., M.D. Fla., 2002), in which the court held that the 60—day time limit in subs. 10(a) must be read into subs. 10(b), with the effect that a corporation only has 60 days following the shareholders meeting at which voting rights are not accorded to the acquiring person's shares in which to redeem those shares. Although not at issue in that case, the court noted that the 'fair value' requirement of subs. 10(a) should also be read into subs. 10(b).

Subsection 9(c) was added in 2003 to clarify that control shares lose their "taint" under the control share acquisition provisions, and regain any voting rights, once they are sold or transferred in a non-control share acquisition transaction. This allows for marketability of control shares, which might not otherwise be able to be sold or transferred if the restrictions of Section 607.0902 remained on the shares. The amendment is regarded as a clarification of existing law.

No changes have been proposed to this statute.

6576 **ARTICLE 10**

6577 **AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**

6578

6579 607.1001 Authority to amend the articles of incorporation.

6580

6581 (1) A corporation may amend its articles of incorporation at any time to add or change a
6582 provision that is required or permitted in the articles of incorporation or to delete a provision not
6583 required to be contained in the articles of incorporation. Whether a provision is required or
6584 permitted in the articles of incorporation is determined as of the effective date of the amendment.

6585

6586 (2) A shareholder of the corporation does not have a vested property right resulting from any
6587 provision in the articles of incorporation, including provisions relating to management, control,
6588 capital structure, dividend entitlement, or purpose or duration of the corporation.

6589

6590 **Commentary to Section 607.1001:**

6591 This section of the FBCA follows the prior version of the Model Act. Although minor, non-
6592 substantive changes were made to the language in the Model Act, the current language was
6593 considered clearer. The clarifying change made to this section is not considered substantive.
6594 Thirty-one jurisdictions, including Connecticut, Georgia, and Massachusetts, have similar
6595 sections. Other states, like Delaware (in DGCL s. 242) provide a shortened "laundry list" of
6596 possible subjects of amendments.

6597 Subsection (2) expressly rejects the concept that an otherwise lawful amendment to the articles of
6598 incorporation might be restricted or invalidated because it modified particular rights conferred on
6599 shareholders by the original or prior version of the articles of incorporation. At the same time,
6600 subsection (2) does not override contracts by a corporation outside its articles of incorporation
6601 which might be violated by an otherwise lawful amendment to the articles of incorporation or
6602 invalidate provisions in articles of incorporation that require procedures for approval of
6603 amendments that limit the power to amend the articles of incorporation without particular
6604 shareholder consent.

6605

6606 607.1002 Amendment by board of directors.

6607 Unless the articles of incorporation provide otherwise, a corporation's board of directors
6608 may adopt one or more amendments to the corporation's articles of incorporation without
6609 shareholder ~~action~~ approval:

6610 (1) To extend the duration of the corporation if it was incorporated at a time when limited
6611 duration was required by law;

6612 (2) To delete the names and addresses of the initial directors;

6613 (3) To delete the name and address of the initial registered agent or registered office, if a
6614 statement of change is on file with the ~~D~~Department of State;

6615 (4) To delete any other information contained in the articles of incorporation that is solely of
6616 historical interest;

6617 (5) To delete the authorization for a class or series of shares authorized pursuant to s.
6618 607.0602, if no shares of such class or series are issued.

6619 (6) To change the corporate name by substituting the word "corporation," "incorporated," or
6620 "company," or the abbreviation "corp.," "Inc.," or "Co.," for a similar word or abbreviation in the
6621 name, or by adding, deleting, or changing a geographical attribution for the name;

6622 (7) To change the par value for a class or series of shares;

6623 (8) To provide that if the corporation acquires its own shares, such shares belong to the
6624 corporation and constitute treasury shares until disposed of or canceled by the corporation;

6625 (9) To reflect a reduction in authorized shares, as a result of the operation of s. 607.0631(2),
6626 when the corporation has acquired its own shares and the articles of incorporation prohibit the
6627 reissue of the acquired shares;

6628 (10) To delete a class of shares from the articles of incorporation, as a result of the operation
6629 of s. 607.0631(2), when there are no remaining shares of the class because the corporation has
6630 acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired
6631 shares; or

6632 (11 ~~9~~) To make any other change expressly permitted by this ~~aet~~ chapter to be made without
6633 shareholder ~~action~~ approval.

6634

6635 **Commentary to Section 607.1002:**

6636 The changes to the articles of incorporation may be made by the board of directors without
6637 shareholder approval because they are routine and ministerial and are not believed to affect the
6638 substantive rights of shareholders in a meaningful way.

6639 Section 607.1002 compares to the corollary section of the Model Act (s. 10.05) as follows:

6640 Subsections (1), (2), and (3) of Florida's statute match subsections (a)(1), (2), and (3) of the Model
6641 Act.

6642 Subsection (4) was added to this section of the FBCA in 1989. It is not in the corollary section of
6643 the Model Act.

6644 New subsection (d) of the Model Act has not been added because of the inclusion of s. 607.10025
6645 in the FBCA.

6646 Subsection (6) of Florida's statute substantially matches subsection (e) of the corollary provision
6647 of the Model Act. The FBCA provision, when adopted in 1989, did not to include the use of the
6648 word "limited" or the abbreviation "Ltd." for a corporation, and this limitation has been carried
6649 forward in current proposed version of the FBCA.

6650 Subsection (7) of the FBCA does not appear in the Model Act, but has been retained to allow the
6651 ministerial task of changing par value to be undertaken by the directors, without shareholder
6652 approval, in those cases where the corporation continues to have shares that have a par value.

6653 Subsection (8) was added in 1997. It was added to permit the board of directors of any corporation
6654 (not just public companies) on its own to amend the articles of incorporation to treat reacquired
6655 shares as treasury shares.

6656 New subsections (9) and (10) follow subsections (f) and (g) of the corollary Model Act provision
6657 and relate to changes made in light of s. 607.0631.

6658 Subsection (9) of Florida's statute (renumbered subsection (11) matches the pre-1999 version of
6659 the Model Act. Cleanup changes matching the current version of this section to the current version
6660 of the Model Act have been made to the statute.

6661 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s. 10.02
6662 to s. 10.05. However, since this concept has been numbered as s. 607.1002 since 1982, this section
6663 was not moved from its current place in Article 10.

6664

6665 607.10025 Shares; combination or division.

6666 (1) A corporation may effect a division or combination of its shares in the manner as provided
6667 in this section. For purposes of this section, the terms "division" and "combination" mean dividing
6668 or combining shares of any issued and outstanding class or series into a greater or lesser number
6669 of shares of the same class or series.

6670 (2) Unless the articles of incorporation provide otherwise, a division or combination may be
6671 effected solely by the action of the board of directors. In effecting a share combination or division,
6672 the board shall have authority to amend the articles to:

6673 (a) Increase or decrease the par value of shares;

6674 (b) Increase or decrease the number of authorized shares; or

6675 (c) Make any other changes necessary or appropriate to assure that the rights or
6676 preferences of each holder of outstanding shares of all classes and series will not be adversely
6677 affected by the combination or division.

6678 The board shall not have the authority to amend the articles, and shareholder approval of any
6679 amendment shall be required pursuant to s. 607.1003, if, as a result of the amendment, the rights
6680 or preferences of the holders of any outstanding class or series will be adversely affected, or the
6681 percentage of authorized shares remaining unissued after the share division or combination will
6682 exceed the percentage of authorized shares that was unissued before the division or combination.

6683 (3) Fractional shares created by a division or combination effected under this section may
6684 not be redeemed for cash under s. 607.0604.

6685 (4) If a division or combination is effected by a board action without shareholder approval
6686 and includes an amendment to the articles of incorporation, there shall be signed ~~executed~~ in
6687 accordance with s. 607.0120 on behalf of the corporation and filed in the office of the ~~D~~Department
6688 ~~of State~~ articles of amendment which shall set forth:

6689 (a) The name of the corporation.

6690 (b) The date of adoption by the board of directors of the resolution approving the
6691 division or combination.

6692 (c) That the amendment to the articles of incorporation does not adversely affect the
6693 rights or preferences of the holders of outstanding shares of any class or series and does not result
6694 in the percentage of authorized shares that remain unissued after the division or combination
6695 exceeding the percentage of authorized shares that were unissued before the division or
6696 combination.

6697 (d) The class or series and number of shares subject to the division or combination
6698 and the number of shares into which the shares are to be divided or combined.

6699 (e) The amendment of the articles of incorporation made in connection with the division
6700 or combination.

6701 (f) If the division or combination is to become effective at a time subsequent to the
6702 time of filing, the date, which may not exceed 90 days after the date of filing, when the division
6703 or combination becomes effective.

6704 (5) Within 30 days after effecting a division or combination without shareholder approval,
6705 the corporation shall give written notice to its shareholders setting forth the material terms of the
6706 division or combination.

6707 (6) If a division or combination is effected by action of the board and of the shareholders,
6708 there shall be signed ~~executed~~ on behalf of the corporation and filed with the ~~D~~department of State
6709 articles of amendment as provided in s. 607.1006, which articles shall set forth, in addition to the
6710 information required by s. 607.1006, the information required in subsection (4).

6711 (7) Upon the effectiveness of a combination, the authorized shares of the classes or series
6712 affected by the combination shall be reduced by the same percentage by which the issued shares
6713 of such class or series were reduced as a result of the combination, unless the articles of
6714 incorporation otherwise provide or the combination was approved by the shareholders pursuant to
6715 s. 607.1003.

6716 ~~(8) This section applies only to corporations with more than 35 shareholders of record.~~

6717

6718 **Commentary to Section 607.10025:**

6719 This section of the FBCA was added to the statute in 1993. It is not in the Model Act. It was added
6720 to the FBCA to allow forward stock splits and reverse stock splits without shareholder approval.
6721 The statute contains protective provisions to avoid squeeze-outs, forced buy-outs of fractional
6722 shares, and dilution, along with a provision in subsection (2)(c) precluding the board from acting
6723 without shareholder approval where the division or combination would adversely affect pre-
6724 existing shareholder rights.

6725 Section (8) has been eliminated. Since the protective provisions of this statute (particularly
6726 subsections (3) and (7) make it impossible for this statute to be used for squeeze out transactions
6727 or to dilute the interests of minority shareholders, the limitation of this provision to use in
6728 corporations with more than 35 shareholders of record is no longer believed to serve a useful
6729 purpose.

6730

6731 607.1003 Amendment by board of directors and shareholders.

6732 ~~(1) A corporation's board of directors may propose one or more amendments to the~~
6733 ~~articles of incorporation for submission to the shareholders. If a corporation has issued shares, an~~
6734 ~~amendment to the articles of incorporation shall be adopted in the following manner:~~

6735 (1) the proposed amendment shall first be adopted by the board of directors.

6736 (2) Except as provided in ss. 607.1002, 607.10025, 607.1007 (with respect to
6737 restatements that do not require shareholder approval under that section), and 607.1008, the
6738 amendment shall then be approved by the shareholders. In submitting the proposed amendment to
6739 the shareholders for approval, the board of directors shall recommend that the shareholders
6740 approve the amendment unless (a) the board of directors makes a determination that because of a
6741 conflict of interest or other special circumstances it should not make such a recommendation, or
6742 (b) s. 607.0826 applies. If either (a) or (b) applies, the board must inform the shareholders of the
6743 basis for its proceeding without such recommendation.

6744 ~~For the amendment to be adopted:~~

6745 ~~(a) The board of directors must recommend the amendment to the shareholders,~~
6746 ~~unless the board of directors determines that because of conflict of interest or other special~~
6747 ~~circumstances it should make no recommendation and communicates the basis for its~~
6748 ~~determination to the shareholders with the amendment; and~~

6749 ~~(b) The shareholders entitled to vote on the amendment must approve the~~
6750 ~~amendment as provided in subsection (5).~~

6751 (3) The board of directors may set conditions for the approval of the amendment by the
6752 shareholders or the effectiveness of the amendment ~~its submission of the proposed amendment on~~
6753 ~~any basis.~~

6754 (4) If the amendment is required to be approved by the shareholders, and the approval is to
6755 be given at a meeting, the corporation must notify each shareholder, whether or not entitled to
6756 vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The
6757 notice must be given in accordance with s. 607.0705 and must state that the purpose, or one of the
6758 purposes, of the meeting is to consider the amendment, and must contain or be accompanied by a
6759 copy of the amendment. The corporation shall notify each shareholder, whether or not entitled to
6760 vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice of meeting
6761 must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed
6762 amendment and contain or be accompanied by a copy or summary of the amendment.

6763 (5) Unless this chapter aet, the articles of incorporation, or the board of directors (acting
6764 pursuant to subsection (3)), requires a greater vote or a greater quorum ~~vote by voting groups~~, the

6765 ~~amendment to be adopted must be approved by~~ approval of the amendment requires the approval
6766 of the shareholders at a meeting at which a quorum consisting of at least a majority of the shares
6767 entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote
6768 as a separate group on the amendment, except as provided in s. 607.1004(3), the approval of each
6769 such separate voting group at a meeting at which a quorum of the voting group exists consisting
6770 of at least a majority of the votes entitled to be cast on the amendment by that voting group.

6771 ~~(a) A majority of the votes entitled to be cast on the amendment by any voting group~~
6772 ~~with respect to which the amendment would create dissenters' rights; and~~

6773 ~~(b) The votes required by ss. 607.0725 and 607.0726 by every other voting group~~
6774 ~~entitled to vote on the amendment.~~

6775 (6) If the amendment by any voting group would create appraisal rights, approval of the
6776 amendment shall also require the vote of a majority of the votes entitled to be cast by such voting
6777 group.

6778 ~~(67)~~ Unless otherwise provided in the articles of incorporation, the shareholders of a
6779 corporation having 35 or fewer shareholders may amend the articles of incorporation without an
6780 act of the directors at a meeting for which notice of the changes to be made is given. For purposes
6781 of this subsection, the term "shareholder" means a record shareholder, a beneficial shareholder,
6782 and an unrestricted voting trust beneficial owner.

6783 (8) If as a result of an amendment of the articles of incorporation one or more shareholders of
6784 a domestic corporation would become subject to new interest holder liability, approval of the
6785 amendment requires the signing in connection with the amendment, by each such shareholder, of a
6786 separate written consent to become subject to such new interest holder liability, unless in the case of
6787 a shareholder that already has interest holder liability the terms and conditions of the new interest
6788 holder liability (i) are substantially identical to those of the existing interest holder liability, or (ii)
6789 are substantially identical to those of the existing interest holder liability (other than changes that
6790 eliminate or reduce such interest holder liability).

6791 (9) For purposes of subsection (8) and s. 607.1009, "new interest holder liability" means
6792 interest holder liability of a person resulting from an amendment of the articles of incorporation if
6793 (i) the person did not have interest holder liability before the amendment becomes effective, or (ii)
6794 the person had interest holder liability before the amendment becomes effective, the terms and
6795 conditions of which are changed when the amendment becomes effective.

6796

6797 **Commentary to Section 607.1003:**

6798 Subsections (1) through (5) were modified to reflect language changes to the current version of
6799 the Model Act. These provisions substantially clean up the language of the statute, but are not
6800 considered substantive. The language in subsection (6) also continues the bifurcated required vote
6801 in Florida in situations where a voting group will receive appraisal rights as a result of the
6802 amendment.

6803 In line with the Model Act, subsection (4) has been modified to require that a copy of the amendment
6804 be provided, rather than allowing, as an alternative, a summary of the amendment to be provided (as
6805 is permitted in the current version of this section of the FBCA). Allowing just a summary to be
6806 presented to shareholders raises the issue of whether the summary is complete, and, as a result, it
6807 is believed best that shareholders receive a full copy of the amendment so they can read and make
6808 their own decisions on the entire provision. It is also not believed to be an onerous burden to
6809 provide a copy of the full amendment.

6810 Subsection (7) is not a Model Act provision. It was included in the FBCA in 1989 and represented
6811 a compromise between those that believed that the provisions of this section should apply to all
6812 amendments regardless of the size of the corporation and those who believed that shareholders
6813 should have more control in a closely held corporation. While this provision has been retained in
6814 the FBCA, the definition of "shareholder" for purposes of this subsection has been modified so
6815 that this provision only applies in true closely held corporations.

6816 New subsections (8) and (9) are derived from s. 10.3 of the Model Act. These new sections add the
6817 concept of separate approval by interest holders on amendments where the interest holder will have
6818 interest holder liability following the transaction.

6819

6820 607.1004 Voting on amendments by voting groups.

6821 (1) If the corporation has more than one class of shares outstanding, the holders of the
6822 outstanding shares of a class are entitled to vote as a separate voting group class (if shareholder
6823 voting is otherwise required by this chapter ~~act~~) upon a proposed amendment to the articles of
6824 incorporation, if the amendment would:

6825 (a) Effect an exchange or reclassification of all or part of the shares of the class into
6826 shares of another class;

6827 (b) Effect an exchange or reclassification, or create a right of exchange, of all or part of
6828 the shares of another class into the shares of the class;

6829 (c) Change the designation, rights, preferences, or limitations of all or part of the shares
6830 of the class;

6831 (d) Change the shares of all or part of the class into a different number of shares of the
6832 same class;

6833 (e) Create a new class of shares having rights or preferences with respect to
6834 distributions or to dissolution that are prior or superior to the shares of the class;

6835 (f) Increase the rights, preferences, or number of authorized shares of any class that,
6836 after giving effect to the amendment, have rights or preferences with respect to distributions
6837 or to dissolution that are prior or superior to the shares of the class;

6838 (g) Limit or deny an existing preemptive right of all or part of the shares of the class; or

6839 (h) Cancel or otherwise affect rights to distributions or dividends that have
6840 accumulated but not yet been declared on all or part of the shares of the class.

6841 (2) If a proposed amendment would affect a series of a class of shares in one or more of the
6842 ways described in subsection (1), the shares of that series are entitled to vote as a separate voting
6843 group class on the proposed amendment.

6844 (3) If a proposed amendment that entitles the holders of two or more classes or series of
6845 shares to vote as separate voting groups under this section would affect those two or more classes
6846 or series in the same or substantially similar way, the holders of ~~the~~ shares of all the classes or
6847 series so affected must vote together as a single voting group on the proposed amendment, unless
6848 otherwise provided in the articles of incorporation or added as a condition by the board of directors
6849 pursuant to s. 607.1003(3).

6850 (4) A class or series of shares is entitled to the voting rights granted by this section even if
6851 ~~although~~ the articles of incorporation provide that the shares are nonvoting shares.

6852

6853 **Commentary to Section 607.1004:**

6854 This section substantially follows the Model Act. Cleanup changes were made to conform to the
6855 current version of the corollary section of the Model Act. One minor change was to retain the
6856 words "or to dissolution" in subsections (1)(e) and (1)(f). While it can be argued that the statutory
6857 term "distribution" includes all forms of distribution, including payments in liquidation or
6858 dissolution, there was a concern that there may be cases where there are rights or preferences
6859 triggered upon dissolution that are not in the nature of distributions.

6860

6861 607.1005 Amendment before issuance of shares.

6862 If a corporation has not yet issued shares, its board of directors or ~~its~~ a majority of its
6863 incorporators, if it has no ~~or~~ board of directors, may adopt, one or more amendments to the
6864 corporation's articles of incorporation.

6865

6866 **Commentary to Section 607.1005:**

6867 This section is substantively similar to s. 10.02 of the Model Act. Although not in the Model Act,
6868 language requiring that the vote of the incorporators or the directors approving an such amendment
6869 be a majority vote of the incorporators or the board of directors, as applicable, has been retained.

6870 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s. 10.05
6871 to s. 10.02.²

6872

² The co-chairs intend to discuss with bill drafting whether s. 607.1002 and 607.1005 can be put into the Model Act order without violating a bill drafting convention, since that is a more logical sequence for these sections. If such a reordering is made, s. 607.10025 will need to be renumbered as s. 607.10055.

6873 607.1006 Articles of Amendment.

6874 (1) ~~After an amendment to the A corporation amending its~~ After an amendment to the A corporation amending its articles of incorporation has
6875 been adopted and approved in the manner required by this chapter, the corporation shall deliver to
6876 the Department of State for filing articles of amendment which shall be signed executed in
6877 accordance with s. 607.0120 and which shall set forth:

6878 (a~~1~~) The name of the corporation;

6879 (b~~2~~) The text of each amendment adopted, or the information required by s.
6880 607.0120(11)(e), if applicable;

6881 (c~~3~~) If an amendment provides for an exchange, reclassification, or cancellation
6882 of issued shares, provisions for implementing the amendment if not contained in the
6883 amendment itself, which may be made dependent upon facts objectively ascertainable
6884 outside of the articles of amendment in accordance with s. 607.0120(11);

6885 (d~~4~~) The date of each amendment's adoption; and

6886 (e~~5~~) If an amendment:

6887 1. was adopted by the incorporators or board of directors without
6888 shareholder approval action, a statement that the amendment was duly adopted by
6889 the incorporators or by the board of directors, as the case may be, to that effect and
6890 that shareholder approval action was not required;

6891 (6)~~2.~~ If an amendment was approved required approval by the
6892 shareholders, a statement that the number of votes cast for the amendment by the
6893 shareholders in the manner required by the chapter and by the articles of
6894 incorporation was sufficient for approval and, if more than one voting group was
6895 entitled to vote on the amendment, a statement designating each voting group
6896 entitled to vote separately on the amendment, and a statement that the number of
6897 votes cast for the amendment by the shareholders in each voting group was
6898 sufficient for approval by that voting group; or

6899 3. is being filed pursuant to s. 607.0120(11)(e), a statement to that effect.

6900 2. Articles of amendment shall take effect at the effective date determined in accordance
6901 with s. 607.0123.

6902

6903 **Commentary to Section 607.1006:**

6904 With some exceptions, the current Florida statute follows the pre-1999 version of the Model Act,
6905 except that Florida (in current subsection (6) is unique in requiring a broad statement regarding
6906 what voting groups had a separate vote on the amendment. The revised statute modifies the
6907 wording of this provision to bring it in line with the language in the 2016 version of the Model
6908 Act. With two exceptions (noted below), these are not substantive changes.

6909 While the vast majority of state corporate statutes require only a statement that the amendment
6910 was duly approved by the shareholders in the manner required by the act and by the articles of
6911 incorporation, Florida has always required a statement in the amendment as filed as to what voting
6912 groups had a separate vote on the amendment. While this difference pre-dates the 1989 statute, it
6913 is believed that this language adds meaningfully to the public information about the corporation
6914 available in the filed articles of incorporation and forces practitioners to consider this issue in
6915 interpreting the statute.

6916 Conforming language has been added to the text of this section to implement the changes to s.
6917 607.0120(11) that allow a filed document to be dependent on facts objectively ascertainable
6918 outside a filed document.

6919

6920 607.1007 Restated articles of incorporation.

6921 (1) A corporation’s board of directors may restate its articles of incorporation at any time
6922 ~~with or without shareholder action~~ approval, subject to subsection (2).

6923 (2) ~~The restatement may~~ If the restated articles include one or more new amendments to the
6924 ~~articles. If the restatement includes an amendment requiring that require~~ shareholder approval, it
6925 ~~the amendments~~ must be adopted and approved as provided in s. 607.1003.

6926 (3) If, notwithstanding subsection (1), the board of directors submits a restatement for
6927 shareholder approval action, and the approval is to be given at a meeting, the corporation must
6928 shall ~~notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at~~
6929 which the restatement is to be submitted for approval. The notice must be given of the proposed
6930 shareholders’ meeting ~~in accordance with s. 607.0705 and. The notice must also state that the~~
6931 purpose, or one of the purposes, of the meeting is to consider the proposed restatement and must
6932 contain or be accompanied by a copy of the restatement that identifies any amendment or other
6933 change it would make in the articles.

6934 (4) A corporation ~~restating that restates~~ restates its articles of incorporation shall execute and deliver
6935 to the ~~Department of State~~ Department of State for filing articles of restatement, that comply with the provisions of s.
6936 607.0120, and to the extent applicable, s. 607.0202, setting forth:

6937 (a) the name of the corporation,

6938 (b) ~~and~~ the text of the restated articles of incorporation,

6939 (c) ~~together with a certificate setting forth:~~ a statement that the restated articles
6940 consolidate all amendments into a single document, and,

6941 (d) if one or more new amendments are included in the restated articles, the
6942 statements required under s. 607.1006 with respect to each new amendment.

6943 (a) ~~Whether the restatement contains an amendment to the articles requiring~~
6944 ~~shareholder approval and, if it does not, that the board of directors adopted the restatement;~~
6945 ~~or~~

6946 (b) ~~If the restatement contains an amendment to the articles requiring shareholder~~
6947 ~~approval, the information required by s. 607.1006.~~

6948 (5) Duly adopted restated articles of incorporation supersede the original articles of
6949 incorporation and all amendments to ~~them~~ the articles of incorporation.

6950 (6) The ~~D~~department of State may certify restated articles of incorporation, as the articles of
6951 incorporation currently in effect, without including the statements ~~certificate information~~ required
6952 by subsection (4).

6953

6954 **Commentary to Section 607.1007:**

6955 Florida's current statute was identical to the pre-1999 version of the Model Act. The changes
6956 proposed to be made to this section add confirming language to bring this section into line with
6957 the current version of the Model Act. These changes are not believed to be substantive.

6958 Subsection (3), which is not in the Model Act, but is in the current Florida statute, has been
6959 retained, but the language has been modified to make it consistent with s. 607.1003(4).

6960

6961 607.1008 Amendment pursuant to reorganization.

6962 (1) A corporation’s articles of incorporation may be amended without action by the board of
6963 directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of
6964 competent jurisdiction under ~~any federal or Florida statute if the articles of incorporation after~~
6965 ~~amendment contain only provisions required or permitted by s. 607.0202~~ the authority of a law of
6966 the United States or of the State of Florida.

6967 (2) The individual or individuals designated by the court shall deliver to the ~~D~~department of
6968 ~~State~~ for filing articles of amendment setting forth:

6969 (a) The name of the corporation;

6970 (b) The text of each amendment approved by the court;

6971 (c) The date of the court’s order or decree approving the articles of amendment;

6972 (d) The title of the reorganization proceeding in which the order or decree was
6973 entered; and

6974 (e) A statement that the court had jurisdiction of the proceeding under a federal or
6975 Florida statute.

6976 (3) Shareholders of a corporation undergoing reorganization do not have appraisal dissenters’
6977 rights except as and to the extent provided in the reorganization plan.

6978 (4) This section does not apply after entry of a final decree in the reorganization proceeding
6979 even though the court retains jurisdiction of the proceeding for limited purposes unrelated to
6980 consummation of the reorganization plan.

6981

6982 **Commentary to Section 607.1008:**

6983 Changes made to subsection (1) mirror clarifying changes in the Model Act. These changes are
6984 not believed to be substantive.

6985 The Model Act only references reorganizations under federal law. The concept of a Florida state
6986 law reorganization was added to the FBCA in 1989 and has been retained.

6987 Subsection (3) has been retained, notwithstanding its removal from the Model Act in 1999.

6988

6989 607.1009 Effect of amendment.

6990 (1) An amendment to articles of incorporation does not affect a cause of action existing
6991 against or in favor of the corporation, a proceeding to which the corporation is a party, or the
6992 existing rights of persons other than shareholders of the corporation. An amendment changing a
6993 corporation’s name does not ~~affect~~ ~~abate~~ a proceeding brought by or against the corporation in its
6994 former name.

6995 (2) A shareholder who becomes subject to new interest holder liability in respect of the
6996 corporation as a result of an amendment to the articles of incorporation shall have that new interest
6997 holder liability only in respect of interest holder liabilities that arise after the amendment becomes
6998 effective.

6999 (3) Except as otherwise provided in the articles of incorporation of the corporation, the
7000 interest holder liability of a shareholder who had interest holder liability in respect of the corporation
7001 before the amendment becomes effective and has new interest holder liability after the amendment
7002 becomes effective shall be as follows:

7003 (a) The amendment does not discharge that prior interest holder liability with respect
7004 to any interest holder liabilities that arose before the amendment becomes effective.

7005 (b) The provisions of the articles of incorporation of the corporation relating to
7006 interest holder liability as in effect immediately prior to the amendment shall continue to apply
7007 to the collection or discharge of any interest holder liabilities preserved by subsection (3)(a), as
7008 if the amendment had not occurred.

7009 (c) The shareholder shall have such rights of contribution from other persons as are
7010 provided by the articles of incorporation relating to interest holder liability as in effect
7011 immediately prior to the amendment with respect to any interest holder liabilities preserved by
7012 subsection (3)(a), as if the amendment had not occurred.

7013 (d) The shareholder shall not, by reason of such prior interest holder liability, have
7014 interest holder liability with respect to any interest holder liabilities that arise after the
7015 amendment becomes effective.

7016

7017 **Commentary to Section 607.1009:**

7018 This section mirrors the Model Act.

7019 New subsections (2) and (3) govern the effects of amendments to the articles of incorporation that
7020 impose or change interest holder liability.

7021

7022 607.1020 Amendment of bylaws by board of directors or shareholders.

7023 (1) A corporation’s board of directors may amend or repeal the corporation’s bylaws unless:

7024 (a) ~~The articles of incorporation or this chapter act, reserves the that power to amend~~
7025 ~~the bylaws generally or a particular bylaw provision~~ exclusively to the shareholders in
7026 whole or in part; or

7027 (b) Except as provided in s. 607.0206(5), ~~the~~ shareholders, in amending, ~~or~~
7028 ~~repealing, or adopting~~ the bylaws generally or a particular bylaw provision, ~~provide~~
7029 expressly provide that the board of directors may not amend, ~~or~~ repeal, adopt or reinstate
7030 the bylaws generally or that particular bylaw provision.

7031 (2) A corporation’s shareholders may amend or repeal the corporation’s bylaws even though
7032 the bylaws may also be amended or repealed by its board of directors.

7033 (3) A shareholder does not have a vested property right resulting from any provision in the
7034 bylaws.

7035

7036 **Commentary to Section 607.1020:**

7037 Except for the fact that subsections (1) and (2) in the FBCA are reversed, this section mirrors the
7038 Model Act. The changes made do not affect the substance of these provisions.

7039 Florida is among thirty-eight jurisdictions that authorize both the board of directors and the
7040 shareholders to amend the bylaws, and one of 36 that allow this to be restricted by the articles of
7041 incorporation. This is in opposition to the Delaware model, followed by six jurisdictions other than
7042 Delaware, which authorize the shareholders to amend the bylaws but allow for board amendment
7043 as allowed by the articles of incorporation.

7044 Subsection (3) was added to this section of the FBCA. It follows the language in s. 10.20(c) of the
7045 Model Act. Like s. 607.1001(2) dealing with the same issue with respect to articles of
7046 incorporation, it expressly rejects the concept that an otherwise lawful amendment to the bylaws
7047 might be restricted or invalidated because it modified particular rights conferred on shareholders
7048 by the original or prior version of the bylaws. At the same time, subsection (3) does not override
7049 contracts by a corporation outside its bylaws which might be violated by an otherwise lawful
7050 amendment to the bylaws or invalidate provisions in bylaws that require procedures for approval
7051 of amendments that limit the power to amend the articles of incorporation without particular
7052 shareholder consent.

7053

7054 607.1021 Bylaw increasing quorum or voting requirements for shareholders.

7055 (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a
7056 bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of
7057 shareholders) than is required by this chapter ~~act~~. The adoption or amendment of a bylaw that adds,
7058 changes, or deletes a greater quorum or voting requirement for shareholders must meet the same
7059 quorum requirement and be adopted by the same vote and voting groups required to take action
7060 under the quorum and voting requirement then in effect or proposed to be adopted, whichever is
7061 greater.

7062 (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under
7063 subsection (1) may not be adopted, amended, or repealed by the board of directors.

7064

7065 **Commentary to Section 607.1021:**

7066 The 1984 version of the Model Act included Section 10.21, which deals with quorum or voting
7067 requirements for shareholders, and Section 10.22, which deals with quorum or voting requirements
7068 for directors. In the 1999 amendments, Section 10.21, regarding quorum and voting requirements
7069 for shareholders, was deleted. Section 10.22, regarding quorum and voting requirements for
7070 directors, was amended and renumbered as s. 10.21. A new section 10.22, relating to bylaw
7071 provisions dealing with the election of directors, was added to the Model Act in 2006 as a way to
7072 help corporations and shareholder groups who want to alter the traditional plurality vote for
7073 electing directors (renumbered s. 607.1023 in the FBCA).

7074 This section, which has been in the FBCA since 1989, has been retained.

7075

7076 607.1022 Bylaw increasing quorum or voting requirements for directors.

7077 (1) A bylaw that increases ~~fixes~~ a ~~greater~~ quorum or voting requirement for the board of
7078 directors may be amended or repealed:

7079 (a) If originally adopted by the shareholders, only by the shareholders, unless the
7080 bylaw otherwise provides; or

7081 (b) If originally adopted by the board of directors, either by the shareholders or by
7082 the board of directors.

7083 (2) A bylaw adopted or amended by the shareholders that increases ~~fixes~~ a ~~greater~~ quorum
7084 or voting requirement for the board of directors may provide that it may be amended or repealed
7085 only by a specified vote of either the shareholders or the board of directors.

7086 (3) Action by the board of directors under subsection ~~paragraph~~ (1) to ~~adopt or amend or~~ or
7087 repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet
7088 the same quorum requirement and be adopted by the same vote required to take action under the
7089 quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

7090

7091 **Commentary to Section 607.1022:**

7092 See commentary to s. 607.0121 above.

7093 The changes bring the FBCA section into conformity with the corollary provision in the Model
7094 Act (s. 10.21).

7095

7096 607.1023 Bylaw Provisions Relating to the Election of Directors.

7097 (1) Unless the articles of incorporation (x) specifically prohibit the adoption of a bylaw
7098 pursuant to this section, (y) alter the vote specified in s. 607.0728(1), or (z) provide for cumulative
7099 voting, a corporation may elect in its bylaws to be governed in the election of directors as follows:

7100 (a) each vote entitled to be cast may be voted for or against up to that number of
7101 candidates that is equal to the number of directors to be elected, or a shareholder may
7102 indicate an abstention, but without cumulating the votes;

7103 (b) to be elected, a nominee must have received a plurality of the votes cast by
7104 holders of shares entitled to vote in the election at a meeting at which a quorum is present,
7105 provided that a nominee who is elected but receives more votes against than for election
7106 shall serve as a director for a term that shall terminate on the date that is the earlier of (x)
7107 90 days from the date on which the voting results are determined pursuant to s.
7108 607.0729(2)(e) or (y) the date on which an individual is selected by the board of directors
7109 to fill the office held by such director, which selection shall be deemed to constitute the
7110 filling of a vacancy by the board to which s. 607.0809 applies. Subject to clause (c) of this
7111 section, a nominee who is elected but receives more votes against than for election shall
7112 not serve as a director beyond the 90-day period referenced above; and

7113 (c) the board of directors may select any qualified individual to fill the office held
7114 by a director who received more votes against than for election.

7115 (2) Subsection (1) does not apply to an election of directors by a voting group if (a) at
7116 the expiration of the time fixed under a provision requiring advance notification of director
7117 candidates, or (b) absent such a provision, at a time fixed by the board of directors which is not
7118 more than 14 days before notice is given of the meeting at which the election is to occur, there are
7119 more candidates for election by the voting group than the number of directors to be elected, one or
7120 more of whom are properly proposed by shareholders. An individual shall not be considered a
7121 candidate for purposes of this subsection if the board of directors determines before the notice of
7122 meeting is given that such individual's candidacy does not create a bona fide election contest.

7123 (3) A bylaw electing to be governed by this section may be repealed:

7124 (a) if originally adopted by the shareholders, only by the shareholders, unless the
7125 bylaw otherwise provides;

7126 (b) if adopted by the board of directors, by the board of directors or the
7127 shareholders.

7128 **Commentary to Section 607.1023:**

7129 This new section was added to the Model Act in 2006, as new s. 10.22. It deals with bylaws relating
7130 to the election of directors and concepts of majority voting and holdover directors. It has to be
7131 expressly adopted into a corporation’s bylaws for this statutory provision to apply to a particular
7132 corporation, and is largely for use by public companies, although all corporations can elect to be
7133 governed by this provision.

7134

ARTICLE 11

PART A – MERGERS AND SHARE EXCHANGES

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607.1101 Merger.

(1) By complying with this chapter, including adopting of a plan of merger in accordance with subsection (3) and complying with s. 607.1103:

(a) One or more domestic corporations may merge with one or more domestic or foreign corporations entities pursuant to a plan of merger, resulting in a survivor if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of merger; and

(b) Any two or more entities, each of which is either a domestic eligible entity or a foreign eligible entity may merge, resulting in a survivor that is a domestic corporation created in the merger.

(2) A domestic eligible entity that is not a corporation may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the domestic eligible entity that is not a corporation. A foreign eligible entity may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the foreign eligible entity.

(23) The plan of merger must shall set forth:

(a) The As to each party to the merger, its name, jurisdiction of formation, and type of entity name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge, which is hereinafter designated as the surviving corporation;

(b) The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect;

(c) The terms and conditions of the proposed merger; and

(d) The manner and basis of converting;

7165 1. The shares of each domestic or foreign corporation and the eligible
7166 interests of each merging domestic or foreign eligible entity into (i) shares or
7167 other securities, (ii) eligible interests, (iii) obligations, (iv) rights to acquire
7168 shares, other securities or eligible interests, (v) cash, (vi) other property, or (vii)
7169 any combination of the foregoing, and

7170 2. Rights to acquire shares of each merging domestic or foreign
7171 corporation and rights to acquire eligible interests of each merging domestic or
7172 foreign eligible entity into rights to acquire (i) shares or other securities, (ii)
7173 eligible interests, (iii) obligations, (iv) rights to acquire shares, other securities
7174 or eligible interests, (v) cash, (vii) other property, or (viii) any of the foregoing
7175 corporation into shares, obligations, or other securities of the surviving
7176 corporation or any other corporation or, in whole or in part, into cash or other
7177 property and the manner and basis of converting rights to acquire shares of each
7178 corporation into rights to acquire shares, obligations, or other securities of the
7179 surviving or any other corporation or, in whole or in part, into cash or other
7180 property;

7181 (e) The articles of incorporation of any domestic or foreign corporation, or the
7182 public organic record of any other domestic or foreign eligible entity to be created by the
7183 merger, or if a new domestic or foreign corporation or other eligible entity is not to be
7184 created by the merger, any amendments to, or restatements of, the survivor’s articles of
7185 incorporation or other public organic record;

7186 (f) The effective date and time of the merger, which may be on or after the filing
7187 date of the articles of merger; and

7188 (g) Any other provisions required by the laws under which any party to the merger
7189 is organized or by which it is governed, or by the articles of incorporation or organic rules
7190 of any such party.

7191 (4) In addition to the requirements of subsection (3), a ~~The plan of merger may contain~~
7192 ~~set forth~~ any other provision that is not prohibited by law.

7193 ~~(a) Amendments to, or a restatement of, the articles of incorporation of the surviving~~
7194 ~~corporation;~~

7195 ~~(b) The effective date of the merger, which may be on or after the date of filing the~~
7196 ~~certificate; and~~

7197 ~~(c) Other provisions relating to the merger.~~

7198 (5) Terms of a plan of merger may be made dependent on facts objectively ascertainable

7199 outside the plan in accordance with s. 607.0120(11).
7200

7201 (6) A plan of merger may be amended only with the consent of each party to the merger,
7202 except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

7203 (a) In the same manner as the plan was approved, if the plan does not provide for
7204 the manner in which it may be amended; or

7205 (b) In the manner provided in the plan, except that shareholders, members, or
7206 interest holders that were entitled to vote on or consent to the approval of the plan are
7207 entitled to vote on or consent to any amendment to the plan that will change:

7208 1. The amount or kind of shares or other securities, eligible interests,
7209 obligations, rights to acquire shares, other securities or eligible interests, cash, or
7210 other property to be received under the plan by the shareholders, holders of rights
7211 to acquire shares or eligible interests, members, or interest holders of any party to
7212 the merger;

7213 2. The articles of incorporation of any domestic corporation, or the
7214 organic rules of any other type of entity, that will be the survivor of the merger,
7215 except for changes permitted by s. 607.1002 or by comparable provisions of the
7216 organic law of any other type of entity; or

7217 3. Any of the other terms or conditions of the plan if the change would
7218 adversely affect such shareholders, members or interest holders in any material
7219 respect.

7220 (7) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a
7221 merger of a foreign corporation and a domestic corporation, and the surviving corporation shall be
7222 deemed to be a domestic corporation incorporated under the laws of this state. The redomestication
7223 of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a
7224 domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to
7225 be a foreign corporation.

7226

7227 **Commentary to Article 11 Generally:**

7228 Article 11 of the Model Act, dealing with mergers and share exchanges, is new Part A of Article
7229 11 of the FBCA. New Part B of Article 11 of the FBCA contains the domestication provisions of
7230 the Model Act, which are derived from Article 9 of the Model Act. New Part C of Article 11 of
7231 the FBCA contains the conversion provisions of the Model Act, which are also derived from
7232 Article 9 of the Model Act. The numbering of Article 11 is intended to keep each part separated,
7233 in a similar format to the corollary provisions in Article 10 of FRLLLCA.

7234 Each part of Article 9 and Article 11 of the Model Act includes definitions applicable to each part.
7235 All such required definitions are included in s. 607.01401.

7236 **Commentary to Section 607.1101:**

7237 Major changes have been proposed to s. 607.1101 to bring the section in line with the current
7238 corollary section of the Model Act (s. 11.02). The current version of Florida's merger statute is
7239 based on the pre-1999 version of the Model Act, which made no provisions for the merger of a
7240 domestic corporation or other eligible entity with a foreign corporation or other eligible entity, nor
7241 did it allow for the merger of foreign corporations to result in the formation of a Florida
7242 corporation. Changes were made to Model Act s. 11.02 in 1999 and then again in 2003 to allow
7243 for these transactions (and these changes were adopted as ss. 607.1107-607.11101 of the FBCA).
7244 Further changes have been made in the 2016 draft of the Model Act, and now all of these types of
7245 merger transactions are covered by s. 607.1101.

7246 Article 11 uses the term "eligible entity" largely as defined in FRLLLCA to deal with the types of
7247 entities that can be a party to a merger with a domestic corporation. This harmonizes the types of
7248 entities that can participate in a merger with the types of entities that can merge with a domestic
7249 LLC. The Model Act uses the term "eligible entity" for the same purpose. The difference in the
7250 wording of the definition is not considered substantive.

7251 Subsection (3) of Model Act s. 11.02 has not been recommended for adoption. That section covers
7252 procedures for a domestic eligible entity to approve a merger. Since the Florida Statutes provide
7253 procedures for approving a cross-entity merger with respect to other types of entities, this section
7254 is believed unnecessary.

7255 Subsection (6) of the Model Act has been added to cover the topic of amendments to a plan of
7256 merger. This topic was previously covered in s. 607.1103(8) of the FBCA.

7257 Subsection (7) has been moved here from existing s. 607.1107(5). It is not a Model Act
7258 provision.

7259

7260 607.1102 Share exchange.

7261 (1) By complying with this chapter, including adopting a plan of share exchange in
7262 accordance with subsection (3) and complying with s. 607.1103:

7263 ~~A corporation may acquire all of the outstanding shares of one or more classes or~~
7264 ~~series of another corporation if the board of directors of each corporation adopts and its~~
7265 ~~shareholders (if required by s. 607.1103) approve a plan of share exchange.~~

7266 (a) A domestic corporation may acquire all of the shares or rights to acquire shares
7267 of one or more classes or series of shares or rights to acquire shares of another domestic or
7268 foreign corporation, or all of the eligible interests of one or more classes or series of
7269 interests of a domestic or foreign eligible entity, in exchange for (i) shares or other
7270 securities, (ii) eligible interests, (iii) obligations, (iv) rights to acquire shares or other
7271 securities or eligible interests, (v) cash, (vi) other property, or (vii) any combination of the
7272 foregoing, pursuant to a plan of share exchange; or

7273 (b) All of the shares of one or more classes or series of shares or rights to acquire
7274 shares of a domestic corporation may be acquired by another domestic or foreign eligible
7275 entity, in exchange for (i) shares or other securities, (ii) eligible interests, (iii) obligations,
7276 (iv) rights to acquire share or other securities or eligible interests, (v) cash, (vi) other
7277 property, or (viii) any combination of the foregoing, pursuant to a plan of share exchange.

7278 (2) A foreign eligible entity may be the acquired eligible entity in a share exchange only
7279 if the share exchange is permitted by the organic law of that eligible entity.

7280 (23) The plan of share exchange must ~~shall~~ set forth:

7281 (a) The name of the each domestic or foreign corporation eligible entity the shares
7282 or eligible interests of which will be acquired and the name of the domestic or foreign
7283 acquiring corporation or eligible entity that will acquire those shares or eligible interests;

7284 (b) The terms and conditions of the share exchange;

7285 (c) The manner and basis of exchanging:

7286 1. The shares of each domestic or foreign corporation, and the eligible
7287 interests of each domestic or foreign eligible entity, the shares or eligible interests
7288 that are to be acquired in the share exchange, into shares or other securities, eligible
7289 interests, obligations, rights to acquire shares, other securities or eligible interests,
7290 cash, other property, or any combination of the foregoing, and

7291 2. Rights to acquire shares of each domestic or foreign corporation and
7292 rights to acquire eligible interests of each domestic or foreign eligible entity, that
7293 are to be acquired in the share exchange, into shares or other securities, eligible
7294 interests, obligations, rights to acquire shares, ~~to be acquired for shares obligations,~~
7295 ~~or other securities of the acquiring or any other corporation or, in whole or in part,~~
7296 ~~for cash or other property, and the manner and basis of exchanging rights to acquire~~
7297 ~~shares, other securities, or eligible interests, of the corporation to be acquired for~~
7298 ~~rights to acquire shares, obligations, or, in whole or in part, other securities of the~~
7299 ~~acquiring or any other corporation or, in whole or in part, for cash, or other property,~~
7300 or any combination of the foregoing; and

7301 (d) Any other provisions required by the organic law governing the acquired eligible
7302 entity or its articles of incorporation or organic rules.

7303 (34) In addition to the requirements of subsection (3), the plan of share exchange may
7304 contain any set forth other provisions relating to the exchange that is not prohibited by law.

7305 (5) Terms of a plan of share exchange may be made dependent on facts objectively
7306 ascertainable outside the plan in accordance with s. 607.0120(k).

7307 (6) A plan of share exchange may be amended only with the consent of each party to the
7308 share exchange, except as provided in the plan. A domestic eligible entity may approve an
7309 amendment to a plan:

7310 (a) In the same manner as the plan was approved, if the plan does not provide for
7311 the manner in which it may be amended; or

7312 (b) In the manner provided in the plan, except that shareholders, members, or
7313 interest holders that were entitled to vote on or consent to approval of the plan are entitled
7314 to vote on or consent to any amendment of the plan that will change:

7315 (i) The amount or kind of shares or other securities, eligible interests,
7316 obligations, rights to acquire shares, other securities or eligible interests, cash, or
7317 other property to be received under the plan by the shareholders, members or
7318 interest holders of the acquired eligible entity; or

7319 (ii) Any of the other terms or conditions of the plan if the change would
7320 adversely affect such shareholders, members or interest holders in any material
7321 respect.

7322 (74) This section does not limit the power of a corporation to acquire all or part of the shares
7323 of one or more classes or series of another corporation or eligible interests of any other eligible
7324 entity through a voluntary exchange or otherwise.

7325 **Commentary to Section 607.1102:**

7326 Changes have been made to bring this section into conformity with the corollary provision of s.
7327 11.03 of the Model Act.

7328 Subsection (3) of Model Act s. 11.03 has not been recommended for adoption. That section covers
7329 procedures for a domestic eligible entity to approve a merger. Since the Florida Statutes provide
7330 procedures for approving a cross-entity merger with respect to other types of entities, this section
7331 is believed unnecessary.

7332 Subsections (3) (now subsection (4)) and (4) (now subsection (7)) are not in the Model Act.
7333 However, they have been retained herein for the elimination of doubt and possible confusion that
7334 might result if the sections were removed.

7335

7336 607.1103 Action on a plan of merger or share exchange.

7337 In the case of a domestic corporation that is a party to a merger or the acquired eligible
7338 entity in a share exchange, the plan of merger or the plan of share exchange shall be adopted in the
7339 following manner:

7340 (1) ~~After adopting a~~ The plan of merger or the plan of share exchange shall first be
7341 adopted by the board of directors of such domestic corporation of each corporation party to the
7342 merger, and the board of directors of the corporation the shares of which will be acquired in the
7343 share exchange, shall submit the plan of merger (except as provided in subsection (7)) or the plan
7344 of share exchange for approval by its shareholders.

7345 (2) Except as provided in subsections (8), (10) and (11), and in ss. 607.11035 and
7346 607.1104, the plan of merger or the plan of share exchange shall then be adopted by the
7347 shareholders. In submitting the plan of merger or the plan of share exchange to the shareholders
7348 for approval, the board of directors shall recommend that the shareholders approve the plan, or in
7349 the case of an offer referred to in s. 607.11035(1)(b), that the shareholders tender their shares to
7350 the offeror in response to the offer, unless (a) the board of directors makes a determination that
7351 because of conflicts of interest or other special circumstances, it should not make such a
7352 recommendation, or (b) s. 607.0826 applies. If either (a) or (b) applies, the board shall inform the
7353 shareholders of the basis for its so proceeding without such recommendation.

7354 (2) ~~For a plan of merger or share exchange to be approved:~~

7355 (a) ~~The board of directors must recommend the plan of merger or share exchange~~
7356 ~~to the shareholders, unless the board of directors determines that it should make no~~
7357 ~~recommendation because of conflict of interest or other special circumstances and~~
7358 ~~communicates the basis for its determination to the shareholders with the plan; and~~

7359 (b) ~~The shareholders entitled to vote must approve the plan as provided in~~
7360 ~~subsection (5).~~

7361 (3) ~~The board of directors may condition its submission~~ set conditions for the approval
7362 of the proposed merger or share exchange by the shareholders or the effectiveness of the plan of
7363 merger or the plan of share exchange on any basis.

7364 (4) ~~The corporation the~~ If the plan of merger or the plan of share exchange is required to
7365 be approved by the shareholders of which are entitled to vote on the matter, and if the approval is
7366 to be given at a meeting, the corporation shall notify each shareholder, regardless of whether or
7367 not entitled to vote, of the proposed shareholders' meeting of shareholders at which the plan is to
7368 be submitted for approval, in accordance with s. 607.0705. The notice shall also state that the
7369 purpose, or one of the purposes, of the meeting is to consider the plan of merger or the plan of

7370 share exchange, regardless of whether or not the meeting is an annual or a special meeting, and
7371 contain or be accompanied by a copy ~~or summary~~ of the plan. If the corporation is to be merged
7372 into an existing foreign or domestic eligible entity, the notice must also include or be accompanied
7373 by a copy of the articles of incorporation and bylaws or the organic rules of that eligible entity into
7374 which the corporation is to be merged. If the corporation is to be merged with a domestic or foreign
7375 eligible entity and a new domestic or foreign eligible entity is to be created pursuant to the merger,
7376 the notice must include or be accompanied by a copy of the articles of incorporation and bylaws
7377 or the organic rules of the new eligible entity. Furthermore, if applicable, the notice shall contain
7378 a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders
7379 dissenting therefrom may be entitled, if they comply with the provisions of this act regarding
7380 appraisal rights, to be paid the fair value of their shares, and shall be accompanied by a copy of ss.
7381 607.1301-607.1340~~33~~.

7382 (5) Unless this ~~chapter act,~~ the articles of incorporation, or the board of directors (acting
7383 pursuant to subsection (3)) requires a greater vote or a ~~vote by classes~~ greater quorum in the
7384 respective case, approval of the plan of merger or the plan of share exchange to be authorized shall
7385 ~~be approved by each class entitled to vote on the plan by a majority of all the votes entitled to be~~
7386 ~~cast on the plan by that class shall require the approval of the shareholders at a meeting at which a~~
7387 quorum exists by a majority of the votes entitled to be cast on the plan, and, if any class or series
7388 of shares is entitled to vote as a separate group on the plan of merger or the plan of share exchange,
7389 the approval of each such separate voting group at a meeting at which a quorum of the voting
7390 group is present by a majority of the votes entitled to be cast on the merger or share exchange by
7391 that voting group.

7392 (6) (a) Subject to subsection (7), ~~V~~oting by a class or series as a separate voting group
7393 is required on a plan of merger:

7394 1. By each class or series of shares of the corporation that would be
7395 entitled to vote as a separate group on any provision in the plan ~~contains a provision~~
7396 ~~which, if contained in which, if such provision had been contained in a proposed~~
7397 amendment to the articles of incorporation of a surviving corporation, would have
7398 entitled the class or series to vote as a separate voting group on the proposed
7399 amendment under s. 607.1004; or

7400 2. If the plan contains a provision that would allow the plan to be amended
7401 to include the type of amendment to the articles of incorporation referenced in
7402 clause 1., by each class or series of shares of the corporation that would have been
7403 entitled to vote as a separate group on any such amendment to the articles of
7404 incorporation; or

7405 3. By each class or series of shares of the corporation that is to be
7406 converted under the plan of merger into shares, other securities, eligible interests,

7407 obligations, rights to acquire shares, other securities or eligible interests, cash,
7408 property, or any combination of the foregoing; or

7409 4. If the plan contains a provision that would allow the plan to be amended
7410 to convert other classes or series of shares of the corporation, by each class or series
7411 of shares of the corporation that would have been entitled to vote as a separate
7412 group if the plan were to be so amended.

7413 (b) Subject to subsection (7), voting by a class or series as a separate voting group
7414 is required on a plan of share exchange;

7415 1. By each if the shares of such class or series are to be converted or
7416 exchanged under such plan, that is to be exchanged in the exchange, with each class
7417 or series constituting a separate voting group; or if the plan contains any provisions
7418 which, if contained in a proposed amendment to articles of incorporation, would
7419 entitle the class or series to vote as a separate voting group on the proposed
7420 amendment under s. 607.1004.

7421 2. If the plan contains a provision that would allow the plan to be amended
7422 to include the type of amendment to the articles of incorporation referenced in
7423 clause 1., by each class or series of shares of the corporation that would have been
7424 entitled to vote as a separate group on any such amendment to the articles of
7425 incorporation.

7426
7427 (c) Subject to subsection (7), voting by a class or series as a separate voting group
7428 is required on a plan of merger or a plan of share exchange, if the voting group is entitled
7429 under the articles of incorporation to vote as a voting group to approve the plan of merger
7430 or the plan of share exchange, respectively.

7431 (7) The articles of incorporation may expressly limit or eliminate the separate voting
7432 rights provided in any one or more of subparagraphs (6)(a)3. and 4. and subparagraph (6)(b)1. as
7433 to any class or series of shares, except when the plan of merger or the plan of share exchange:

7434 (a) Includes what is or would be, in effect, an amendment subject to any one or
7435 more of subparagraphs (6)(a)1. and 2. and subparagraph (6)(b)2. and

7436 (b) Will not effect a substantive business combination.

7437 (78) Notwithstanding the requirements of this section, unless required by the
7438 corporation's its articles of incorporation provide otherwise, approval action by the corporation's
7439 shareholders of the surviving corporation on of a plan of merger is not required if:

7440 (a) The corporation will survive the merger.

7441 (ab) The articles of incorporation of the surviving corporation will not differ
7442 (except for amendments enumerated in s. 607.1002) from its articles of incorporation
7443 before the merger; and

7444 (bc) Each shareholder of the surviving corporation whose shares were outstanding
7445 immediately prior to the effective date of the merger will hold the same number of shares,
7446 with identical designations, preferences, rights and limitations, ~~and relative rights,~~
7447 immediately after the effective date of the merger.

7448 (8) ~~Any plan of merger or share exchange may authorize the board of directors of each~~
7449 ~~corporation party to the merger or share exchange to amend the plan at any time prior to the filing~~
7450 ~~of the articles of merger or share exchange. An amendment made subsequent to the approval of~~
7451 ~~the plan by the shareholders of any corporation party to the merger or share exchange may not:~~

7452 (a) ~~Change the amount or kind of shares, securities, cash, property, or rights to be~~
7453 ~~received in exchange for or on conversion of any or all of the shares of any class or series~~
7454 ~~of such corporation;~~

7455 (b) ~~Change any other terms and conditions of the plan if such change would~~
7456 ~~materially and adversely affect such corporation or the holders of the shares of any class~~
7457 ~~or series of such corporation; or~~

7458 (c) ~~Except as specified in s. 607.1002 or without the vote of shareholders entitled to~~
7459 ~~vote on the matter, change any term of the articles of incorporation of any corporation the~~
7460 ~~shareholders of which must approve the plan of merger or share exchange.~~

7461 ~~If articles of merger or share exchange already have been filed with the Department of~~
7462 ~~State, amended articles of merger or share exchange shall be filed with the Department of State~~
7463 ~~prior to the effective date of the merger or share exchange.~~

7464 (9) ~~Unless a plan of merger or share exchange prohibits abandonment of the merger or~~
7465 ~~share exchange without shareholder approval after a merger or share exchange has been~~
7466 ~~authorized, the planned merger or share exchange may be abandoned (subject to any contractual~~
7467 ~~rights) at any time prior to the filing of articles of merger or share exchange by any corporation~~
7468 ~~party to the merger or share exchange, without further shareholder action, in accordance with the~~
7469 ~~procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner~~
7470 ~~determined by the board of directors of such corporation.~~

7471 (9) If, as a result of a merger or share exchange, one or more shareholders of a domestic
7472 corporation would become subject to new interest holder liability, approval of the plan of merger
7473 or the plan of share exchange shall require, in connection with the transaction, the signing by each
7474 such shareholder of a separate written consent to become subject to such new interest holder

7475 liability, unless in the case of a shareholder that already has interest holder liability with respect to
7476 such domestic corporation:

7477 (a)The new interest holder liability is with respect to a domestic or foreign
7478 corporation (which may be a different or the same domestic corporation in which the
7479 person is a shareholder), and

7480 (b) The terms and conditions of the new interest holder liability are
7481 substantially identical to those of the existing interest holder liability (other than for
7482 changes that reduce or eliminate such interest holder liability).

7483 (10) Unless the articles of incorporation otherwise provide, approval of a plan of share
7484 exchange by the shareholders of a domestic corporation is not required if the corporation is the
7485 acquiring eligible entity in the share exchange.

7487 (11) Unless the articles of incorporation otherwise provide, shares in the acquired eligible
7488 entity not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

7489

7490 **Commentary to Section 607.1103:**

7491 Florida's current version of s. 607.1103 follows the 1984 version of Model Act s. 11.04. This
7492 section of the Model Act was substantially revised in 1999, and the revisions to this section are
7493 intended to provide greater clarity as to what is required to approve a merger or share exchange.
7494 Particularly, this section as revised is designed to correct a long-standing ambiguity under Florida
7495 law that arguably allows any class or series of shares to have a separate class vote on a merger or
7496 share exchange even under circumstances where the articles of incorporation arguably provide
7497 otherwise.

7498 The exception in subsection (2) is intended to allow a shareholder vote without a recommendation
7499 from the Board, including where there is a "force the vote" provision in a plan of merger or the
7500 plan of share exchange.

7501 Subsection (5) continues the requirement that a majority of the shares entitled to vote at the meeting
7502 (*i.e.*, an absolute majority, rather than just a majority of the quorum) must approve the merger or
7503 share exchange. This is consistent with existing Florida law, the Model Act and s. 251(e) of the
7504 DGCL.

7505 Subsection (6) sets forth circumstances when voting by a class or series as a separate voting group
7506 is required. While largely based on the Subsection (f) of s. 11.04 of the Model Act, the proposed
7507 language has been expanded to not only cover the substantive provisions of the plan, but also
7508 provisions that would permit amendments to the plan that could subsequently cover such a
7509 substantive provision. Accordingly, subparagraphs (a)2. and 4. and subparagraph (b)2. have been
7510 added for clarification.

7511 New subsection (7) largely follows the Model Act, although the provisions have been modified in
7512 light of the changes to subsection (6). Under subsection (7), the general rule is to allow the
7513 elimination or limitation of separate voting rights under subsection (7) by adding a provision to
7514 the articles of incorporation. However, that exception is overridden when both (i) the plan of
7515 merger or share exchange includes what would be an amendment to the articles of incorporation
7516 of the surviving corporation that would require a vote by separate voting groups under s. 607.1004,
7517 and (ii) the transaction detailed in such plan of merger or share exchange will not effect a
7518 "substantive business combination." The commentary to the Model Act provides guidance
7519 (including examples) as to when a merger or share exchange is considered to be (or not to be) a
7520 "substantive business combination." While the term is somewhat vague, this section is intended to
7521 preclude a corporation from going around the requirements of s. 607.1004 (dealing with when a
7522 class vote is required on changes to the corporation's articles of incorporation) by effecting a
7523 merger which seeks to amend the articles of incorporation but does not constitute a substantive
7524 business combination.

7525 Previous subsection (8), dealing with amendment to a plan of merger or share exchange, has been
7526 moved following the 2016 version of the Model Act into ss. 607.1101(6) and 607.1102(6). The
7527 topic in previous subsection (9), regarding abandonment of a merger or share exchange, is now
7528 covered in new s. 607.1107.

7529 New subsections (9), dealing with protections for shareholders who have interest holder liability,
7530 has been added in conformity with the corollary Model Act provision.

7531 Subsections (10) and (11) deal with the two situations in which, unless the articles of incorporation
7532 provide otherwise, shareholders do not get a vote on a share exchange.

7533

7534 607.11035 Shareholder approval of a merger or share exchange in connection with a
7535 tender offer.

7536 (1) Unless the articles of incorporation otherwise provide, shareholder approval of a plan
7537 of merger or a plan of share exchange under s. 607.1103(1)(b) is not required if:

7538 (a) The plan of merger or share exchange expressly:

7539 1. Permits or requires the merger or share exchange to be effected under
7540 this section; and

7541 2. Provides that, if the merger or share exchange is to be effected under
7542 this section, the merger or share exchange will be effected as soon as practicable
7543 following the satisfaction of the requirement set forth in subsection (1)(f);

7544 (b) Another party to the merger, the acquiring eligible entity in the share exchange,
7545 or a parent of another party to the merger or the parent of the acquiring eligible entity in
7546 the share exchange, makes an offer to purchase, on the terms provided in the plan of merger
7547 or the plan of share exchange, any and all of the outstanding shares of the corporation that,
7548 absent this section, would be entitled to vote on the plan of merger or the plan of share
7549 exchange, except that the offer may exclude shares of the corporation that are owned at the
7550 commencement of the offer by the corporation, the offeror, or any parent of the offeror, or
7551 by any wholly owned subsidiary of any of the foregoing;

7552 (c) The offer discloses that the plan of merger or the plan of share exchange provides
7553 that the merger or share exchange will be effected as soon as practicable following the
7554 satisfaction of the requirement set forth in subsection (1)(f) and that the shares of the
7555 corporation that are not tendered in response to the offer will be treated as set forth in
7556 subsection (1)(h);

7557 (d) The offer remains open for at least 10 days;

7558 (e) The offeror purchases all shares properly tendered in response to the offer and
7559 not properly withdrawn;

7560 (f) The shares listed below are collectively entitled to cast at least the minimum
7561 number of votes on the merger or share exchange that, absent this section, would be
7562 required by this chapter and by the articles of incorporation for the approval of the merger
7563 or share exchange by the shareholders and by each other voting group entitled to vote on
7564 the merger or share exchange at a meeting at which all shares entitled to vote on the
7565 approval were present and voted;

7566 1. Shares purchased by the offeror in accordance with the offer;

7567 2. Shares otherwise owned by the offeror or by any parent of the offeror
7568 or any wholly owned subsidiary of any of the foregoing; and

7569 3. Shares subject to an agreement that they are to be transferred,
7570 contributed or delivered to the offeror, any parent of the offeror, or any wholly
7571 owned subsidiary of any of the foregoing in exchange for shares or eligible interests
7572 in such offeror, parent or subsidiary;

7573 (g)The offeror or a wholly owned subsidiary of the offeror merges with or into, or
7574 effects a share exchange in which it acquires shares of, the corporation; and

7575 (h)Each outstanding share of each class or series of shares of the corporation that
7576 the offeror is offering to purchase in accordance with the offer, and that is not purchased
7577 in accordance with the offer, is to be converted in the merger into, or into the right to
7578 receive, or is to be exchanged in the share exchange for, or for the right to receive, the same
7579 amount and kind of securities, eligible interests, obligations, rights, cash, or other property
7580 to be paid or exchanged in accordance with the offer for each share of that class or series
7581 of shares that is tendered in response to the offer, except that shares of the corporation that
7582 are owned by the corporation or that are described in clause 2. or 3. of subsection (1)(f)
7583 need not be converted into or exchanged for the consideration described in this subsection
7584 (1)(h).

7585 (2) As used in this section:

7586 (a) "Offer" means the offer referred to in subsection (1)(b);

7587 (b) "Offeror" means the person making the offer;

7588 (c) "Parent" of an eligible entity means a person that owns, directly or indirectly
7589 (through one or more wholly owned subsidiaries), all of the outstanding shares of or
7590 eligible interests in that eligible entity;

7591 (d)Shares tendered in response to the offer shall be deemed to have been
7592 "purchased" in accordance with the terms of the offer at the earliest time as of which:

7593 1. The offeror has irrevocably accepted those shares for payment; and

7594 2. Either (A) in the case of shares represented by certificates, the offeror,
7595 or the offeror's designated depository or other agent, has physically received the
7596 certificates representing those shares or (B) in the case of shares without
7597 certificates, those shares have been transferred into the account of the offeror or its
7598 designated depository or other agent, or an agent's message relating to those shares
7599 has been received by the offeror or its designated depository or other agent; and

7600 (e) "Wholly owned subsidiary" of a person means an eligible entity of or in which
7601 that person owns, directly or indirectly (through one or more wholly owned subsidiaries),
7602 all of the outstanding shares or eligible interests.

7603

7604 **Commentary to Section 607.11035:**

7605 New s. 607.11035 is derived from subsection (j) of Model Act s. 11.04. Similar to Delaware law,
7606 it allows for a "two step" transaction in which the offeror first makes a tender offer to shareholders,
7607 and through the tender offer acquires enough of an interest in the Company to satisfy the
7608 shareholder approval that would otherwise be required.

7609

7610 607.1104 Merger between parent and of subsidiary or between subsidiaries
7611 corporation.

7612 (1)(a) A domestic or foreign parent corporation eligible entity that owns shares of a
7613 domestic corporation which carry owning at least 80 percent of the voting power outstanding
7614 shares of each class and series of the outstanding shares of the a subsidiary ~~corporation~~ may:

7615 (a) ~~M~~merge the subsidiary into itself (if it is a domestic or foreign eligible entity) or
7616 into another domestic or foreign eligible entity in which the parent eligible entity owns at
7617 least 90 percent of the voting power of each class and series of the outstanding shares or
7618 eligible interests which have voting power; or

7619 (b) ~~M~~may merge itself (if it is a domestic or foreign eligible entity) into such the
7620 subsidiary,

7621 in either case without the approval of the board of directors or shareholders of the subsidiary,
7622 unless the articles of incorporation or organic rules of the parent eligible entity or the articles of
7623 incorporation of the subsidiary otherwise provide. Section 607.1103(9) applies to a merger under
7624 this section. The articles of merger relating to a merger under this section do not need to be signed
7625 by the subsidiary merge the subsidiary into and with another subsidiary in which the parent
7626 corporation owns at least 80 percent of the outstanding shares of each class of the subsidiary
7627 without the approval of the shareholders of the parent or subsidiary. In a merger of a parent
7628 corporation into its subsidiary corporation, the approval of the shareholders of the parent
7629 corporation shall be required if the articles of incorporation of the surviving corporation will differ,
7630 except for amendments enumerated in s. 607.1002, from the articles of incorporation of the parent
7631 corporation before the merger, and the required vote shall be the greater of the vote required to
7632 approve the merger and the vote required to adopt each change to the articles of incorporation as
7633 if each change had been presented as an amendment to the articles of incorporation of the parent
7634 corporation.

7635 (b) ~~The board of directors of the parent shall adopt a plan of merger sets forth:~~

7636 1. ~~The names of the parent and subsidiary corporations;~~

7637 2. ~~The manner and basis of converting the shares of the subsidiary or parent into~~
7638 ~~shares, obligations, or other securities of the parent or any other corporation or, in whole~~
7639 ~~or in part, into cash or other property, and the manner and basis of converting rights to~~
7640 ~~acquire shares of each corporation into rights to acquire shares, obligations, and other~~
7641 ~~securities of the surviving or any other corporation or, in whole or in part, into cash or other~~
7642 ~~property;~~

7643 ~~3. If the merger is between the parent and a subsidiary corporation and the parent~~
7644 ~~is not the surviving corporation, a provision for the pro rata issuance of shares of the~~
7645 ~~subsidiary to the holders of the shares of the parent corporation upon surrender of any~~
7646 ~~certificates therefor; and~~

7647 ~~4. A clear and concise statement that shareholders of the subsidiary who, except~~
7648 ~~for the applicability of this section, would be entitled to vote and who dissent from the~~
7649 ~~merger pursuant to s. 607.1321, may be entitled, if they comply with the provisions of this~~
7650 ~~act regarding appraisal rights, to be paid the fair value of their shares.~~

7651 ~~(2) The parent shall, within 10 days after the effective date of a merger approved under~~
7652 ~~subsection (1), notify each of the subsidiary's shareholders that the merger has become effective~~
7653 ~~mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not~~
7654 ~~waive the mailing requirement in writing.~~

7655 ~~(3) The parent may not deliver articles of merger to the Department of State for filing~~
7656 ~~until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of~~
7657 ~~the subsidiary who did not waive the mailing requirement, or, if earlier, upon the waiver thereof~~
7658 ~~by the holders of all of the outstanding shares of the subsidiary.~~

7659 ~~(4) Articles of merger under this section may not contain amendments to the articles of~~
7660 ~~incorporation of the parent corporation (except for amendments enumerated in s. 607.1002).~~

7661 ~~(5) Two or more subsidiaries may be merged into the parent pursuant to this section.~~

7662 ~~(3) Except as provided for in subsections (1) and (2), a merger between a parent eligible~~
7663 ~~entity and a domestic subsidiary corporation shall be governed by the provisions of ss. 607.1101-~~
7664 ~~607.1107 applicable to mergers generally.~~

7665

7666 **Commentary to Section 607.1104:**

7667 Like the rest of Article 11, this section was fundamentally changed in 1999 and then further
7668 fundamentally changed in the 2016 version of the Model Act.

7669 Subsection (2) is a Model Act provision. It requires that shareholders be given notice within 10
7670 days of the effective date of the merger. A similar requirement is contained in the DGCL.

7671 Subsection (3) has been deleted. The 30 day notice requirement was deleted from the Model Act
7672 in 1999. The requirement still exists in approximately 17 other jurisdictions (including New York
7673 and Illinois), but most states, including other large Model Act states, have removed this
7674 requirement. Removal of subsection (3) eliminates the key objection that many practitioners have
7675 had to this provision in the FBCA.

7676 This section continues to use the 80% threshold for application of this section. While the Model
7677 Act and the DGCL (and many other states) use a 90% threshold, it was believed that because this
7678 threshold has been used in Florida since 1989, that it should be retained in the statute.

7679

7680 607.11045 Holding company formation by merger by certain corporations.

7681 (1) This section applies only to a corporation that has shares registered pursuant to
7682 section 12 of the Securities Exchange Act of 1934 of any class or series which are either registered
7683 on a national securities exchange or designated as a national market system security on an
7684 interdealer quotation system by the National Association of Securities Dealers, Inc., or held of
7685 record by not fewer than 2,000 shareholders.

7686 (2) As used in this section, the term:

7687 (a) "Constituent corporation" means a corporation that is a party to a merger
7688 governed by this section.

7689 (b) "Holding company" means a corporation that, from the date it first issued shares
7690 until consummation of a merger governed by this section, was at all times a wholly owned
7691 subsidiary of a constituent corporation, and whose shares are issued in such merger.

7692 (c) "Wholly owned subsidiary" means, as to a corporation, any other corporation of
7693 which it owns, directly or indirectly through one or more subsidiaries, all of the issued and
7694 outstanding shares.

7695 (3) Notwithstanding the requirements of s. 607.1103, unless expressly required by its
7696 articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger
7697 of the corporation with or into a wholly owned subsidiary of such corporation if:

7698 (a) Such corporation and wholly owned subsidiary are the only constituent
7699 corporations to the merger;

7700 (b) Each share or fraction of a share of the constituent corporation whose shares are
7701 being converted pursuant to the merger which are outstanding immediately prior to the
7702 effective date of the merger is converted in the merger into a share or equal fraction of
7703 share of a holding company having the same designations, rights, powers and preferences,
7704 and qualifications, limitations and restrictions thereof as the share of the constituent
7705 corporation being converted in the merger;

7706 (c) The holding company and each of the constituent corporations to the merger are
7707 domestic corporations;

7708 (d) The articles of incorporation and bylaws of the holding company immediately
7709 following the effective date of the merger contain provisions identical to the articles of
7710 incorporation and bylaws of the constituent corporation whose shares are being converted
7711 pursuant to the merger immediately prior to the effective date of the merger, except
7712 provisions regarding the incorporators, the corporate name, the registered office and agent,

7713 the initial board of directors, the initial subscribers for shares and matters solely of
7714 historical significance, and such provisions contained in any amendment to the articles of
7715 incorporation as were necessary to effect a change, exchange, reclassification, or
7716 cancellation of shares, if such change, exchange, reclassification, or cancellation has
7717 become effective;

7718 (e) As a result of the merger, the constituent corporation whose shares are being
7719 converted pursuant to the merger or its successor corporation becomes or remains a direct
7720 or indirect wholly owned subsidiary of the holding company;

7721 (f) The directors of the constituent corporation become or remain the directors of
7722 the holding company upon the effective date of the merger;

7723 (g) The articles of incorporation of the surviving corporation immediately following
7724 the effective date of the merger are identical to the articles of incorporation of the
7725 constituent corporation whose shares are being converted pursuant to the merger
7726 immediately prior to the effective date of the merger, except provisions regarding the
7727 incorporators, the corporate name, the registered office and agent, the initial board of
7728 directors, the initial subscribers for shares and matters solely of historical significance, and
7729 such provisions contained in any amendment to the articles of incorporation as were
7730 necessary to effect a change, exchange, reclassification, or cancellation of shares, if such
7731 change, exchange, reclassification, or cancellation has become effective. The articles of
7732 incorporation of the surviving corporation must be amended in the merger to contain a
7733 provision requiring, by specific reference to this section, that any act or transaction by or
7734 involving the surviving corporation, other than the election or removal of directors, which
7735 requires for its adoption under this chapter ~~æ~~ or its articles of incorporation the approval
7736 of the shareholders of the surviving corporation also be approved by the shareholders of
7737 the holding company, or any successor by merger, by the same vote as is required by this
7738 chapter ~~æ~~ or the articles of incorporation of the surviving corporation. The articles of
7739 incorporation of the surviving corporation may be amended in the merger to reduce the
7740 number of classes and shares which the surviving corporation is authorized to issue;

7741 (h) The board of directors of the constituent corporation determines that the
7742 shareholders of the constituent corporation will not recognize gain or loss for United States
7743 federal income tax purposes; and

7744 (i) The board of directors of such corporation adopts a plan of merger that sets forth:

7745 1. The names of the constituent corporations;

7746 2. The manner and basis of converting the shares of the corporation into
7747 shares of the holding company and the manner and basis of converting rights to

7748 acquire shares of such corporation into rights to acquire shares of the holding
7749 company; and

7750 3. A provision for the pro rata issuance of shares of the holding company
7751 to the holders of shares of the corporation upon surrender of any certificates
7752 therefor.

7753 (4) From and after the effective time of a merger adopted by a constituent corporation
7754 by action of its board of directors and without any vote of shareholders pursuant to this section:

7755 (a) To the extent the restrictions of ss. 607.0901 and 607.0902 applied to the
7756 constituent corporation and its shareholders at the effective time of the merger, such
7757 restrictions also apply to the holding company and its shareholders immediately after the
7758 effective time of the merger as though it were the constituent corporation, and all shares of
7759 the holding company acquired in the merger shall, for purposes of ss. 607.0901 and
7760 607.0902, be deemed to have been acquired at the time that the shares of the constituent
7761 corporation converted in the merger were acquired, and provided further that any
7762 shareholder who immediately prior to the effective time of the merger was not an interested
7763 shareholder within the meaning of s. 607.0901 shall not, solely by reason of the merger,
7764 become an interested shareholder of the holding company; and

7765 (b) If the corporate name of the holding company immediately following the
7766 effective time of the merger is the same as the corporate name of the constituent corporation
7767 immediately prior to the effective time of the merger, the shares of the holding company
7768 into which the shares of the constituent corporation are converted in the merger shall be
7769 represented by the share certificates that previously represented shares of the constituent
7770 corporation.

7771 (5) If a plan of merger is adopted by a constituent corporation by selection of its board
7772 of directors without any vote of shareholders pursuant to this section, the secretary or assistant
7773 secretary of the constituent corporation shall certify in the articles of merger that the plan of merger
7774 has been adopted pursuant to this section and that the conditions specified in subsection (3) have
7775 been satisfied. The articles of merger so certified shall then be filed and become effective in
7776 accordance with s. 607.1106.

7777

7778

7779 **Commentary to Section 607.11045:**

7780 This section is not in the Model Act. It was added to the FBCA in 1998, based on s. 251(g) of the
7781 DGCL. This provision only applies to public companies, although the section has been modified
7782 to make the definition of what is a public company consistent with other proposed FBCA sections
7783 (such as the majority voting section of the FBCA).

7784 The proposed changes bring this section into conformity with certain aspects of the current version
7785 of s. 251(g) of the DGCL, which allows for these transactions to include additional amendments
7786 to constituent documents under subsection (3)(d). However, although the DGCL also attempts to
7787 allow for the transactions to include LLCs, the DGCL revisions in that regard are a bit confusing
7788 and, after consideration, have not been added to the text of this section.

7789

7790 607.1105 Articles of merger or share exchange.

7791 (1) After (i) a plan of merger or share exchange is has been adopted and approved as
7792 required by this chapter, or (ii) if the merger is being effected under s. 607.1101(1)(b), the merger
7793 has been approved as required by the organic law governing the parties to the merger, then the
7794 articles of merger shall be signed by each party to the merger, except as provided in s. 607.1104(1).
7795 The articles approved by the shareholders, or adopted by the board of directors if shareholder
7796 approval is not required, the surviving or acquiring corporation shall deliver to the Department of
7797 State for filing articles of merger or share exchange which shall be executed by each corporation
7798 as required by s. 607.0120 and which shall must set forth:

7799 (a) The plan of merger or share exchange name, jurisdiction of formation, and type
7800 of entity of each party to the merger;

7801 (b) If not already identified as the survivor pursuant to subsection (1)(a), tThe name,
7802 jurisdiction of formation, and type of entity of the survivor effective date of the merger or
7803 share exchange, which may be on or after the date of filing the articles of merger or share
7804 exchange; if the articles of merger or share exchange do not provide for an effective date
7805 of the merger or share exchange, then the effective date shall be the date on which the
7806 articles of merger or share exchange are filed;

7807 (c) If shareholder approval was not required, a statement to that effect; and the
7808 survivor of the merger is a domestic corporation and its articles of incorporation are being
7809 amended, or if a new domestic corporation is being created as a result of the merger:

7810 1. The amendments to the survivor's articles of incorporation; or

7811 2. The articles of incorporation of the new corporation.

7812 (d) As to each corporation, to the extent applicable, the date of adoption of the plan
7813 of merger or share exchange by the shareholders or by the board of directors when no vote
7814 of the shareholders is required. If the survivor of the merger is a domestic eligible entity
7815 (other than a domestic corporation) and its public organic record is being amended in
7816 connection with the merger, or if a new domestic eligible entity is being created as a result
7817 of the merger:

7818 1. The amendments to the public organic record of the survivor; or

7819 2. The public organic record of the new eligible entity.

7820 (e) If the plan of merger required approval by the shareholders of a domestic
7821 corporation that is a party to the merger, a statement that the plan was duly approved by
7822 the shareholders and, if voting by any separate voting group was required, by each such

7823 separate voting group, in the manner required by this chapter and the articles of
7824 incorporation of such domestic corporation;

7825 (f) If the plan of merger did not require approval by the shareholders of a domestic
7826 corporation that is a party to the merger, a statement to that effect;

7827 (g) As to each foreign corporation that is a party to the merger, a statement that the
7828 participation of the foreign corporation was duly authorized in accordance with such
7829 corporation's organic law;

7830 (h) As to each domestic or foreign eligible entity that is a party to the merger and
7831 that is not a domestic or foreign corporation, a statement that the participation of the eligible
7832 entity in the merger was duly authorized in accordance with such eligible entity's organic
7833 law; and

7834 (i) If the survivor is created by the merger and is a domestic limited liability
7835 partnership, the document required to elect that status, as an attachment.

7836 (2) After a plan of share exchange in which the acquired eligible entity is a domestic
7837 corporation or other eligible entity has been adopted and approved as required by this chapter,
7838 articles of share exchange shall be signed by the acquired eligible entity and the acquiring eligible
7839 entity. The articles must set forth:

7840 (a) The name, jurisdiction of formation, and type of entity of the acquired eligible
7841 entity;

7842 (b) The name, jurisdiction of formation, and type of entity of the domestic or foreign
7843 eligible entity that is the acquiring eligible entity; and

7844 (c) A statement that the plan of share exchange was duly approved by the acquired
7845 eligible entity by:

7846 1. The required vote or consent of each class or series of shares or eligible
7847 interests included in the exchange; and

7848 2. The required vote or consent of each other class or series of shares or
7849 eligible interests entitled to vote on approval of the exchange by the articles of
7850 incorporation or the organic rules of the acquired eligible entity.

7851 (3) In addition to the requirements of subsections (1) or (2), articles of merger or articles
7852 of share exchange may contain any other provision not prohibited by law.

7853 (4) The articles of merger or the articles of share exchange shall be delivered to the
7854 department for filing, and, subject to subsection (5), the merger or share exchange shall take effect
7855 at the effective date determined in accordance with s. 607.0123.

7856 (5) With respect to a merger in which one or more foreign entities is a party or a foreign
7857 eligible entity created by the merger is the survivor, the merger itself shall become effective at the
7858 later of:

7859 (a) When all documents required to be filed in all foreign jurisdictions to effect the
7860 merger have become effective; or

7861 (b) When the articles of merger take effect.

7862 (6) Articles of merger required to be filed under this section may be combined with any
7863 filing required under the organic law governing any other domestic eligible entity involved in the
7864 transaction if the combined filing satisfies the requirements of both this section and the other
7865 organic law.

7866 (27) A copy of the articles of merger or share exchange, certified by the ~~d~~Department of
7867 State, may be filed in the office of the official who is the recording officer of each county in this
7868 state in which real property of a constituent corporation other than the surviving corporation is
7869 situated.

7870

7871 **Commentary to Section 607.1105:**

7872 This section has been rewritten to largely bring it into conformity with the 1999 and 2016 changes
7873 to the Model Act. Subsection (2) (now subsection (7)) has been retained even though it is not a
7874 Model Act provision.

7875

7876 607.1106 Effect of merger or share exchange.

7877 (1) When a merger becomes effective:

7878 (a) The domestic or foreign Every—other corporation eligible entity that is
7879 designated in the plan of merger as the survivor continues party to the merger merges into
7880 the surviving corporation or comes into existence, as the case may be and the separate
7881 existence of every corporation except the surviving corporation ceases;

7882 (b) The separate existence of every domestic or foreign eligible entity that is a party
7883 to the merger, other than the survivor, ceases;

7884 (bc) All The title to all real property estate and other property, including or any
7885 interest therein and or all title thereto, owned by, and every contract right possessed by,
7886 each domestic or foreign corporation eligible entity that is a party to the merger, other than
7887 the survivor, is vested in the surviving corporation become the property and contract rights
7888 of and become vested in the survivor, without transfer, reversion or impairment;

7889 (ed) All debts, obligations, and other liabilities of each domestic or foreign The
7890 surviving corporation eligible entity that is a shall thenceforth be responsible and liable for
7891 all the liabilities and obligations of each corporation party to the merger, other than the
7892 survivor, become debts, obligations, and liabilities of the survivor;

7893 (de) The name of the survivor may, but need not be Any claim existing or action
7894 or proceeding pending by or against any corporation party to the merger may be continued
7895 as if the merger did not occur or the surviving corporation may be substituted in any
7896 pending the proceeding for the name of any party to the merger whose separate for the
7897 which ceased existence ceased in the merger;

7898 (ef) Neither the rights of creditors nor any liens upon the property of any
7899 corporation party to the merger shall be impaired by such merger;

7900 (fg) The If the survivor is a domestic eligible entity, the articles of incorporation
7901 and bylaws or the organic rules of the survivor surviving corporation are amended to the
7902 extent provided in the plan of merger; and

7903 (h) The articles of incorporation and bylaws or the organic rules of a survivor that
7904 is a domestic eligible entity and is created by the merger become effective;

7905 (gi) The shares (and the rights to acquire shares, obligations, or other securities)
7906 of each domestic or foreign corporation party to the merger, and the eligible interests in
7907 any other eligible entity that is party to a merger, that are to be converted in accordance
7908 with the terms of the merger into shares or other securities, eligible interests, rights,

7909 obligations, rights to acquire shares, other securities, eligible interests, or other securities
7910 of the surviving or any other corporation or into cash, or other property, or any combination
7911 of the foregoing are converted, are converted, and the former holders of such the shares,
7912 rights to acquire shares, or other eligible interests are entitled only to the rights provided to
7913 them by those terms of the merger or to any rights they may have in the articles of merger
7914 or to their rights under s. 607.1302 or under the organic law governing the eligible entity;

7915 (j) Except as provided by law or the plan of merger, all the rights, privileges,
7916 franchises and immunities of each eligible entity that is a party to the merger, other than
7917 the survivor, become the rights, privileges, franchises and immunities of the survivor.

7918 (k) If the survivor exists before the merger:

7919 1. All the property and contract rights of the survivor remain its property
7920 and contract rights without transfer, reversion, or impairment;

7921 2. The survivor remains subject to all of its debts, obligations, and other
7922 liabilities; and

7923 3. Except as provided by law or the plan of merger, the survivor continues
7924 to hold all of its rights, privileges, franchises, and immunities.

7925 (2) When a share exchange becomes effective, the shares, eligible interests, and rights to
7926 acquire shares or eligible interests, in the of each acquired eligible entity corporation that are to be
7927 exchanged in accordance with the terms of the share exchange for shares or other securities,
7928 eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash,
7929 other property or any combination of the foregoing, are entitled only to the rights provided to them
7930 by the terms of the as provided in the plan of share exchange, and the former holders of the shares
7931 are entitled only to the exchange rights provided in the articles of share exchange or to any their
7932 rights they may have under s. 607.1302 or under the organic law governing the acquired eligible
7933 entity.

7934 (3) Except as otherwise provided in the articles of incorporation of a domestic
7935 corporation or the organic law governing or organic rules of a domestic or foreign eligible entity,
7936 the effect of a merger or share exchange on interest holder liability is as follows:

7937 (a) A person who becomes subject to new interest holder liability in respect of an
7938 eligible entity as a result of a merger or share exchange shall have that new interest holder
7939 liability only in respect of interest holder liabilities that arise after the merger or share
7940 exchange becomes effective.

7941 (b) If a person had interest holder liability with respect to a party to the merger or
7942 the acquired eligible entity before the merger or share exchange becomes effective with

7943 respect to shares or eligible interests of such party or acquired entity which were (i)
7944 exchanged in the merger or share exchange, (ii) were cancelled in the merger or (iii) the
7945 terms and conditions of which relating to interest holder liability were amended pursuant
7946 to the merger:

7947 1. The merger or share exchange does not discharge that prior interest
7948 holder liability with respect to any interest holder liabilities that arose before the
7949 merger or share exchange becomes effective.

7950 2. The provisions of the organic law governing any eligible entity for
7951 which the person had that prior interest holder liability shall continue to apply to
7952 the collection or discharge of any interest holder liabilities preserved by subsection
7953 (3)(b)1., as if the merger or share exchange had not occurred.

7954 3. The person shall have such rights of contribution from other persons as
7955 are provided by the organic law governing the eligible entity for which the person
7956 had that prior interest holder liability with respect to any interest holder liabilities
7957 preserved by subsection (3)(b)1., as if the merger or share exchange had not
7958 occurred.

7959 4. The person shall not, by reason of such prior interest holder liability,
7960 have interest holder liability with respect to any interest holder liabilities that arise
7961 after the merger or share exchange becomes effective.

7962 (c)If a person has interest holder liability both before and after a merger becomes
7963 effective with unchanged terms and conditions with respect to the eligible entity that is the
7964 survivor by reason of owning the same shares or eligible interests before and after the
7965 merger becomes effective, the merger has no effect on such interest holder liability.

7966 (d)A share exchange has no effect on interest holder liability related to shares or
7967 eligible interests of the acquired eligible entity that were not exchanged in the share
7968 exchange.

7969 (4) Upon a merger becoming effective, a foreign eligible entity that is the survivor of the
7970 merger is deemed to:

7971 (a)Appoint the secretary of state as its agent for service of process in a proceeding
7972 to enforce the rights of shareholders of each domestic corporation that is a party to the
7973 merger who exercise appraisal rights, and

7974 (b)Agree that it will promptly pay the amount, if any, to which such shareholders
7975 are entitled under ss. 607.1301-607.1340.

7976 (5) Except as provided in the organic law governing a party to a merger or in its articles
7977 of incorporation or organic rules, the merger does not give rise to any rights that an interest holder,
7978 governor, or third party would have upon a dissolution, liquidation, or winding up of that party.
7979 The merger does not require a party to the merger to wind up its affairs and does not constitute or
7980 cause its dissolution or termination.

7981 (6) Property held for a charitable purpose under the law of this state by a domestic or
7982 foreign eligible entity immediately before a merger becomes effective may not, as a result of the
7983 transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise
7984 transferred except and only to the extent permitted by or pursuant to the laws of this state
7985 addressing cy près or dealing with nondiversion of charitable assets.

7986 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
7987 donation, subscription, or conveyance which is made to an eligible entity that is a party to a merger
7988 that is not the survivor and which takes effect or remains payable after the merger inures to the
7989 survivor.

7990 (8) A trust obligation that would govern property if the property is directed to be
7991 transferred to a nonsurviving eligible entity will apply to property that is to be transferred instead
7992 to the survivor after a merger becomes effective.

7993

7994 **Commentary to Section 607.1106:**

7995 Changes have been made above following other changes made in Article 11 of the Model Act to
7996 provide more clarity on the effect of mergers or share exchanges of domestic and foreign
7997 corporations, to allow mergers with non-corporate entities, and for mergers resulting in the
7998 formation of a new corporation.

7999 Subsection (1)(e) (now subsection (1)(f)) is no longer in the Model Act but has been retained herein
8000 for the elimination of doubt and possible confusion that might result if the section were to be
8001 removed.

8002

8003 607.1107 Abandonment of a Merger or Share Exchange.

8004 (1) After a plan of merger or a plan of share exchange has been adopted and approved
8005 as required by this chapter, and before the articles of merger or the articles of share exchange have
8006 become effective, the plan may be abandoned by a domestic corporation that is a party to the plan
8007 without action by its shareholders in accordance with any procedures set forth in the plan of merger
8008 or the plan of share exchange, or, if no such procedures are set forth in the plan, in the manner
8009 determined by the board of directors.

8010 (2) If a merger or share exchange is abandoned under subsection (1) after articles of
8011 merger or articles of share exchange have been delivered to the department for filing but before
8012 the merger or articles of share exchange has become effective, a statement of abandonment signed
8013 by all the parties that signed the articles of merger or articles of share exchange shall be delivered
8014 to the department for filing before the articles of merger or articles of share exchange become
8015 effective. The statement shall take effect on filing whereupon the merger or share exchange shall
8016 be deemed abandoned and shall not become effective. The statement of abandonment must
8017 contain:

8018 (a) The name of each party to the merger or the names of the acquiring and acquired
8019 entities in a share exchange;

8020 (b) The date on which the articles of merger or articles of share exchange were filed
8021 by the department; and

8022 (c) A statement that the merger or share exchange has been abandoned in
8023 accordance with this section.

8024

8025 **Commentary to Section 607.1107:**

8026 This section (s. 11.08 of the Model Act) was added to the Model Act in 1999 to allow for
8027 abandonment of mergers or share exchanges prior to their effectiveness. This topic was previously
8028 covered in s. 607.1103(9) of the FBCA.

8029 Section 607.1103(9) currently reads as follows:

8030 (9)Unless a plan of merger or share exchange prohibits abandonment of the
8031 merger or share exchange without shareholder approval after a merger or share exchange
8032 has been authorized, the planned merger or share exchange may be abandoned (subject to
8033 any contractual rights) at any time prior to the filing of articles of merger or share
8034 exchange by any corporation party to the merger or share exchange, without further
8035 shareholder action, in accordance with the procedure set forth in the plan of merger or
8036 share exchange or, if none is set forth, in the manner determined by the board of directors
8037 of such corporation.

8038

8039 ~~607.1107—Merger or share exchange with foreign corporations.~~

8040

8041 (1) ~~One or more foreign corporations may merge or enter into a share exchange with one~~
8042 ~~or more domestic corporations if:~~

8043

8044 (a) ~~In a merger, the merger is permitted by the law of the state or country under~~
8045 ~~the law of which each foreign corporation is incorporated and each foreign corporation~~
8046 ~~complies with that law in effecting the merger;~~

8047

8048 (b) ~~In a share exchange, the corporation the shares of which will be acquired is a~~
8049 ~~domestic corporation, whether or not a share exchange is permitted by law of the state or~~
8050 ~~country under the law of which the acquiring corporation is incorporated;~~

8051

8052 (c) ~~The foreign corporation complies with s. 607.1105 if it is the surviving~~
8053 ~~corporation of the merger or acquiring corporation of the share exchange; and~~

8054

8055 (d) ~~Each domestic corporation complies with the applicable provisions of ss.~~
8056 ~~607.1101-607.1104 and, if it is the surviving corporation of the merger or acquiring~~
8057 ~~corporation of the share exchange, with s. 607.1105.~~

8058

8059 (2) ~~Upon the merger becoming effective, the surviving foreign corporation of a merger,~~
8060 ~~and the acquiring foreign corporation in a share exchange, is deemed:~~

8061

8062 (a) ~~To appoint the Secretary of State as its agent for service of process in a~~
8063 ~~proceeding to enforce any obligation or the rights of dissenting shareholders of each~~
8064 ~~domestic corporation party to the merger or share exchange; and~~

8065

8066 (b) ~~To agree that it will promptly pay to the dissenting shareholders of each~~
8067 ~~domestic corporation party to the merger or share exchange the amount, if any, to which~~
8068 ~~they are entitled under s. 607.1302.~~

8069

8070 (3) ~~This section does not limit the power of a foreign corporation to acquire all or part of~~
8071 ~~the shares of one or more classes or series of a domestic corporation through a voluntary exchange~~
8072 ~~or otherwise.~~

8073

8074 (4) ~~The effect of such merger shall be the same as in the case of the merger of domestic~~
8075 ~~corporations if the surviving corporation is to be governed by the laws of this state. If the surviving~~
8076 ~~corporation is to be governed by the laws of any state other than this state, the effect of such merger~~
8077 ~~shall be the same as in the case of the merger of domestic corporations except insofar as the laws~~
8078 ~~of such other state provide otherwise.~~

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~~(5) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a merger of a foreign corporation and a domestic corporation, and the surviving corporation shall be deemed to be a domestic corporation incorporated under the laws of this state. The redomestication of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to be a foreign corporation.~~

8087 **Commentary to Section 607.1107:**

8088

8089 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8090 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8091 this section.

8092 This section was originally modeled on old Model Act s. 11.07, which was deleted from the Model
8093 Act in 1999.

8094

8095 ~~607.1108 — Merger of domestic corporation and other business entity.~~

8096

8097 ~~(1) — As used in this section and ss. 607.1109 and 607.11101, the term "other business~~
8098 ~~entity" means a limited liability company, a foreign corporation, a not for profit corporation, a~~
8099 ~~business trust or association, a real estate investment trust, a common law trust, an unincorporated~~
8100 ~~business, a general partnership, a limited partnership, or any other entity that is formed pursuant~~
8101 ~~to the requirements of applicable law. Notwithstanding the provisions of chapter 617, a domestic~~
8102 ~~not for profit corporation acting under a plan of merger approved pursuant to s. 617.1103 shall be~~
8103 ~~governed by the provisions of ss. 607.1109, 607.11101, and this section.~~

8104

8105 ~~(2) — Pursuant to a plan of merger complying and approved in accordance with this section,~~
8106 ~~one or more domestic corporations may merge with or into one or more other business entities~~
8107 ~~formed, organized, or incorporated under the laws of this state or any other state, the United States,~~
8108 ~~foreign country, or other foreign jurisdiction, if:~~

8109

8110 ~~(a) — Each domestic corporation which is a party to the merger complies with the~~
8111 ~~applicable provisions of this chapter.~~

8112

8113 ~~(b) — Each domestic partnership that is a party to the merger complies with the~~
8114 ~~applicable provisions of chapter 620.~~

8115

8116 ~~(c) — Each domestic limited liability company that is a party to the merger complies~~
8117 ~~with the applicable provisions of chapter 605.~~

8118

8119 ~~(d) — The merger is permitted by the laws of the state, country, or jurisdiction under~~
8120 ~~which each other business entity that is a party to the merger is formed, organized, or~~
8121 ~~incorporated and each such other business entity complies with such laws in effecting the~~
8122 ~~merger.~~

8123

8124 ~~(3) — The plan of merger shall set forth:~~

8125

8126 ~~(a) — The name of each domestic corporation and the name and jurisdiction of~~
8127 ~~formation, organization, or incorporation of each other business entity planning to merge,~~
8128 ~~and the name of the surviving or resulting domestic corporation or other business entity~~
8129 ~~into which each other domestic corporation or other business entity plans to merge, which~~
8130 ~~is hereinafter and in ss. 607.1109 and 607.11101 designated as the surviving entity.~~

8131

8132 ~~(b) — The terms and conditions of the merger.~~

8133

8134 ~~(c) — The manner and basis of converting the shares of each domestic corporation~~
8135 ~~that is a party to the merger and the partnership interests, interests, shares, obligations or~~
8136 ~~other securities of each other business entity that is a party to the merger into partnership~~
8137 ~~interests, interests, shares, obligations or other securities of the surviving entity or any other~~
8138 ~~domestic corporation or other business entity or, in whole or in part, into cash or other~~
8139 ~~property, and the manner and basis of converting rights to acquire the shares of each~~
8140 ~~domestic corporation that is a party to the merger and rights to acquire partnership interests,~~
8141 ~~interests, shares, obligations or other securities of each other business entity that is a party~~
8142 ~~to the merger into rights to acquire partnership interests, interests, shares, obligations or~~
8143 ~~other securities of the surviving entity or any other domestic corporation or other business~~
8144 ~~entity or, in whole or in part, into cash or other property.~~

8145 ~~(d) — If a partnership is to be the surviving entity, the names and business addresses~~
8146 ~~of the general partners of the surviving entity.~~

8147 ~~(e) — If a limited liability company is to be the surviving entity and management~~
8148 ~~thereof is vested in one or more managers, the names and business addresses of such~~
8149 ~~managers.~~

8150 ~~(f) — All statements required to be set forth in the plan of merger by the laws under~~
8151 ~~which each other business entity that is a party to the merger is formed, organized, or~~
8152 ~~incorporated.~~

8153 ~~(4) — The plan of merger may set forth:~~

8154 ~~(a) — If a domestic corporation is to be the surviving entity, any amendments to, or~~
8155 ~~a restatement of, the articles of incorporation of the surviving entity, and such amendments~~
8156 ~~or restatement shall be effective at the effective date of the merger.~~

8157 ~~(b) — The effective date of the merger, which may be on or after the date of filing~~
8158 ~~the certificate of merger.~~

8159 ~~(c) — Any other provisions relating to the merger.~~

8160 ~~(5) — The plan of merger required by subsection (3) shall be adopted and approved by each~~
8161 ~~domestic corporation that is a party to the merger in the same manner as is provided in s. 607.1103.~~
8162 ~~Notwithstanding the foregoing, if the surviving entity is a partnership, no shareholder of a domestic~~
8163 ~~corporation that is a party to the merger shall, as a result of the merger, become a general partner~~
8164 ~~of the surviving entity, unless such shareholder specifically consents in writing to becoming a~~
8165 ~~general partner of the surviving entity, and unless such written consent is obtained from each such~~
8166 ~~shareholder.~~

8174 shareholder who, as a result of the merger, would become a general partner of the surviving entity,
8175 such merger shall not become effective under s. 607.11101. Any shareholder providing such
8176 consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s.
8177 607.1103.

8178
8179 (6) Sections 607.1103 and 607.1301-607.1333 shall, insofar as they are applicable, apply
8180 to mergers of one or more domestic corporations with or into one or more other business entities.

8181
8182 (7) Notwithstanding any provision of this section or ss. 607.1109 and 607.11101, any
8183 merger consisting solely of the merger of one or more domestic corporations with or into one or
8184 more foreign corporations shall be consummated solely in accordance with the requirements of s.
8185 607.1107.

8186

8187 **Commentary to Section 607.1108:**

8188

8189 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8190 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8191 this section.

8192

8193 ~~607.1109—Articles of merger.~~

8194

8195 ~~(1) After a plan of merger is approved by each domestic corporation and other business~~
8196 ~~entity that is a party to the merger, the surviving entity shall deliver to the Department of State for~~
8197 ~~filing articles of merger, which shall be executed by each domestic corporation as required by s.~~
8198 ~~607.0120 and by each other business entity as required by applicable law, and which shall set forth:~~

8199

8200 ~~(a) The plan of merger.~~

8201

8202 ~~(b) A statement that the plan of merger was approved by each domestic~~
8203 ~~corporation that is a party to the merger in accordance with the applicable provisions of~~
8204 ~~this chapter, and, if applicable, a statement that the written consent of each shareholder of~~
8205 ~~such domestic corporation who, as a result of the merger, becomes a general partner of the~~
8206 ~~surviving entity has been obtained pursuant to s. 607.1108(5).~~

8207

8208 ~~(c) A statement that the plan of merger was approved by each domestic~~
8209 ~~partnership that is a party to the merger in accordance with the applicable provisions of~~
8210 ~~chapter 620.~~

8211

8212 ~~(d) A statement that the plan of merger was approved by each domestic limited~~
8213 ~~liability company that is a party to the merger in accordance with the applicable provisions~~
8214 ~~of chapter 605.~~

8215

8216 ~~(e) A statement that the plan of merger was approved by each other business~~
8217 ~~entity that is a party to the merger, other than domestic corporations, limited liability~~
8218 ~~companies, and partnerships formed, organized, or incorporated under the laws of this~~
8219 ~~state, in accordance with the applicable laws of the state, country, or jurisdiction under~~
8220 ~~which such other business entity is formed, organized, or incorporated.~~

8221

8222 ~~(f) The effective date of the merger, which may be on or after the date of filing~~
8223 ~~the articles of merger, provided, if the articles of merger do not provide for an effective~~
8224 ~~date of the merger, the effective date shall be the date on which the articles of merger are~~
8225 ~~filed.~~

8226

8227 ~~(g) If the surviving entity is another business entity formed, organized, or~~
8228 ~~incorporated under the laws of any state, country, or jurisdiction other than this state:~~

8229

8230 ~~1. The address, including street and number, if any, of its principal office~~
8231 ~~under the laws of the state, country, or jurisdiction in which it was formed,~~
8232 ~~organized, or incorporated.~~

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~~2.—A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger.~~

~~3.—A statement that the surviving entity has agreed to promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under s. 607.1302.~~

~~(2)—A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.~~

~~(3)—A domestic corporation is not required to file articles of merger pursuant to subsection (1) if the domestic corporation is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 605.1025, s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and (2), and if the articles of merger or certificate of merger substantially complies with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (2).~~

8254 **Commentary to Section 607.1109:**

8255

8256 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8257 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8258 this section.

8259

8260 ~~607.11101—Effect of merger of domestic corporation and other business entity.~~

8261

8262 ~~When a merger becomes effective:~~

8263

8264 ~~(1) Every domestic corporation and other business entity that is a party to the merger~~
8265 ~~merges into the surviving entity and the separate existence of every domestic corporation and other~~
8266 ~~business entity that is a party to the merger except the surviving entity ceases.~~

8267

8268 ~~(2) The title to all real estate and other property, or any interest therein, owned by each~~
8269 ~~domestic corporation and other business entity that is a party to the merger is vested in the~~
8270 ~~surviving entity without reversion or impairment.~~

8271

8272 ~~(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and~~
8273 ~~obligations of each domestic corporation and other business entity that is a party to the merger,~~
8274 ~~including liabilities arising out of appraisal rights with respect to such merger under applicable~~
8275 ~~law.~~

8276

8277 ~~(4) Any claim existing or action or proceeding pending by or against any domestic~~
8278 ~~corporation or other business entity that is a party to the merger may be continued as if the merger~~
8279 ~~did not occur or the surviving entity may be substituted in the proceeding for the domestic~~
8280 ~~corporation or other business entity which ceased existence.~~

8281

8282 ~~(5) Neither the rights of creditors nor any liens upon the property of any domestic~~
8283 ~~corporation or other business entity shall be impaired by such merger.~~

8284

8285 ~~(6) If a domestic corporation is the surviving entity, the articles of incorporation of such~~
8286 ~~corporation in effect immediately prior to the time the merger becomes effective shall be the~~
8287 ~~articles of incorporation of the surviving entity, except as amended or restated to the extent~~
8288 ~~provided in the plan of merger.~~

8289

8290 ~~(7) The shares, partnership interests, interests, obligations, or other securities, and the~~
8291 ~~rights to acquire shares, partnership interests, interests, obligations, or other securities, of each~~
8292 ~~domestic corporation and other business entity that is a party to the merger shall be converted into~~
8293 ~~shares, partnership interests, interests, obligations, or other securities, or rights to such securities,~~
8294 ~~of the surviving entity or any other domestic corporation or other business entity or, in whole or~~
8295 ~~in part, into cash or other property as provided in the plan of merger, and the former holders of~~
8296 ~~shares, partnership interests, interests, obligations, or other securities, or rights to such securities,~~
8297 ~~shall be entitled only to the rights provided in the plan of merger and to their appraisal rights, if~~
8298 ~~any, under s. 605.1006, ss. 605.1061–605.1072, ss. 607.1301–607.1333, ss. 620.2114–620.2124, or~~
8299 ~~other applicable law.~~

8300 **Commentary to Section 607.11101:**

8301

8302 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8303 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8304 this section.

8305

PART B - DOMESTICATION

607.11920 Domestication.

(1) By complying with the provisions of this section and ss. 607.11921-607.11924, as applicable, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of this section and ss. 607.11921-607.11924, as applicable, a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) In a domestication under subsections (2), the domesticating eligible entity shall enter into a plan of domestication. The plan of domestication must include:

(a) The name of the domesticating corporation;

(b) The name and jurisdiction of formation of the domesticated corporation;

(c) The manner and basis of reclassifying the shares of the domesticating corporation into (i) shares or other securities, (ii) obligations, (iii) rights to acquire shares or other securities, (iv) cash, (v) other property, or (vi) any combination of the foregoing;

(d) The proposed organic rules of the domesticated corporation which are to be in writing; and

(e) The other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with a. 607.0120(11).

(6) If a protected agreement of a domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until such time as the provision is first amended after _____, 20 (its enactment date).

8346 **Commentary to Section 607.11920:**

8347 The FBCA currently has one section dealing with domestication, s. 607.1801. Florida law currently
8348 allows non-United States corporations (with corporations being broadly defined in the existing
8349 statute) to domesticate into Florida. New proposed ss. 607.11920-607.11924 expands the use of
8350 those types of domestications that can be completed under the FBCA and provides greater
8351 guidance as to the effect of those domestications.
8352

8353 This proposal allows domestications of (i) Florida corporations into foreign corporations organized
8354 in both other states of the United States and non-United States jurisdictions, and (ii) foreign
8355 corporations organized in other states of the United States and in non-United States jurisdictions
8356 to become Florida domestic corporations, so long as, in both cases, the domestication is permitted
8357 by the organic law of the foreign corporation. This proposal does not permit other types of entities
8358 to domesticate into Florida or Florida corporations to domesticate into other types of foreign
8359 entities, with the view that such transactions can be completed as either a conversion or a merger.
8360

8361 Because the definition of foreign corporation under the FBCA includes not only a corporation
8362 organized in another state of the United States but also an eligible entity organized under the law
8363 of a non-United States jurisdiction that would be a business corporation if incorporated under the
8364 law of this state, this definition would include entities in non-United States jurisdictions called
8365 something other than "corporations" that are the functional equivalent of what would be a domestic
8366 corporation in Florida.
8367

8368 607.11921 Action on a Plan of Domestication.
8369

8370 In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan
8371 of domestication shall be adopted in the following manner:
8372

8373 (1) The plan of domestication shall first be adopted by the board of directors of such
8374 domestic corporation.
8375

8376 (2) The plan of domestication shall then be approved by the shareholders of such domestic
8377 corporation. In submitting the plan of domestication to the shareholders for approval, the board of
8378 directors shall recommend that the shareholders approve the plan, unless (i) the board of directors
8379 makes a determination that because of conflicts of interest or other special circumstances it should
8380 not make such a recommendation or (ii) s. 607.0826 applies. If either (i) or (ii) applies, the board
8381 shall inform the shareholders of the basis for its so proceeding without such recommendation.
8382

8383 (3) The board of directors may set conditions for approval of the plan of domestication
8384 by the shareholders or the effectiveness of the plan of domestication.
8385

8386 (4) If the plan of domestication is required to be approved by the shareholders, and if the
8387 approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder,
8388 regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication
8389 is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the
8390 meeting is to consider the plan of domestication and must contain or be accompanied by a copy of the
8391 plan. The notice must include or be accompanied by a copy of the organic rules of the domesticated
8392 eligible entity that are to be in writing as they will be in effect immediately after the domestication.
8393

8394 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
8395 subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan
8396 of domestication requires:
8397

8398 (a) The approval of the shareholders at a meeting at which a quorum exists consisting
8399 of a majority of the votes entitled to be cast on the plan, and,
8400

8401 (b) Except as provided in subsection (6), the approval of each class or series of shares
8402 voting as a separate voting group at a meeting at which a quorum of the voting group exists
8403 consisting of a majority of the votes entitled to be cast on the plan by that voting group.
8404

8405 (6) The articles of incorporation may expressly limit or eliminate the separate voting
8406 rights provided in subsection (5)(b) as to any class or series of shares, except when the public
8407 organic rules of the foreign corporation resulting from the domestication include what would be

8408 in effect an amendment that would entitle the class or series to vote as a separate group under s.
8409 607.1004 if it were a proposed amendment of the articles of incorporation of a domestic
8410 domesticating corporation.

8411
8412 (7) If as a result of a domestication one or more shareholders of a domestic domesticating
8413 corporation would become subject to interest holder liability, approval of the plan of domestication
8414 shall require the signing in connection with the domestication, by each such shareholder, of a
8415 separate written consent to become subject to such interest holder liability, unless in the case of a
8416 shareholder that already has interest holder liability with respect to the domesticating corporation,
8417 the terms and conditions of the interest holder liability with respect to the domesticated corporation
8418 are substantially identical to those of the existing interest holder liability (other than for changes
8419 that eliminate or reduce such interest holder liability).

8420

8421 **Commentary to Section 607.11921:**

8422 This section largely follows s. 9.21 of the Model Act with respect to the votes required to approve a
8423 domestication of a Florida corporation into a corporation formed in another jurisdiction.

8424

607.11922 Articles of Domestication; Effectiveness.

(1) Articles of domestication shall be signed by the domesticating corporation after:

(a) A plan of domestication of a domestic corporation has been adopted and approved as required by this chapter, or

(b) A foreign corporation that is the domesticating corporation has approved a domestication as required by the applicable provisions of this chapter and under the foreign corporation's organic law.

(2) Articles of domestication must set forth:

(a) The name of the domesticating corporation and its jurisdiction of formation;

(b) The name and jurisdiction of formation of the domesticated corporation; and

(c) If the domesticating corporation is a domestic corporation, a statement that the plan of domestication was approved in accordance with this chapter or, if the domesticating corporation is a foreign corporation, a statement that the domestication was approved in accordance with its organic law.

(3) If the domesticated corporation is to be a domestic corporation, the articles of domestication must attach articles of incorporation of the domesticated corporation that satisfy the requirements of s. 607.0202. Provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation attached to the articles of domestication.

(4) The articles of domestication shall be delivered to the department for filing, and shall take effect at the effective date determined in accordance with s. 607.0123.

(5) If the domesticated corporation is a domestic corporation, the domestication becomes effective when the articles of domestication are effective. If the domesticated corporation is a foreign corporation, the domestication becomes effective on the later of (i) the date and time provided by the organic law of the domesticated corporation, and (ii) when the articles of domestication are effective.

(6) If the domesticating corporation is a foreign corporation that is qualified to transact business in this state under ss. 607.1501-607.1523, its certificate of authority shall be cancelled automatically when the domestication becomes effective.

8465

8466 (7) A copy of the articles of domestication, certified by the department, may be filed in
8467 the official records of any county in this state in which the domesticating eligible entity holds an
8468 interest in real property.

8469

8470 **Commentary to Section 607.11922:**

8471 This section largely follows s. 9.22 of the Model Act with respect to the filing of articles of
8472 domestication and effectiveness of a domestication. It is very similar to the provisions in the Model
8473 Act relating to conversions of entities.

8474

8475 607.11923 Amendment of a Plan of Domestication; Abandonment.

8476

8477 (1) A plan of domestication of a domestic corporation adopted under s. 607.11920(3) may be
8478 amended:

8479

8480 (a) In the same manner as the plan of domestication was approved, if the plan does
8481 not provide for the manner in which it may be amended; or

8482

8483 (b) In the manner provided in the plan of domestication, except that a shareholder
8484 that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent
8485 to any amendment of the plan that will change:

8486

8487 1. The amount or kind of (i) shares or other securities, (ii) obligations, (iii) rights
8488 to acquire shares or other securities, eligible interests, (iv) cash, (v) other property, or (vi)
8489 any combination of the foregoing, to be received by any of the shareholders of the
8490 domesticating corporation under the plan;

8491

8492 2. The organic rules of the domesticated corporation that are to be in writing and
8493 that will be in effect immediately after the domestication becomes effective, except for
8494 changes that do not require approval of the shareholders of the domesticated corporation
8495 under its organic rules as set forth in the plan of domestication; or

8496

8497 3. Any of the other terms or conditions of the plan, if the change would adversely
8498 affect the shareholder in any material respect.

8499

8500 (2) After a plan of domestication has been adopted and approved by a domestic corporation
8501 as required by this chapter, and before the articles of domestication have become effective, the
8502 plan may be abandoned by the corporation without action by its shareholders in accordance with
8503 any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner
8504 determined by the board of directors of the domestic corporation.

8505

8506 (3) If a domestication is abandoned after the articles of domestication have been delivered to
8507 the department for filing but before the articles of domestication have become effective, a
8508 statement of abandonment, signed by the domesticating corporation, must be delivered to the
8509 department for filing before the articles of domestication become effective. The statement shall
8510 take effect upon filing, and the domestication shall be deemed abandoned and shall not become
8511 effective. The statement of abandonment must contain:

8512

8513 (a) The name of the domesticating corporation;

8514

8515 (b) The date on which the articles of domestication were filed by the department; and

8516

8517 (c) A statement that the domestication has been abandoned in accordance with this

8518 section.

8519

8520 **Commentary to Section 607.11923:**

8521 This section largely follows s. 9.23 of the Model Act.

8522

8523 607.11924 Effect of Domestication.

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8525 (1) When a domestication becomes effective:

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(a) All real property and other property owned by, including any interests therein and all title thereto, and every contract right possessed by, the domesticating corporation, are the property and contract rights of the domesticated corporation without transfer, reversion or impairment;

(b) All debts, obligations and other liabilities of the domesticating corporation are the debts, obligations and other liabilities of the domesticated corporation;

(c) The name of the domesticated corporation may but need not be substituted for the name of the domesticating corporation in any pending proceeding;

(d) The organic rules of the domesticated corporation become effective;

(e) The shares or equity interests of the domesticating corporation are reclassified into (i) shares or other securities, (ii) obligations, (iii) rights to acquire shares or other securities, (iv) cash or (v) other property in accordance with the terms of the domestication, and the shareholders or equity owners of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) The domesticated corporation is:

1. Incorporated under and subject to the organic law of the domesticated corporation;

2. The same corporation without interruption as the domesticating corporation; and

3. Deemed to have been incorporated or formed on the date the domesticating corporation was originally incorporated.

(2) In addition, when a domestication of a domestic corporation into a foreign jurisdiction becomes effective, the domesticated corporation is deemed to:

8561 (a) Appoint the secretary of state as its agent for service of process in a proceeding
8562 to enforce the rights of shareholders who exercise appraisal rights in connection with the
8563 domestication; and

8564
8565 (b) Agree that it will promptly pay the amount, if any, to which such shareholders
8566 are entitled under ss. 607.1301-607.1340.

8567
8568 (3) Except as otherwise provided in the organic law or organic rules of a domesticating
8569 foreign corporation, the interest holder liability of a shareholder or equity holder in a foreign
8570 corporation that is domesticated into this state who had interest holder liability in respect of such
8571 domesticating corporation before the domestication becomes effective shall be as follows:

8572
8573 (a) The domestication does not discharge that prior interest holder liability with
8574 respect to any interest holder liabilities that arose before the domestication becomes effective.

8575
8576 (b) The provisions of the organic law of the domesticating corporation shall
8577 continue to apply to the collection or discharge of any interest holder liabilities preserved by
8578 subsection (3)(a), as if the domestication had not occurred.

8579
8580 (c) The shareholder or equity holder shall have such rights of contribution from
8581 other persons as are provided by the organic law of the domesticating corporation with respect
8582 to any interest holder liabilities preserved by subsection (3)(a), as if the domestication had not
8583 occurred.

8584
8585 (d) The shareholder or equity holder shall not, by reason of such prior interest holder
8586 liability, have interest holder liability with respect to any interest holder liabilities that are
8587 incurred after the domestication becomes effective.

8588
8589 (4) A shareholder or equity holder who becomes subject to interest holder liability in respect
8590 of the domesticated corporation as a result of the domestication shall have such interest holder
8591 liability only in respect of interest holder liabilities that arise after the domestication becomes
8592 effective.

8593
8594 (5) A domestication does not constitute or cause the dissolution of the domesticating
8595 corporation.

8596
8597 (6) Property held for charitable purposes under the laws of this state by a domestic or foreign
8598 corporation immediately before a domestication becomes effective may not, as a result of the
8599 transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise
8600 transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy

8601 près or dealing with nondiversion of charitable assets.

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8603 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
8604 donation, subscription, or conveyance which is made to the domesticating corporation and which
8605 takes effect or remains payable after the domestication inures to the domesticated corporation.

8606

8607 (8) A trust obligation that would govern property if transferred to the domesticating
8608 corporation applies to property that is transferred to the domesticated corporation after the
8609 domestication takes effect.

8610

8611 **Commentary to Section 607.11924:**

8612 This section largely follows s. 9.24 of the Model Act and resolves one of the shortcomings of the
8613 existing FBCA domestication statute, which does not explicitly describe the effect of a
8614 domestication.

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8616

PART C - CONVERSIONS³

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607.11930~~12~~ Conversion of domestic corporation into another business entity.

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~~(1) As used in this section and ss. 607.1113 and 607.1114, the term "another business entity" or "other business entity" means a limited liability company; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; or any other domestic or foreign entity that is organized under a governing law or other applicable law, provided such term shall not include a corporation and shall not include any entity that has not been organized for profit.~~

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~~(2) By complying with this chapter, including adopting a plan of conversion in accordance with s. 607.11931 and complying with s. 607.11932, a domestic corporation may become: Pursuant to a plan of conversion complying with and approved in accordance with this section, a domestic corporation may convert to another business entity organized under the laws of this state or any other state, the United States, a foreign country, or other foreign jurisdiction, if:~~

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~~(a) A domestic eligible entity, other than a domestic corporation; or the domestic corporation converting to the other business entity complies with the applicable provisions of this chapter.~~

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~~(b) A foreign eligible entity, if the conversion is permitted by the organic law of the foreign eligible entity The conversion is permitted by the laws of the jurisdiction that enacted the applicable laws under which the other business entity is governed and the other business entity complies with such laws in effecting the conversion.~~

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~~(2) By complying with the provisions of this chapter and applicable provisions of its organic law, a domestic eligible entity other than a domestic corporation may become a domestic corporation.~~

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~~(3) By complying with the provisions of this chapter applicable to foreign entities and by complying with the applicable provisions of its organic law, a foreign eligible entity may become a domestic corporation, but only if the organic law of the foreign eligible entity permits it to become a corporation in another jurisdiction.~~

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8648

~~(4) If a protected agreement of a domestic converting eligible entity is in effect immediately before the conversion becomes effective contains a provision applying to a merger of the corporation that is a converting eligible entity and the agreement does not refer to a conversion of the corporation,~~

³ Need to discuss with bill drafting if the draft can renumber these sections as set forth in this subchapter B so that they follow the numbering of the sections of Article 9 of the Model Act dealing with this topic.

8649 the provision applies to a conversion of the corporation as if the conversion were a merger, until such
8650 time as the provision is first amended after _____, 20__ (the enactment date).
8651

8652 ~~(3) The plan of conversion shall set forth:~~

8653 ~~(a) The name of the domestic corporation and the name, jurisdiction of organization~~
8654 ~~of the other business entity to which the domestic corporation is to be converted.~~

8655 ~~(b) The terms and conditions of the conversion, including the manner and basis of~~
8656 ~~converting the shares, obligations, or other securities, or rights to acquire shares,~~
8657 ~~obligations, or other securities, of the domestic corporation into the partnership interests,~~
8658 ~~limited liability company interests, obligations, or other securities of the other business~~
8659 ~~entity, including any rights to acquire any such interests, obligations, or other securities,~~
8660 ~~or, in whole or in part, into cash or other consideration.~~

8661 ~~(c) All statements required to be set forth in the plan of conversion by the laws under~~
8662 ~~which the other business entity is governed.~~

8663 ~~(4) The plan of conversion shall include, or have attached to it, the articles, certificate,~~
8664 ~~registration, or other organizational document by which the other business entity has been or will~~
8665 ~~be organized under its governing laws.~~

8666 ~~(5) The plan of conversion may also set forth any other provisions relating to the~~
8667 ~~conversion.~~

8668 ~~(6) The plan of conversion shall be adopted and approved by the board of directors and~~
8669 ~~shareholders of a domestic corporation in the same manner as a merger of a domestic corporation~~
8670 ~~under s. 607.1103. Notwithstanding such requirement, if the other business entity is a partnership~~
8671 ~~or limited partnership, no shareholder of the converting domestic corporation shall, as a result of~~
8672 ~~the conversion, become a general partner of the partnership or limited partnership, unless such~~
8673 ~~shareholder specifically consents in writing to becoming a general partner of such partnership or~~
8674 ~~limited partnership and, unless such written consent is obtained from each such shareholder, such~~
8675 ~~conversion shall not become effective under s. 607.1114. Any shareholder providing such consent~~
8676 ~~in writing shall be deemed to have voted in favor of the plan of conversion pursuant to which the~~
8677 ~~shareholder became a general partner.~~

8678 ~~(7) Section 607.1103 and ss. 607.1301–607.1333 shall, insofar as they are applicable,~~
8679 ~~apply to a conversion of a domestic corporation into another business entity in accordance with~~
8680 ~~this chapter.~~

8681

8682 **Commentary to Section 607.11930:**

8683 This section has not been renumbered despite the proposed deletion of several preceding sections.
8684 It is largely based on s. 9.30 of the Model Act.

8685 In 2001, amended several times since, this section of the Model Act was split into three different
8686 sections. This proposal follows the Model Act in that regard. All types of conversions of a domestic
8687 corporation into a domestic or foreign eligible entity (other than a domestic corporation) and all
8688 conversions of a domestic or foreign eligible entity into a domestic corporation are now addressed
8689 in this section with applicable details set forth in subsequent sections addressing conversions.

8690

8691 607.119313 Plan Certificate of conversion.

8692 (1) A domestic corporation may convert to a domestic or foreign eligible entity under
8693 this chapter by approving After a plan of conversion. The plan of conversion must include is
8694 approved by the board of directors and shareholders of a converting domestic corporation such
8695 corporation shall deliver to the Department of State for filing a certificate of conversion which
8696 shall be executed by the domestic corporation as required by s. 607.0120 and shall set forth:

8697 (a) The name of the domestic converting corporation; ~~A statement that the~~
8698 ~~domestic corporation has been converted into another business entity in compliance with~~
8699 ~~this chapter and that the conversion complies with the applicable laws governing the other~~
8700 ~~business entity.~~

8701 (b) The name, jurisdiction of formation and type of entity of the converted
8702 eligible entity; ~~A statement that the plan of conversion was approved by the converting~~
8703 ~~domestic corporation in accordance with this chapter and, if applicable, a statement that~~
8704 ~~the written consent of each shareholder of such domestic corporation who, as a result of~~
8705 ~~the conversion, becomes a general partner of the surviving entity has been obtained~~
8706 ~~pursuant to s. 607.1112(6).~~

8707 (c) The manner and basis of converting the shares of the domestic corporation, or
8708 the rights to acquire shares, obligations or other securities, of the domestic corporation
8709 into (i) shares, (ii) other securities, (iii) eligible interests, (iv) obligations, (v) rights to
8710 acquire shares, other securities or eligible interests, (vi) cash, (vii) other property, or (viii)
8711 any combination of the foregoing; ~~effective date of the conversion, which, subject to the~~
8712 ~~limitations in s. 607.0123(2), may be on or after the date of filing the certificate of~~
8713 ~~conversion but shall not be different than the effective date of the conversion under the~~
8714 ~~laws governing the other business entity into which the domestic corporation has been~~
8715 ~~converted.~~

8717 (d) The other terms and conditions of the conversion; and address, including street
8718 and number, if any, of the principal office of the other business entity under the laws of the
8719 state, country, or jurisdiction in which such other business entity was organized.

8720 (e) The full text, as it will be in effect immediately after the conversion becomes
8721 effective, of the organic rules of the converted eligible entity which are to be in writing. If
8722 the other business entity is a foreign entity and is not authorized to transact business in this
8723 state, a statement that the other business entity appoints the Secretary of State as its agent
8724 for service of process in a proceeding to enforce obligations of the converting domestic
8725 corporation, including any appraisal rights of shareholders of the converting domestic
8726 corporation under ss. 607.1301-607.1333 and the street and mailing address of an office
8727 which the Department of State may use for purposes of s. 607.1114(4).

8728 ~~(f) A statement that the other business entity has agreed to pay any shareholders~~
8729 ~~having appraisal rights the amount to which they are entitled under ss. 607.1301–607.1333.~~

8730 (2) In addition to the requirements of subsection (1), a plan of conversion may contain
8731 any other provision not prohibited by law ~~A copy of the certificate of conversion, certified by the~~
8732 ~~department of State, may be filed in the official records of any county in this state in which the~~
8733 ~~converting domestic corporation holds an interest in real property.~~

8734 (3) The terms of a plan of conversion may be made dependent upon facts objectively
8735 ascertainable outside the plan in accordance with section 607.0120(11) ~~A converting domestic~~
8736 ~~corporation is not required to file a certificate of conversion pursuant to subsection (1) if the~~
8737 ~~converting domestic corporation files articles of conversion or a certificate of conversion that~~
8738 ~~substantially complies with the requirements of this section pursuant to s. 605.1045,~~
8739 ~~s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains the signatures required by this chapter. In such~~
8740 ~~a case, the other certificate of conversion may also be used for purposes of subsection (2).~~

8741

8742 **Commentary to Section 607.11931:**

8743 This provision largely follows the corollary provision of the Model Act (s. 9.31).

8744 Subsection (4) has been retained even though it is not part of the Model Act.

8745 Part B of Article 11 uses the term "converted eligible entity" to mean the converting eligible entity
8746 as it continues in existence after (following) the conversion. Put another way, it is the entity to
8747 which the converting eligible entity is converted. At the same time, it's the same entity as the
8748 converting eligible entity. Thus, there was some concern as to whether the term "converted eligible
8749 entity" (not unlike the term currently used in the FBCA, the "other business entity") causes
8750 confusion. Based on this concern, the Subcommittee considered using a term other than "converted
8751 eligible entity" (such as "resulting eligible entity" or the "eligible entity to which the converting
8752 eligible entity is converted" or the "as-converted eligible entity"). However, there was a view that
8753 all of these terms had the same issues, so the decision was made to retain the Model Act definition.

8754

8755 607.1193244 **Action on a plan** ~~Effect of conversion of domestic corporation into another~~
8756 ~~business entity.~~

8757 In the case of a conversion of a domestic corporation to a domestic or foreign eligible
8758 entity other than a domestic corporation, the plan of conversion shall be adopted in the following
8759 manner:
8760

8761 (1) The plan of conversion shall first be adopted by the board of directors of such
8762 domestic corporation ~~When a conversion becomes effective: A domestic corporation that has~~
8763 ~~been converted into another business entity pursuant to this chapter is for all purposes the same~~
8764 ~~entity that existed before the conversion.~~

8765 (2) The plan of conversion shall then be approved by the shareholders of such domestic
8766 corporation. In submitting the plan of conversion to the shareholders for their approval, the board
8767 of directors shall recommend that the shareholders approve the plan of conversion, unless (i) the
8768 board of directors makes a determination that because of conflicts of interest or other special
8769 circumstances it should not make such a recommendation, or (ii) s. 607.0826 applies. If either (i)
8770 or (ii) applies, the board of directors shall inform the shareholders of the basis for its so proceeding
8771 without such recommendation ~~title to all real property and other property, or any interest therein,~~
8772 ~~owned by the domestic corporation at the time of its conversion into the other business entity~~
8773 ~~remains vested in the converted entity without reversion or impairment by operation of this~~
8774 ~~chapter.~~

8775 (3) The board of directors may set conditions for approval of the plan of conversion by
8776 the shareholders or the effectiveness of the plan of conversion ~~other business entity into which the~~
8777 ~~domestic corporation was converted shall continue to be responsible and liable for all the liabilities~~
8778 ~~and obligations of the converting domestic corporation, including liability to any shareholders~~
8779 ~~having appraisal rights under ss. 607.1301–607.1333 with respect to such conversion.~~

8780 (4) If plan of conversion is required to be approved by the shareholders, and if the
8781 approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of
8782 whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for
8783 approval, in accordance with s. 607.0705. The notice must state that the purpose, or one of the
8784 purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied
8785 by a copy of the plan. The notice must include or be accompanied by a copy of the organic rules
8786 of the converted eligible entity which are to be in writing as they will be in effect immediately
8787 after the conversion ~~Any claim existing or action or proceeding pending by or against any domestic~~
8788 ~~corporation that is converted into another business entity may be continued as if the conversion~~
8789 ~~did not occur.~~

8790 (5) ~~Neither the rights of creditors nor any liens upon the property of a domestic~~
8791 ~~corporation that is converted into another business entity under this chapter shall be impaired by~~

8792 ~~such conversion~~ Unless the articles of incorporation, or the board of directors acting pursuant to
8793 subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan
8794 of conversion requires:

8795 (a) The approval of the shareholders at a meeting at which a quorum exists consisting
8796 of a majority of the votes entitled to be cast on the plan; and

8797 (b) The approval of each class or series of shares voting as a separate voting group at a
8798 meeting at which a quorum of the voting group exists consisting of a majority of the votes
8799 entitled to be cast on the plan by that voting group.

8800 (6) If as a result of the conversion one or more shareholders of the converting domestic
8801 corporation would become subject to interest holder liability, approval of the plan of conversion shall
8802 require the signing in connection with the transaction, by each such shareholder, of a separate written
8803 consent to become subject to such interest holder liability ~~The shares, obligations, and other~~
8804 ~~securities, or rights to acquire shares, obligations, or other securities, of the domestic corporation~~
8805 ~~shall be converted into the partnership interests, limited liability company interests, obligations, or~~
8806 ~~other securities of the other business entity, including any rights to acquire any such interests,~~
8807 ~~obligations, or other securities, or, in whole or in part, into cash, or other consideration, as provided~~
8808 ~~in the plan of conversion. The former shareholders of the converting domestic corporation shall be~~
8809 ~~entitled only to the rights provided in the plan of conversion and to their appraisal rights, if any,~~
8810 ~~under ss. 607.1301-607.1333 or other applicable law.~~

8811 (7) If the converted eligible entity is a partnership or limited partnership, no shareholder
8812 of the converting domestic corporation shall, as a result of the conversion, become a general
8813 partner of the partnership or limited partnership, unless such shareholder specifically consents in
8814 writing to becoming a general partner of such partnership or limited partnership and, unless such
8815 written consent is obtained from each such shareholder, such conversion shall not become effective
8816 under s. 607.11933. Any shareholder providing such consent in writing shall be deemed to have
8817 voted in favor of the plan of conversion pursuant to which the shareholder became a general
8818 partner.

8819 (8) Sections 607.1301-607.1340 shall, insofar as they are applicable, apply to a conversion
8820 in accordance with this chapter of a domestic corporation into a domestic or foreign eligible
8821 entity that is not a domestic corporation.

8822

8823 **Commentary to Section 607.11932:**

8824 Like the other sections in Chapter 11, the section of the Model Act (s, 9.32 in the 2016 Model Act)
8825 has been substantially changed in both 1999 and 2016. This revised draft largely follows the Model
8826 Act construct.

8827 Subsection (7) was retained from existing FBCA s. 607.1112(6) even though it is not in the Model
8828 Act.

8829 For clarity, subsection (8) was retained from existing s. 607.1112(7) even though it is not a Model
8830 Act provision.

8831

8832 607.11933-15 Articles of Conversion; Effectiveness of another business entity to a
8833 domestic corporation.

8834 (1) After (i) a plan of conversion of a domestic corporation has been adopted and
8835 approved as required by this chapter, or (ii) a domestic or foreign eligible entity (other than a
8836 domestic corporation) that is the converting eligible entity has approved a conversion as required
8837 under its organic law, articles of conversion shall be signed by the converting eligible entity as
8838 required by s. 607.0120 and must: As used in this section, the term "other business entity" means a
8839 limited liability company; a common law or business trust or association; a real estate investment
8840 trust; a general partnership, including a limited liability partnership; a limited partnership,
8841 including a limited liability limited partnership; or any other domestic or foreign entity that is
8842 organized under a governing law or other applicable law, provided such term shall not include a
8843 corporation and shall not include any entity that has not been organized for profit.
8844

8845 (a) State the name, jurisdiction of formation, and type of entity of the
8846 converting eligible entity;
8847

8848 (b) State the name, jurisdiction of formation, and type of entity of the converted
8849 eligible entity;
8850

8851 (c) If the converting eligible entity is:
8852

8853 1. A domestic corporation, state that the plan of conversion was approved
8854 in accordance with this chapter; or
8855

8856 2. A domestic or foreign eligible entity other than a domestic corporation,
8857 state that the conversion was approved by the eligible entity in accordance with its
8858 organic law.
8859

8860 (d) If the converted eligible entity is:
8861

8862 1. A domestic corporation or a domestic or foreign eligible entity that is not
8863 a domestic corporation, attach the public organic record of the converted eligible
8864 entity, except that provisions that would not be required to be included in a restated
8865 public organic record may be omitted; or
8866

8867 2. A domestic limited liability partnership, attach the filing or filings
8868 required to become a domestic limited liability partnership.
8869

8870 (2) If the converted eligible entity is a domestic corporation, its articles of incorporation
8871 must satisfy the requirements of section 607.0202, except that provisions that would not be required to

8872 be included in restated articles of incorporation may be omitted from the articles of incorporation. If
8873 the converted eligible entity is a domestic eligible entity that is not a domestic corporation, its public
8874 organic record, if any, must satisfy the applicable requirements of the organic law of this state, except
8875 that the public organic record does not need to be signed. Any other business entity may convert to
8876 a domestic corporation if the conversion is permitted by the laws of the jurisdiction that enacted
8877 the applicable laws governing the other business entity and the other business entity complies with
8878 such laws and the requirements of this section in effecting the conversion. The other business entity
8879 shall file with the Department of State in accordance with s. 607.0120:

8880 ~~(a) A certificate of conversion that has been executed in accordance with~~
8881 ~~s. 607.0120 and by the other business entity as required by applicable law.~~

8882 ~~(b) Articles of incorporation that comply with s. 607.0202 and have been executed~~
8883 ~~in accordance with s. 607.0120.~~

8884 (3) The articles of conversion shall be delivered to the department for filing, and shall take
8885 effect at the effective date determined in accordance with s. 607.0123. The certificate of conversion
8886 shall state:

8887 ~~(a) The date on which, and the jurisdiction in which, the other business entity was~~
8888 ~~first organized and, if the entity has changed, its jurisdiction immediately prior to its~~
8889 ~~conversion.~~

8890 ~~(b) The name of the other business entity immediately prior to the filing of the~~
8891 ~~certificate of conversion to a corporation.~~

8892 ~~(c) The name of the corporation as set forth in its articles of incorporation filed in~~
8893 ~~accordance with subsection (2).~~

8894 ~~(d) The delayed effective date or time, which, subject to the limitations in~~
8895 ~~s. 607.0123(2), shall be a date or time certain, of the conversion if the conversion is not to~~
8896 ~~be effective upon the filing of the certificate of conversion and the articles of incorporation,~~
8897 ~~provided such delayed effective date may not be different than the effective date and time~~
8898 ~~of the articles of incorporation.~~

8899 (4) If a converted eligible entity is a domestic eligible entity, the conversion becomes
8900 effective when the articles of conversion are effective. With respect to a conversion in which the
8901 converted eligible entity is a foreign eligible entity, the conversion itself shall become effective at the later
8902 of:

8903 1. The date and time provided by the organic law of that eligible entity, and

8904 2. When the articles of conversion take effect ~~Upon the filing with the Department of~~
8905 ~~State of the certificate of conversion and the articles of incorporation, or upon the delayed~~
8906 ~~effective date or time of the certificate of conversion and the articles of incorporation, the~~
8907 ~~other business entity shall be converted into a domestic corporation and the corporation~~
8908 ~~shall thereafter be subject to all of the provisions of this chapter, except notwithstanding~~
8909 ~~s. 607.0123, the existence of the corporation shall be deemed to have commenced when~~
8910 ~~the other business entity commenced its existence in the jurisdiction in which the other~~
8911 ~~business entity was first organized.~~

8912 (5) Articles of conversion required to be filed under this section may be combined with any
8913 filing required under the organic law of a domestic eligible entity that is the converting eligible entity or
8914 the converted eligible entity if the combined filing satisfies the requirements of both this section and
8915 the other organic law. ~~The conversion of any other business entity into a domestic corporation shall~~
8916 ~~not affect any obligations or liabilities of the other business entity incurred prior to its conversion~~
8917 ~~to a domestic corporation or the personal liability of any person incurred prior to such conversion.~~

8918 (6) If the converting eligible entity is a foreign eligible entity that is authorized to transaction
8919 business in this state under a provision of law similar to ss. 607.1501-607.1532, its foreign qualification
8920 shall be cancelled automatically on the effective date of its conversion ~~When any conversion~~
8921 ~~becomes effective under this section, for all purposes of the laws of this state, all of the rights,~~
8922 ~~privileges, and powers of the other business entity that has been converted, and all property, real,~~
8923 ~~personal, and mixed, and all debts due to such other business entity, as well as all other things and~~
8924 ~~causes of action belonging to such other business entity, shall be vested in the domestic corporation~~
8925 ~~into which it was converted and shall thereafter be the property of the domestic corporation as they~~
8926 ~~were of the other business entity. Without limiting this provision, title to any real property, or any~~
8927 ~~interest therein, vested by deed or otherwise in such other business entity at the time of conversion~~
8928 ~~shall remain vested in the converted entity without reversion or impairment by operation of this~~
8929 ~~chapter. All rights of creditors and all liens upon any property of such other business entity shall~~
8930 ~~be preserved unimpaired, and all debts, liabilities, and duties of such other business entity shall~~
8931 ~~thenceforth attach to the domestic corporation into which it was converted and may be enforced~~
8932 ~~against the domestic corporation to the same extent as if said debts, liabilities, and duties had been~~
8933 ~~incurred or contracted by the domestic corporation.~~

8934 (7) ~~Unless otherwise agreed, or as required under applicable laws of states other than~~
8935 ~~this state, the converting entity shall not be required to wind up its affairs or pay its liabilities and~~
8936 ~~distribute its assets and the conversion shall not constitute a dissolution of such entity and shall~~
8937 ~~constitute a continuation of the existence of the converting entity in the form of a domestic~~
8938 ~~corporation.~~

8939 (8) ~~Prior to filing a certificate of conversion with the Department of State, the conversion~~
8940 ~~shall be approved in the manner provided for by the document, instrument, agreement, or other~~

8941 ~~writing, as the case may be, governing the internal affairs of the other business entity or by other~~
8942 ~~applicable law, as appropriate, and the articles of incorporation and bylaws of the corporation shall~~
8943 ~~be approved by the same authorization required to approve the conversion. As part of such an~~
8944 ~~approval, a plan of conversion or other record may describe the manner and basis of converting~~
8945 ~~the partnership interests, limited liability company interests, obligations, or securities of, or other~~
8946 ~~interests or rights in, the other business entity, including any rights to acquire any such interests,~~
8947 ~~obligations, securities, or other rights, into shares of the domestic corporation, or rights to acquire~~
8948 ~~shares, obligations, securities, or other rights, or, in whole or in part, into cash or other~~
8949 ~~consideration. Such a plan or other record may also contain other provisions relating to the~~
8950 ~~conversion, including without limitation the right of the other business entity to abandon a~~
8951 ~~proposed conversion, or an effective date for the conversion that is not inconsistent with paragraph~~
8952 ~~(2)(d).~~

8953 (7) A copy of the articles of conversion, certified by the department, may be filed in the
8954 official records of any county in this state in which the converting eligible entity holds an interest
8955 in real property.

8956

8957 **Commentary to Section 607.11933:**

8958 This section largely follows s. 9.33 of the Model Act, but retains some aspects of existing Florida
8959 law.

8960 Subsection (7) is retained from existing s. 607.1113(2).

8961

8962 607.1193416 Amendment of Plan of Conversion; Abandonment.

8963
8964 (1) A plan of conversion of a converting eligible entity that is a domestic corporation
8965 may be amended:

8966
8967 (a) In the same manner as the plan of conversion was approved, if the plan does not
8968 provide for the manner in which it may be amended; or

8969
8970 (b) In the manner provided in the plan of conversion, except that shareholders that
8971 were entitled to vote on or consent to approval of the plan are entitled to vote on or consent
8972 to any amendment of the plan that will change:

8973
8974 1. The amount or kind of shares or other securities, eligible interests,
8975 obligations, rights to acquire shares or other securities, eligible interests, cash, other
8976 property, or any combination of the foregoing, to be received by any of the
8977 shareholders of the converting corporation under the plan;

8978
8979 2. The organic rules of the converted eligible entity that will be in effect
8980 immediately after the conversion becomes effective, except for changes that do not
8981 require approval of the eligible interest holders of the converted eligible entity under
8982 its organic law or organic rules; or

8983
8984 3. Any other terms or conditions of the plan, if the change would adversely
8985 affect such shareholders in any material respect.

8986
8987 (2) After a plan of conversion has been adopted and approved by a converting eligible
8988 entity that is a domestic corporation in the manner required by this chapter and before the articles
8989 of conversion become effective, the plan may be abandoned by the domestic corporation without
8990 action by its shareholders in accordance with any procedures set forth in the plan or, if no such
8991 procedures are set forth in the plan, in the manner determined by the board of directors of the
8992 domestic corporation.

8993
8994 (3) If a conversion is abandoned after the articles of conversion have been delivered to
8995 the department for filing but before the articles of conversion have become effective, a statement
8996 of abandonment, signed by the converting eligible entity, shall be delivered to the department for
8997 filing before the articles of conversion become effective. The statement shall take effect on filing,
8998 and the conversion shall be deemed abandoned and shall not become effective. The statement of
8999 abandonment must contain:

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9001 (a) The name of the converting eligible entity;

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(b) The date on which the articles of conversion were filed by the department; and

(c) A statement that the conversion has been abandoned in accordance with this section.

9008 **Commentary to Section 607.11934:**

9009 This section largely adopts Model Act s. 9.34 and for the most part follows the corollary provisions
9010 in the Model Act regarding amendment and abandonment of a plan of merger or a plan of share
9011 exchange.

9012

9013 607.1193547 Effect of Conversion.
9014

9015 (1) When a conversion becomes effective:
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9017 (a) All real property and other property owned by, including any interest therein and
9018 all title thereto, and every contract right possessed by, the converting eligible entity remain the
9019 property and contract rights of the converted eligible entity without transfer, reversion or
9020 impairment;
9021

9022 (b) All debts, obligations and other liabilities of the converting eligible entity remain
9023 the debts, obligations and other liabilities of the converted eligible entity;
9024

9025 (c) The name of the converted eligible entity may but need not be substituted for
9026 the name of the converting eligible entity in any pending action or proceeding;
9027

9028 (d) If the converted eligible entity is a filing entity or a domestic corporation or a
9029 domestic or foreign nonprofit corporation, its public organic record and its private organic
9030 rules become effective;
9031

9032 (e) If the converted eligible entity is a nonfiling entity, its private organic rules
9033 become effective;
9034

9035 (f) If the converted eligible entity is a limited liability partnership, the filing required
9036 to become a limited liability partnership and its private organic rules become effective;
9037

9038 (g) The shares, rights to acquire shares, eligible interests, other securities and
9039 obligations of the converting eligible entity are reclassified into shares other securities, rights
9040 to acquire shares or other securities, eligible interests, obligations, cash, or other property in
9041 accordance with the terms of the conversion, and the shareholders or interest holders of the
9042 converting eligible entity are entitled only to the rights provided to them by those terms and to
9043 any rights they may have under s. 607.1302 or under the organic law of the converting eligible
9044 entity; and
9045

9046 (h) The converted eligible entity is:
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9048 1. Deemed to be incorporated or organized under and subject to the organic law of
9049 the converted eligible entity;
9050

9051 2. Deemed to be the same entity without interruption as the converting eligible
9052 entity; and

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3. Deemed to have been incorporated or otherwise organized on the date that the converting eligible entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a domestic or foreign eligible entity other than a domestic corporation becomes effective, the converted eligible entity is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under ss. 607.1301-607.1340.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a domestic or foreign eligible entity other than a domestic corporation, a shareholder or eligible interest holder who becomes subject to interest holder liability in respect of a domestic corporation or domestic or foreign eligible entity other than a domestic eligible entity as a result of the conversion shall have such interest holder liability only in respect of interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the domestic or foreign eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability in respect of such converting eligible entity before the conversion becomes effective shall be as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subsection (4)(a), as if the conversion had not occurred.

(c) The eligible interest holder shall have such rights of contribution from other persons as are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by subsection (4)(a), as if the conversion had not occurred.

(d) The eligible interest holder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

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(5) A conversion does not require the converting eligible entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign eligible entity immediately before a conversion becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy prè or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to the converting eligible entity and which takes effect or remains payable after the conversion inures to the converted eligible entity.

(8) A trust obligation that would govern property if transferred to the converting eligible entity applies to property that is to be transferred to the converted eligible entity after the conversion becomes effective.

9111 **Commentary to Section 607.11935:**

9112 This section largely adopts Model Act s. 9.35 and for the most part follows the corollary provisions
9113 in the Model Act regarding the effect of a merger or share exchange.

9114

9115 ARTICLE 12

9116 SALE OF ASSETS

9117

9118 607.1201 Disposition of Sale of assets not requiring shareholder approval in regular
9119 course of business and mortgage of assets.

9120

9121 ~~(1)~~ No approval by the shareholders is required, unless the articles of incorporation
9122 otherwise provide ~~A corporation may, on the terms and conditions and for the consideration~~
9123 ~~determined by the board of directors:~~

9124

9125 (1a) To Ssell, lease, exchange, or otherwise dispose of any or all, of the
9126 corporation's assets or substantially all, of its property in the usual and regular course of
9127 business;

9128

9129 (2b) To mMortgage, pledge, dedicate to the repayment of indebtedness (whether
9130 with or without recourse), create a security interest in, or otherwise encumber any or all of
9131 the corporation's its assets, property regardless of whether or not in the usual and regular
9132 course of business; ~~or~~

9133

9134 (c) To transfer any or all of the corporation's assets to one or more domestic or
9135 foreign corporations or other entities all of the shares or interests of which its property to a
9136 corporation all the shares of which are owned by the corporation; or

9137

9138 (d) Except to the extent that the distribution is part of a dissolution of the corporation
9139 under ss. 607.1401-607.14401, to distribute assets pro rata to the holders of one or more
9140 classes or series of the corporation's shares.

9141

9142 (2) ~~Unless the articles of incorporation require it, approval by the shareholders of a~~
9143 ~~transaction described in subsection (1) is not required.~~

9145 **Commentary to Section 607.1201:**

9146

9147 This section makes changes to largely conform this section to the provisions of s. 12.01 of the
9148 Model Act. While many of these changes are not considered substantive, the revised section
9149 clarifies situations where shareholder approval would not be required even though one might argue
9150 that that such transactions constitute a sale of substantially all of the assets of the corporation.

9151

9152 New s. 607.1201 does not include existing language in s. 607.1201 that, although not believed to
9153 be intended, could have been read as requiring all sales of assets to be approved by the board of
9154 directors. While most Florida lawyers do not believe that such board approval is required in all
9155 circumstances under the existing statute, this revised provision removes the ambiguous language
9156 and appropriately leaves the issue of whether the particular transaction requires board approval to
9157 the general rules relating to when the board is required to approve a transaction.

9158

9159 607.1202 **Shareholder approval of certain dispositions** ~~Sale of assets other than in~~
9160 ~~regular course of business.~~

9161
9162 (1) A corporation may sell, lease, exchange or otherwise dispose or all or substantially
9163 all, of its property (with or without good will), otherwise than in the usual and regular course of
9164 business, on the terms and conditions and for the consideration determined by the corporation's
9165 board of directors, but only if the board of directors proposes and its shareholders of record approve
9166 the proposed transaction.

9167
9168 (2) ~~To obtain the approval of the shareholders under subsection (1), the~~ For a transaction
9169 ~~to be authorized:~~ (a) ~~The board of directors must first adopt a resolution approving the disposition~~
9170 ~~and thereafter, the disposition must also be approved by the corporation's shareholders. In~~
9171 ~~submitting the disposition to the shareholders for approval, the board of directors shall recommend~~
9172 ~~the proposed transaction to the shareholders unless (i) the board of directors makes a determination~~
9173 ~~that determines that it should make no recommendation (a) because of conflict of interest or other~~
9174 ~~special circumstances, it should not make such a recommendation, or (b), s. 607.0826 applies. If~~
9175 ~~either (a) or (b) applies, the board of directors shall inform the shareholders of the basis for its so~~
9176 ~~proceeding without a recommendation. and communicates the basis for its determination to the~~
9177 ~~shareholders of record with the submission of the proposed transaction; and~~

9178
9179 ~~(b) The shareholders entitled to vote must approve the transaction as provided in~~
9180 ~~subsection (5).~~

9181
9182 (3) The board of directors may set conditions for approval of the disposition or the
9183 effectiveness of the disposition ~~its submission of the proposed transaction on any basis.~~

9184
9185 (4) If the disposition is required to be approved by the shareholders under subsection (1)
9186 and if the approval is to be given at a meeting, ~~t~~The corporation shall notify each shareholder
9187 regardless of record, whether ~~or not~~ entitled to vote, of the ~~proposed shareholders' meeting of~~
9188 shareholders at which the disposition is to be submitted for approval in accordance with s.
9189 607.0705. The notice shall ~~also~~ state that the purpose, or one of the purposes, of the meeting is to
9190 consider the disposition sale, lease, exchange, or other disposition of all, or substantially all, the
9191 property of the corporation, regardless of whether or not the meeting is an annual or a special
9192 meeting, and shall contain ~~or be accompanied by~~ a description of the transaction disposition and
9193 the consideration to be received by the corporation. Furthermore, the notice shall contain a clear
9194 and concise statement that, if the transaction is effected, shareholders dissenting therefrom are or
9195 may be entitled, if they comply with the provisions of this chapter ~~aet~~ regarding appraisal rights,
9196 to be paid the fair value of their shares and such notice shall be accompanied by a copy of ss.
9197 607.1301-607.134033.

9198

9199 (5) Unless this ~~chapter act~~, the articles of incorporation, or the board of directors (acting
9200 pursuant to subsection (34)) requires a greater vote or a greater quorum ~~vote by voting groups~~, the
9201 approval of the disposition shall require the approval of the shareholders at a meeting at which a
9202 quorum exists consisting of ~~transaction to be authorized shall be approved by a majority of all the~~
9203 votes entitled to be cast on the disposition ~~transaction~~.

9204
9205 (6) After a disposition has been approved by the shareholders under this chapter, and at
9206 any time before the disposition has been consummated, it may be abandoned by the corporation
9207 without action by the shareholders, subject to any contractual rights of other parties to the
9208 disposition. Any plan or agreement providing for a sale, lease, exchange, or other disposition of
9209 property, or any resolution of the board of directors or shareholders approving such transaction,
9210 may authorize the board of directors of the corporation to amend the terms thereof at any time
9211 prior to the consummation of such transaction. An amendment made subsequent to the approval
9212 of the transaction by the shareholders of the corporation may not:

9213
9214 (a) ~~Change the amount or kind of shares, securities, cash, property, or rights to be~~
9215 ~~received in exchange for the corporation's property; or~~

9216
9217 (b) ~~Change any other terms and conditions of the transaction if such change would~~
9218 ~~materially and adversely affect the shareholders or the corporation.~~

9219
9220 (7) ~~Unless a plan or agreement providing for a sale, lease, exchange, or other disposition~~
9221 ~~of property, or any resolution of the board of directors or shareholders approving such transaction,~~
9222 ~~prohibits abandonment of the transaction without shareholder approval after a transaction has been~~
9223 ~~authorized, the planned transaction may be abandoned (subject to any contractual rights) at any~~
9224 ~~time prior to consummation thereof, without further shareholder action, in accordance with the~~
9225 ~~procedure set forth in the plan, agreement, or resolutions providing for or approving such~~
9226 ~~transaction or, if none is set forth, in the manner determined by the board of directors.~~

9227
9228 (78) A disposition of assets in the course of dissolution shall be governed by ss.
9229 607.1401-607.14401 ~~transaction that constitutes a distribution is governed by s. 607.06401 and~~
9230 not by this section.

9231
9232 (8) The assets of a direct or indirect consolidated subsidiary shall be deemed to be the
9233 assets of the parent corporation for purposes of this section.

9234
9235 (9) For purposes of this section, the term "shareholder" includes a beneficial shareholder
9236 and a voting trust beneficial owner.

9238 **Commentary to Section 607.1202:**

9239

9240 Model Act s. 12.02, adopted in 1999, moves away from the "all or substantially all of the assets"
 9241 test for when shareholder approval of a sale of assets is required (which was in the Model Act prior
 9242 to that time) to an evaluation of whether the disposition would leave the corporation "without a
 9243 significant continuing business activity." The historical commentary provided that this change was
 9244 made because of the belief on the part of the Corporate Laws Committee that in evaluating the
 9245 issue of whether a disposition was a sale of substantially all of the assets of the corporation outside
 9246 the ordinary course of business, courts, in reaching decisions on that issue, were actually
 9247 substantively evaluating whether there remained "significant continuing business activity" in the
 9248 corporation.

9249

9250 The Model Act provision also includes a quantitative conclusive presumption safe harbor, which,
 9251 if satisfied, means that the corporation is deemed to be retaining a significant business activity
 9252 after the transaction (and that therefore no shareholder approval is required for the sale), as follows:

9253

9254 A corporation will conclusively be deemed to have retained a significant continuing
 9255 business activity if it retains a business activity that represented, for the corporation and its
 9256 subsidiaries on a consolidated basis, at least (i) 25% of total assets at the end of the most
 9257 recently completed fiscal year, and (ii) either 25% of either income from continuing
 9258 operations before taxes or 25% of revenues from continuing operations, in each case for
 9259 the most recent completed fiscal year.

9260

9261 In its commentary to the 1999 version of s. 12.02 of the Model Act, the Corporate Laws Committee
 9262 explained that the safe harbor represents a policy judgment that a greater measure of certainty is
 9263 highly desirable and that, although setting the percentage threshold at 25% is arbitrary, it was
 9264 considered reasonable under the circumstances.

9265

9266 To date, 15 states have adopted the new Model Act standard to evaluate whether shareholder action
 9267 is required for the particular disposition of assets. All of these states have also adopted the Model
 9268 Act safe harbor at the 25% threshold level (except for one that set a 20% threshold). Further, three
 9269 additional states require shareholder approval to sell all or substantially all of the corporation's
 9270 assets outside the ordinary course of business, but include a presumption that if the Model Act
 9271 25% safe harbor is satisfied, it is conclusively presumed that such disposition is not a sale of all or
 9272 substantially all of the corporation's assets. All other states (including Delaware) retain the "all or
 9273 substantially all of the assets" test.

9274

9275 In its consideration of s. 607.1201, the Subcommittee was concerned that moving away from the
 9276 current standard for when obtaining shareholder approval is required might very well provide more
 9277 uncertainty than electing to stay with the existing standard, in light of the fact that much of the

9278 significant case law evaluating this topic is found in Delaware (where the traditional "all or
9279 substantially all of the assets" test remains the standard). Further, although the benefit of adding a
9280 quantitative safe harbor was considered, there was some disagreement over whether the Model
9281 Act safe harbor standard was too high or too low and as a result, a decision was made not to add a
9282 quantitative safe harbor to the proposed statute.

9283
9284 The addition in subsection (1) of the words "but only if" is not intended to be substantive change,
9285 but rather to make clear the meaning of this provision, which is that a sale or other disposition of
9286 "all or substantially all of the assets" of a Florida corporation outside the ordinary course of
9287 business can only occur with shareholder approval and also, except in limited circumstances, board
9288 of directors approval. It is believed that this has been the interpretation of this provision even
9289 without these clarifying words, but that these clarifying words clear up any question as to what is
9290 intended by this provision.

9291
9292 Subsections (3)-(7) have been updated largely based on the Model Act and are consistent with
9293 corollary provisions in Article 11, to the extent applicable. These changes are considered clarifying
9294 and not substantive.

9295
9296 Subsection (7) was added, from the corollary provision of the Model Act, to make it clear that in
9297 addition to pro rata distributions, dissolutions are governed by Article 14 (Dissolutions) and not
9298 by Article 12 (Sales of assets).

9299

9300 ARTICLE 13

9301 APPRAISAL RIGHTS

9302 607.1301 Appraisal rights; definitions.

9303 The following definitions apply to ss. 607.1301~~2~~-607.133~~3~~40:

9304 (1) "Accrued interest" means interest from the date the corporate action becomes effective
9305 until the date of payment, at the rate of interest determined for judgments in accordance with s.
9306 55.03, determined as of the effective date of the corporate action.

9307 (2) "Affiliate" means a person that directly or indirectly through one or more intermediaries
9308 controls, is controlled by, or is under common control with another person or is a senior executive
9309 of such person thereof. For purposes of s. 607.1302~~1~~(2~~6~~)(~~da~~) , a person is deemed to be an affiliate
9310 of its senior executives.

9311 (3) "Corporate action" means an event described in s. 607.1302(1).

9312 ~~(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a~~
9313 ~~voting trust or by a nominee on the beneficial owner's behalf.~~

9314 ~~(4) "Corporation" means the domestic corporation that is the issuer of the shares held by a~~
9315 ~~shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.133~~3~~40, includes~~
9316 ~~the domesticated eligible entity in a domestication, the converted eligible entity in a conversion,~~
9317 ~~and the survivor of surviving entity in a merger.~~

9318 ~~(5) "Fair value" means the value of the corporation's shares determined:~~

9319 (a) Immediately before the effectiveness ~~effectuation~~ of the corporate action to which
9320 the shareholder objects.

9321 (b) Using customary and current valuation concepts and techniques generally employed
9322 for similar businesses in the context of the transaction requiring appraisal, excluding any
9323 appreciation or depreciation in anticipation of the corporate action unless exclusion would be
9324 inequitable to the corporation and its remaining shareholders.

9325 (c) ~~For a corporation with 10 or fewer shareholders, w~~ Without discounting for lack of
9326 marketability or minority status.

9327 ~~(5) "Interest" means interest from the effective date of the corporate action until the date of~~
9328 ~~payment, at the rate of interest on judgments in this state on the effective date of the corporate~~
9329 ~~action.~~

9330 (6) "Interested transaction" means a corporate action described in s. 607.1302(1), other than a
9331 merger pursuant to s. 607.1104, involving an interested person in which any of the shares or assets of
9332 the corporation are being acquired or converted. As used in this definition:

9333
9334 (a) "Interested person" means a person, or an affiliate of a person, who at any time during
9335 the one-year period immediately preceding approval by the board of directors of the corporate
9336 action:

9337
9338 1. Was the beneficial owner of 20% or more of the voting power of the corporation,
9339 other than as owner of excluded shares;

9340
9341 2. Had the power, contractually or otherwise, other than as owner of excluded shares,
9342 to cause the appointment or election of 25% or more of the directors to the board of directors
9343 of the corporation; or

9344
9345 3. Was a senior executive or director of the corporation or a senior executive of any
9346 affiliate of the corporation, and that senior executive or director will receive, as a result of the
9347 corporate action, a financial benefit not generally available to other shareholders as such,
9348 other than:

9349
9350 (A) Employment, consulting, retirement, or similar benefits established
9351 separately and not as part of or in contemplation of the corporate action;

9352
9353 (B) Employment, consulting, retirement, or similar benefits established in
9354 contemplation of, or as part of, the corporate action that are not more favorable than
9355 those existing before the corporate action or, if more favorable, that have been approved
9356 on behalf of the corporation in the same manner as is provided in s. 607.0832; or

9357
9358 (C) In the case of a director of the corporation who will, in the corporate action,
9359 become a director or governor of the acquiror or any of its affiliates, rights and benefits
9360 as a director or governor that are provided on the same basis as those afforded by the
9361 acquiror generally to other directors or governors of such entity or such affiliate.

9362
9363 (b) "Beneficial owner" means any person who, directly or indirectly, through any contract,
9364 arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or
9365 to direct the voting of, shares; except that a member of a national securities exchange is not deemed
9366 to be a beneficial owner of securities held directly or indirectly by it on behalf of another person
9367 if the member is precluded by the rules of the exchange from voting without instruction on
9368 contested matters or matters that may affect substantially the rights or privileges of the holders of
9369 the securities to be voted. When two or more persons agree to act together for the purpose of

9370 voting their shares of the corporation, each member of the group formed thereby is deemed to
9371 have acquired beneficial ownership, as of the date of the agreement, of all shares having voting
9372 power of the corporation beneficially owned by any member of the group.
9373

9374 (c) "Excluded shares" means shares acquired pursuant to an offer for all shares having
9375 voting power if the offer was made within one year before the corporate action for consideration
9376 of the same kind and of a value equal to or less than that paid in connection with the corporate
9377 action.
9378

9379 (7) "Preferred shares" means a class or series of shares the holders of which have preference
9380 over any other class or series of shares with respect to distributions.

9381 ~~(7) "Record shareholder" means the person in whose name shares are registered in the records~~
9382 ~~of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee~~
9383 ~~certificate on file with the corporation.~~

9384 (8) "Senior executive" means the chief executive officer, chief operating officer, chief
9385 financial officer, or ~~anyone~~ individual in charge of a principal business unit or function.

9386 (9) For purposes of ss. 607.1301-607.1340, "Shareholder" means both a record shareholder,
9387 and a beneficial shareholder, and a voting trust beneficial owner.

9388

9389 **Commentary to Section 607.1301:**

9390 The statute follows FRLLLCA for the most part and the Model Act in certain respects. With very
9391 few exceptions, the changes are considered non-substantive; rather, they are designed to define
9392 certain terms that are used in Article 13 and to remove terms that are already being defined in s.
9393 607.01401. However, the change to the definition of "fair value" is a substantive change in that it
9394 follows FRLLLCA by indicating that fair value is determined, in all cases, without any discounting
9395 for lack of marketability or minority status (i.e., it removes the language that had been added back
9396 in 2005 which qualified such exclusion of discounting for lack of marketability or minority status
9397 for corporations with 10 or fewer shareholders). Thus, the amendment in 2005 had left some
9398 ambiguity in the statute in terms of whether the statutory language implied that, for corporations
9399 with more than 10 shareholders, discounts for lack of marketability and minority status should be
9400 applied. By virtue of the change in the statute, this ambiguity has been resolved with the effect
9401 that fair value, in the context of appraisal rights valuation, should always be determined without
9402 any discount for lack of marketability or minority status.

9403
9404 The statute adds the definition of an "interested transaction" from Section 13.01 of the Model Act.
9405 While this definition is only used in a few places (s. 607.1302(2)(d)), s. 607.1302(1)(d)2., and s.
9406 607.1302(2)(c), it was concluded that the definition of "interested transaction" was a more fulsome
9407 complete definition of the concept that ought to be included in an "interested transaction."
9408

9409 607.1302 Right of shareholders to appraisal.

9410 (1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain
9411 payment of the fair value of that shareholder’s shares, in the event of any of the following corporate
9412 actions:

9413 (a) Consummation of a domestication or a conversion of such corporation pursuant
9414 to s. 607.11921 or s. 607.11931~~2~~, as applicable, if shareholder approval is required for the
9415 domestication or the conversion and the shareholder is entitled to vote on the conversion
9416 under s. 607.11931;

9417 (b) ~~or the e~~Consummation of a merger to which such corporation is a party:

9418 1. ~~i~~f shareholder approval is required for the merger under s. 607.1103, or
9419 would be required, but for the provisions of s. 607.11035, and the shareholder is
9420 entitled to vote on the merger, except that appraisal rights shall not be available to
9421 any shareholder of the corporation with respect to shares of any class or series that
9422 remains outstanding after consummation of the merger where the terms of such class
9423 or series have not been materially altered; or

9424 2. ~~i~~f such corporation is a subsidiary and the merger is governed by s.
9425 607.1104;

9426 (c**b**) Consummation of a share exchange to which the corporation is a party as the
9427 corporation whose shares will be acquired ~~if the shareholder is entitled to vote on the~~
9428 exchange, except that appraisal rights are not available to any shareholder of the
9429 corporation with respect to any class or series of shares of the corporation that is not
9430 exchanged-acquired in the share exchange;

9431 (d**e**) Consummation of a disposition of assets pursuant to s. 607.1202 if the
9432 shareholder is entitled to vote on the disposition, including a sale in dissolution, ~~but not~~
9433 including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or
9434 substantially all of the net proceeds of the sale will be distributed to the shareholders within
9435 1 year after the date of sale; except that appraisal rights shall not be available to any
9436 shareholder of the corporation with respect to shares of any class or series if:

9437 1. Under the terms of the corporate action approved by the shareholders there
9438 is to be distributed to shareholders in cash the corporation’s net assets, in excess of a
9439 reasonable amount reserved to meet claims of the type described in ss. 607.1406 and
9440 6070.1407,

9441 (A) Within one year after the shareholders’ approval of the action; and

9442 (B) In accordance with their respective interests determined at the time of
9443 distribution, and

9444 2. The disposition of assets is not an interested transaction.

9445 (ed) An amendment of the articles of incorporation with respect to ~~a~~ the class or series
9446 of shares which reduces the number of shares of a class or series owned by the shareholder
9447 to a fraction of a share if the corporation has the obligation or the right to repurchase the
9448 fractional share so created;

9449 (fe) Any other ~~amendment to the articles of incorporation,~~ merger, share exchange,
9450 ~~or~~ disposition of assets, or amendment to the articles of incorporation, in each case to the
9451 extent provided by the articles of incorporation, bylaws, or a resolution of the board of
9452 directors, except that no bylaw or board resolution providing for appraisal rights may be
9453 amended or otherwise altered except by shareholder approval;

9454 (g) An amendment to the articles of incorporation or bylaws of the corporation, the
9455 effect of which is to alter or abolish voting or other rights with respect to such interest in a
9456 manner that is adverse to the interest of such shareholder, except as the right may be
9457 affected by the voting or other rights of new shares then being authorized of a new class or
9458 series of shares.

9459 (h) An amendment to the articles of incorporation or bylaws of a corporation the
9460 effect of which is to adversely affect the interest of the shareholder by altering or
9461 abolishing appraisal rights under this section.

9462 (if) With regard to a class of shares prescribed in the articles of incorporation prior
9463 to October 1, 2003, including any shares within that class subsequently authorized by
9464 amendment, any amendment of the articles of incorporation if the shareholder is entitled
9465 to vote on the amendment and if such amendment would adversely affect such shareholder
9466 by:
9467

9468 1. Altering or abolishing any preemptive rights attached to any of his or her
9469 shares;

9470 2. Altering or abolishing the voting rights pertaining to any of his or her shares,
9471 except as such rights may be affected by the voting rights of new shares then being
9472 authorized of any existing or new class or series of shares;

9473 3. Effecting an exchange, cancellation, or reclassification of any of his or her
9474 shares, when such exchange, cancellation, or reclassification would alter or abolish
9475 the shareholder's voting rights or alter his or her percentage of equity in the

9476 corporation, or effecting a reduction or cancellation of accrued dividends or other
9477 arrearages in respect to such shares;

9478 4. Reducing the stated redemption price of any of the shareholder's
9479 redeemable shares, altering or abolishing any provision relating to any sinking fund
9480 for the redemption or purchase of any of his or her shares, or making any of his or
9481 her shares subject to redemption when they are not otherwise redeemable;

9482 5. Making noncumulative, in whole or in part, dividends of any of the
9483 shareholder's preferred shares which had theretofore been cumulative;

9484 6. Reducing the stated dividend preference of any of the shareholder's
9485 preferred shares; or

9486 7. Reducing any stated preferential amount payable on any of the
9487 shareholder's preferred shares upon voluntary or involuntary liquidation;

9488 (jg) An amendment of the articles of incorporation of a social purpose corporation
9489 to which s. 607.504 or s. 607.505 applies;

9490 (kh) An amendment of the articles of incorporation of a benefit corporation to which
9491 s. 607.604 or s. 607.605 applies;

9492 (li) A merger, domestication, conversion, or share exchange of a social purpose
9493 corporation to which s. 607.504 applies; or

9494 (mj) A merger, domestication, conversion, or share exchange of a benefit corporation
9495 to which s. 607.604 applies.

9496 (2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs
9497 (1)(a), (b), (c), ~~and~~ (d), and (e) shall be limited in accordance with the following provisions:

9498 (a) Appraisal rights shall not be available for the holders of shares of any class or
9499 series of shares which is:

9500 1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933
9501 ~~Listed on the New York Stock Exchange or the American Stock Exchange or~~
9502 ~~designated as a national market system security on an interdealer quotation system~~
9503 ~~by the National Association of Securities Dealers, Inc.;~~ or

9504 2. Traded in an organized market and Not so listed or designated, but has at
9505 least 2,000 shareholders and the outstanding shares of such class or series have a
9506 market value of at least \$20 ~~\$10~~ million, exclusive of the value of such shares held

9507 by its subsidiaries, senior executives, and directors, and by any beneficial
9508 shareholders and any voting trust beneficial owner owning more than 10 percent of
9509 such shares; or;

9510 3. Issued by an open end management investment company registered with the
9511 Securities and Exchange Commission under the Investment Company Act of 1940
9512 and which may be redeemed at the option of the holder at net asset value.

9513 (b) The applicability of paragraph (a) shall be determined as of:

9514 1. The record date fixed to determine the shareholders entitled to receive
9515 notice of, ~~and to vote at,~~ the meeting of shareholders to act upon the corporate action
9516 requiring appraisal rights or, in the case of an offer made pursuant to s. 607.11035,
9517 the date of such offer; or

9518 2. If there will be no meeting of shareholders and no offer is made
9519 pursuant to s. 607.11035, the close of business on the day before the consummation
9520 of the ~~on which the board of directors adopts the resolution recommending such~~
9521 corporate action or the effective date of the amendment of the articles, as applicable.

9522 (c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant
9523 to subsection (1) for the holders of any class or series of shares where the corporate action
9524 is an interested transaction.;

9525 ~~who are required by the terms of the corporate action requiring appraisal~~
9526 ~~rights to accept for such shares anything other than cash or shares of any class or~~
9527 ~~any series of shares of any corporation, or any other proprietary interest of any other~~
9528 ~~entity, that satisfies the standards set forth in paragraph (a) at the time the corporate~~
9529 ~~action becomes effective;~~

9530 (d) ~~Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant~~
9531 ~~to subsection (1) for the holders of any class or series of shares if:~~

9532 1. ~~Any of the shares or assets of the corporation are being acquired or~~
9533 ~~converted, whether by merger, share exchange, or otherwise, pursuant to the~~
9534 ~~corporate action by a person, or by an affiliate of a person, who:~~

9535 a. ~~Is, or at any time in the 1 year period immediately preceding~~
9536 ~~approval by the board of directors of the corporate action requiring appraisal~~
9537 ~~rights was, the beneficial owner of 20 percent or more of the voting power~~
9538 ~~of the corporation, excluding any shares acquired pursuant to an offer for~~
9539 ~~all shares having voting power if such offer was made within 1 year prior~~
9540 ~~to the corporate action requiring appraisal rights for consideration of the~~

9541 same kind and of a value equal to or less than that paid in connection with
9542 the corporate action; or

9543 b. — Directly or indirectly has, or at any time in the 1-year period
9544 immediately preceding approval by the board of directors of the corporation
9545 of the corporate action requiring appraisal rights had, the power,
9546 contractually or otherwise, to cause the appointment or election of 25
9547 percent or more of the directors to the board of directors of the corporation;
9548 or

9549 2. — Any of the shares or assets of the corporation are being acquired or
9550 converted, whether by merger, share exchange, or otherwise, pursuant to such
9551 corporate action by a person, or by an affiliate of a person, who is, or at any time in
9552 the 1-year period immediately preceding approval by the board of directors of the
9553 corporate action requiring appraisal rights was, a senior executive or director of the
9554 corporation or a senior executive of any affiliate thereof, and that senior executive
9555 or director will receive, as a result of the corporate action, a financial benefit not
9556 generally available to other shareholders as such, other than:

9557 a. — Employment, consulting, retirement, or similar benefits
9558 established separately and not as part of or in contemplation of the corporate
9559 action;

9560 b. — Employment, consulting, retirement, or similar benefits
9561 established in contemplation of, or as part of, the corporate action that are
9562 not more favorable than those existing before the corporate action or, if
9563 more favorable, that have been approved on behalf of the corporation in the
9564 same manner as is provided in s. 607.0832; or

9565 c. — In the case of a director of the corporation who will, in the
9566 corporate action, become a director of the acquiring entity in the corporate
9567 action or one of its affiliates, rights and benefits as a director or governor
9568 that are provided on the same basis as those afforded by the acquiring entity
9569 generally to other directors or governors of such entity or such affiliate.

9570 (e) For the purposes of paragraph (d) only, the term "beneficial owner" means any
9571 person who, directly or indirectly, through any contract, arrangement, or understanding,
9572 other than a revocable proxy, has or shares the power to vote, or to direct the voting of,
9573 shares, provided that a member of a national securities exchange shall not be deemed to
9574 be a beneficial owner of securities held directly or indirectly by it on behalf of another
9575 person solely because such member is the recordholder of such securities if the member
9576 is precluded by the rules of such exchange from voting without instruction on contested

9577 ~~matters or matters that may affect substantially the rights or privileges of the holders of~~
9578 ~~the securities to be voted. When two or more persons agree to act together for the purpose~~
9579 ~~of voting their shares of the corporation, each member of the group formed thereby shall~~
9580 ~~be deemed to have acquired beneficial ownership, as of the date of such agreement, of all~~
9581 ~~shares having voting power shares of the corporation beneficially owned by any member~~
9582 ~~of the group.~~

9583 (3) Notwithstanding any other provision of this section, the articles of incorporation as
9584 originally filed or any amendment to the articles of incorporation ~~thereto~~ may limit or eliminate
9585 appraisal rights for any class or series of preferred shares, except that:

9586 (a) ~~but a~~ No such limitation or elimination shall be effective if the class or series
9587 does not have the right to vote separately as a voting group (alone or as part of a group) on
9588 the action or if the action is a domestication under s. 607.11920 or a conversion under s.
9589 607. 11901, or a merger having a similar effect as a domestication or conversion in which
9590 the domesticated eligible entity or the converted eligible entity, as applicable, is an eligible
9591 entity, and

9592 (b) Any such limitation or elimination contained in an amendment to the articles of
9593 incorporation that limits or eliminates appraisal rights for any of such shares that are
9594 outstanding immediately before ~~prior to~~ the effective date of such amendment or that the
9595 corporation is or may be required to issue or sell thereafter pursuant to any conversion,
9596 exchange, or other right existing immediately before the effective date of such amendment
9597 shall not apply to any corporate action that becomes effective within 1 year after the
9598 effective of that date of such amendment ~~if such action would otherwise afford appraisal~~
9599 ~~rights.~~

9600 (4) ~~A shareholder entitled to appraisal rights under this chapter may not challenge a~~
9601 ~~completed corporate action for which appraisal rights are available unless such corporate action:~~

9602 (a) ~~Was not effectuated in accordance with the applicable provisions of this section~~
9603 ~~or the corporation's articles of incorporation, bylaws, or board of directors' resolution~~
9604 ~~authorizing the corporate action; or~~

9605 (b) ~~Was procured as a result of fraud or material misrepresentation.~~

9606

9607 **Commentary to Section 607.1302:**

9608 Consistent with FRLCA, this section is revised to separate out conversions from mergers into
9609 two separate subparagraphs rather than continuing to include them within the same subparagraph.
9610 In addition, with respect to conversions, domestications, mergers and share exchanges and
9611 consistent with the approach of the Model Act, the requirement that the shareholder be entitled to
9612 vote on the transaction in order to have appraisal rights has been removed.

9613
9614 Because of the addition of s. 607.11035 relating to "mop up" mergers, the requirement with respect
9615 to granting appraisal rights in connection with mergers that shareholder approval must be required
9616 is overridden with respect to those transactions that are subject to s. 607.11035. In other words,
9617 the minority shareholder in a s. 607.11035 "mop up" merger would be entitled to appraisal rights
9618 in connection with such merger even though the statute expressly overrides any need to secure
9619 shareholder approval for such "mop up" merger transactions.

9620
9621 Because the transactions with respect to which domestications can occur have been expanded to
9622 follow the expanded scope set forth in the Model Act, the Model Act provision triggering appraisal
9623 rights with respect to certain domestication transactions from the Model Act has been added to the
9624 statute.

9625
9626 The public company override of appraisal rights has been modified to follow the Model Act by
9627 referencing "covered securities," and trading in an organized market where the market value is at
9628 least \$20 million instead of \$10 million and by adding the reference to issuances by open end
9629 management investment companies registered under the 1940 Act. However, this public company
9630 override has certain exceptions. An additional exception relating to the consummation of a
9631 disposition of assets pursuant to s. 607.1202 has been added consistent with the Model Act and
9632 FRLCA.

9633
9634 The provisions in s. 607.1302(4) have, consistent with the Model Act, been moved to new s.
9635 607.1340, with certain clean-up changes to mirror the language used in s. 607.1340. However,
9636 certain of the aspects of Section 13.40 of the Model Act, which are not covered at all in s.
9637 607.1302(4) have not been adopted, as more specifically described in the commentary to s.
9638 607.1340.

9639
9640 FRLCA contains two additional grounds for appraisal rights that were considered: (i) following
9641 s. 605.1006(1)(h), to the extent authorized in the articles of incorporation or by laws or a
9642 shareholders' agreement under s. 607.0732. and (ii) following s. 605.1006(2), the right to abolish
9643 appraisal rights in an operating agreement. While a shareholders agreement under s. 607.0732
9644 might arguably abolish appraisal rights if such change does not violate fundamental public policy,
9645 as a general rule, the co-chairs do not believe that these provisions should be added to the FBCA
9646 in the context of a corporation (compared to an LLC).

9647 607.1303 Assertion of rights by nominees and beneficial owners.

9648 (1) A record shareholder may assert appraisal rights as to fewer than all the shares
9649 registered in the record shareholder’s name but owned by a beneficial shareholder or a voting trust
9650 beneficial owner only if the record shareholder objects with respect to all shares of the class or
9651 series owned by the beneficial shareholder or a voting trust beneficial owner and notifies the
9652 corporation in writing of the name and address of each beneficial shareholder or voting trust
9653 beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record
9654 shareholder who asserts appraisal rights for only part of the shares held of record in the record
9655 shareholder’s name under this subsection shall be determined as if the shares as to which the record
9656 shareholder objects and the record shareholder’s other shares were registered in the names of
9657 different record shareholders.

9658 (2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal
9659 rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

9660 (a) Submits to the corporation the record shareholder’s written consent to the
9661 assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

9662 (b) Does so with respect to all shares of the class or series that are beneficially
9663 owned by the beneficial shareholder or a voting trust beneficial owner.

9664

9665 **Commentary to Section 607.1303:**

9666 No substantive changes have been made to this section.

9667

9668 607.1320 Notice of appraisal rights.

9669 (1) If a proposed corporate action described in s. 607.1302(1) is to be submitted to a vote
9670 at a shareholders' meeting, the meeting notice (or where no approval of such action is required
9671 pursuant to s. 607.11035, the offer made pursuant to s. 607.11035) must state that the corporation
9672 has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this
9673 chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss.
9674 607.1301-607.133340 must accompany the meeting notice or offer, as applicable sent to those
9675 record shareholders entitled to exercise appraisal rights.

9676 (2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all
9677 record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate
9678 action became effective. Such notice must be sent within 10 days after the corporate action became
9679 effective and include the materials described in s. 607.1322.

9680 (3) If a the proposed corporate action described in s. 607.1302(1) is to be approved by
9681 written consent of the shareholders pursuant to s. 607.0704 other than by a shareholders' meeting:

9682 (a) Written notice that appraisal rights are, are not, or may be available must be sent
9683 to each shareholder from whom a consent is solicited at the time consent of such
9684 shareholder is first solicited, and if the corporation has concluded that appraisal rights are
9685 or may be available, a copy of ss. 607.1301-607.1340 must accompany such written
9686 notice; and

9687 (b) Written notice that appraisal rights are, are not, or may be available must be
9688 delivered, at least 10 days before the corporate action becomes effective, to all
9689 nonconsenting and nonvoting shareholders, and, if the corporation has concluded that
9690 appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 must
9691 accompany such written notice. the notice referred to in subsection (1) must be sent to all
9692 shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether
9693 or not consents are solicited from all shareholders, and include the materials described in
9694 s. 607.1322.

9695 (4) Where a corporate action described in s. 607.1302(1) is proposed or a merger
9696 pursuant to s. 607.1104 is effected, and the corporation concludes that appraisal rights are or may
9697 be available, the notice referred to in subsection (1), paragraph (3)(a), or paragraph (3)(b) must be
9698 accompanied by:

9699 (a) Financial statements of the corporation that issued the shares that may be or are
9700 subject to appraisal rights, consisting of a balance sheet as of the end of the fiscal year
9701 ending not more than 16 months before the date of the notice, an income statement for
9702 that fiscal year, and a cash flow statement for that fiscal year; however, if such financial

9703 statements are not reasonably available, the corporation shall provide reasonably
9704 equivalent financial information; and

9705 (b) The latest available interim financial statements, including year-to-date through
9706 the end of the interim period, of such corporation, if any.

9707 (5) The right to receive the information described in subsection (4) may be waived in
9708 writing by a shareholder before or after the corporate action is effected.

9709

9710 **Commentary to Section 607.1320:**

9711 This section has been harmonized with s. 605.1063, which in turn, when drafted, had been based
9712 in large part on the corollary provision in the Model Act. In addition, language addressing
9713 coordination with new s. 607.11035 relating to "mop up" mergers have been added.

9714
9715 Most importantly, consistent with FRLICA, the provisions of this section have been modified to
9716 eliminate certain circularity that existed under the prior statute relating to corporate actions that
9717 were being approved other than by way of vote at a shareholders meeting, such as an approval by
9718 way of written consent. The change, which follows the parallel provision in FRLICA, now (i)
9719 contemplates providing written notice of the appraisal rights being sent to a shareholder from
9720 whom a consent is being solicited at the time the consent of that shareholder is first solicited rather
9721 than arguably having to send notice of appraisal rights to all shareholders at the time the first
9722 shareholder's consent is being solicited, and (ii) adds that, when such a transaction is being
9723 approved by written consent rather than by a vote at a shareholders meeting, notice of the appraisal
9724 rights must be sent at least 10 days before the corporate action becomes effective to any
9725 nonconsenting or nonvoting shareholders.

9726
9727 The statute has also been updated to make it clear that certain financial statements need to be
9728 provided to the shareholders together with the written notice indicating that appraisal rights may
9729 be available, which again is consistent with the provisions of FRLICA. However, subsection (5)
9730 has been added to make it clear that the right to receive the financial statement information can be
9731 waived in writing by any shareholder either before or after the particular corporate action is
9732 effected.

9733

9734 607.1321 Notice of intent to demand payment.

9735 (1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is
9736 submitted to a vote at a shareholders' meeting, ~~or is submitted to a shareholder pursuant to a~~
9737 ~~consent vote under s. 607.0704,~~ a shareholder who wishes to assert appraisal rights with respect to
9738 any class or series of shares:

9739 (a) Must deliver to the corporation before the vote is taken, ~~or within 20 days after~~
9740 ~~receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder~~
9741 ~~meeting,~~ written notice of the shareholder's intent to demand payment if the proposed
9742 corporate action is effectuated; and-

9743 (b) Must not vote, or cause or permit to be voted, any shares of such class or series
9744 in favor of the proposed corporate action.

9745 (2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be
9746 approved by written consent, a shareholder who wishes to assert appraisal rights with respect to
9747 any class or series of shares shall not sign a consent in favor of the proposed corporate action with
9748 respect to that class or series of shares.

9749 (3) If a proposed corporate action specified in s. 607.1302(1) does not require
9750 shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal rights
9751 with respect to any class or series of shares:

9752 (a) Shall deliver to the corporation before the shares are purchased pursuant to the
9753 offer written notice of the shareholder's intent to demand payment if the proposed action
9754 is effected; and

9755 (b) Shall not tender, or cause or permit to be tendered, any shares of such class or
9756 series in response to such offer.

9757 (4) A shareholder who may otherwise be entitled to appraisal rights, but does not satisfy
9758 the requirements of subsection (1), (2) or (3) is not entitled to payment under this chapter.

9759

9760 **Commentary to Section 607.1321:**

9761 Similar to s. 607.1320, this section has been updated to be harmonized with s. 605.1064 of
9762 FRLCA, which in turn had been modeled after the provisions in the corollary section of the
9763 Model Act. As with s. 607.1320, the procedure applicable to the shareholder in terms of noticing
9764 an intent to demand payment has been modified so that the provisions relating to transactions that
9765 are approved by written consent, rather than at a shareholders' meeting, are separately addressed
9766 to avoid the circularity that existed under the previous version of the statute. In addition, because
9767 of the addition of s. 607.11035 relating to "mop up" mergers where no vote is required, the process
9768 for a shareholder to assert appraisal rights in that type of transaction is added as new subsection
9769 (3).
9770

9771 607.1322 Appraisal notice and form.

9772 (1) If a ~~proposed~~ corporate action requiring appraisal rights under s. 607.1302(1)
9773 becomes effective, the corporation must deliver a written appraisal notice and form required by
9774 paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321(1), (2) or (3).
9775 In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and
9776 form to all record shareholders who may be entitled to assert appraisal rights.

9777 (2) The appraisal notice must be delivered ~~sent~~ no earlier than the date the corporate
9778 action became effective, and no later than 10 days after such date, and must:

9779 (a) Supply a form that specifies the date that the corporate action became effective and
9780 that provides for the shareholder to state:

9781 1. The shareholder's name and address.

9782 2. The number, classes, and series of shares as to which the shareholder asserts
9783 appraisal rights.

9784 3. That the shareholder did not vote for the transaction.

9785 4. Whether the shareholder accepts the corporation's offer as stated in
9786 subparagraph (b)4.

9787 5. If the offer is not accepted, the shareholder's estimated fair value of the shares
9788 and a demand for payment of the shareholder's estimated value plus accrued interest.

9789 (b) State:

9790 1. Where the form must be sent and where certificates for certificated shares must
9791 be deposited and the date by which those certificates must be deposited, which date may
9792 not be earlier than the date by which the corporation must receive ~~for receiving~~ the
9793 required form under subparagraph 2.

9794 2. A date by which the corporation must receive the form, which date may not be
9795 fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and
9796 form are sent, and state that the shareholder shall have waived the right to demand
9797 appraisal with respect to the shares unless the form is received by the corporation by such
9798 specified date.

9799 3. The corporation's estimate of the fair value of the shares.

9800 4. An offer to each shareholder who is entitled to appraisal rights to pay the
9801 corporation's estimate of fair value set forth in subparagraph 3.

9802 5. That, if requested in writing, the corporation will provide to the shareholder so
9803 requesting, within 10 days after the date specified in subparagraph 2., the number of
9804 shareholders who return the forms by the specified date and the total number of shares
9805 owned by them.

9806 6. The date by which the notice to withdraw under s. 607.1323 must be received,
9807 which date must be within 20 days after the date specified in subparagraph 2.

9808 7. If not previously provided, accompanied by a copy of ss. 607.1301-607.1340.

9809 ~~(c) Be accompanied by:~~

9810 1. ~~Financial statements of the corporation that issued the shares to be~~
9811 ~~appraised, consisting of a balance sheet as of the end of the fiscal year ending not~~
9812 ~~more than 15 months prior to the date of the corporation's appraisal notice, an~~
9813 ~~income statement for that year, a cash flow statement for that year, and the latest~~
9814 ~~available interim financial statements, if any.~~

9815 2. ~~A copy of ss. 607.1301-607.1333.~~

9816

9817 **Commentary to Section 607.1322:**

9818 The changes to this section are mostly non-substantive. Subsection (2)(c) has been deleted
9819 because, by the time the appraisal notice and form is being provided to those shareholders
9820 indicating their intent to exercise appraisal rights, such shareholders will have already received the
9821 appropriate financial statements and a copy of the appraisal statute earlier on in the process.

9822 The requirement to provide financial statements in old subsection (3) is now included in s.
9823 607.1320(4).

9824

9825 607.1323 Perfection of rights; right to withdraw.

9826 (1) A shareholder who receives notice pursuant to s. 607.1322 and who wishes to
9827 exercise appraisal rights must ~~sign~~ ~~execute~~ and return the form received pursuant to s. 607.1322(1)
9828 and, in the case of certificated shares, deposit the shareholder’s certificates in accordance with the
9829 terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a
9830 shareholder deposits that shareholder’s certificates or, in the case of uncertificated shares, returns
9831 the signed ~~executed~~ forms, that shareholder loses all rights as a shareholder, unless the shareholder
9832 withdraws pursuant to subsection (2).

9833 (2) A shareholder who has complied with subsection (1) may nevertheless decline to
9834 exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation
9835 in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder
9836 who fails to so withdraw from the appraisal process may not thereafter withdraw without the
9837 corporation’s written consent.

9838 (3) A shareholder who does not sign ~~execute~~ and return the form and, in the case of
9839 certificated shares, deposit that shareholder’s share certificates if required, each by the date set
9840 forth in the notice described in s. 607.1322(2)~~subsection (2)~~, shall not be entitled to payment under
9841 ss. 607.1301-607.1340~~this chapter~~.

9842

9843 **Commentary to Section 607.1323:**

9844 There are no substantive changes to this section.

9845

9846 607.1324 Shareholder’s acceptance of corporation’s offer.

9847 (1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder
9848 accepts the offer of the corporation to pay the corporation’s estimated fair value for the shares, the
9849 corporation shall make such payment to the shareholder within 90 days after the corporation’s
9850 receipt of the form from the shareholder.

9851 (2) Upon payment of the agreed value, the shareholder shall cease to have any right to
9852 receive any further consideration with respect to such ~~cease to have any interest in the~~ shares.

9853

9854 **Commentary to Section 607.1324:**

9855 The language in subsection (2) has been changed so as to make it clear that a shareholder who
9856 receives payment of an agreed value ceases to have any right to receive any further consideration
9857 with respect to the shares rather than such shareholder ceasing to have any interest in the shares
9858 given that other sections of Article 13 will have already caused the shareholder to cease to have
9859 any interest in the shares themselves.

9860

9861 A decision was made not to add subsection (b) from Model Act s. 13.24 requiring delivery of
9862 financial statements, an estimate of fair value and a right to demand further payment because such
9863 information will have already previously been provided to the shareholder.

9864

9865 Model Act s. 13.25 After-acquired shares.

9866 Model Act s. 13.25 covers after-acquired shares and allows a corporation to withhold payments
9867 required by Model Act s. 13.24 with respect to certain after-acquired shares. This provision
9868 coordinates with the provisions of Model Act s. 13.24 that require payment of the corporation's
9869 estimate of fair value prior to the resolution of the appraised value. Since a decision was made not
9870 to include this concept of early payment in the FBCA, this Model Act provision was considered
9871 unnecessary and it has not been added to this proposal.

9872 While it is not expressly stated in the commentary to the 2002 proposal, it is clear that a decision
9873 was made at that time not to include this provision in the FBCA. This provision is not in FRLCA,
9874 and is believed unnecessary if the advance payment provisions from the Model Act that are in s.
9875 13.24 are not added to the FBCA.

9876

9877 607.1326 Procedure if shareholder is dissatisfied with offer.

9878 (1) A shareholder who is dissatisfied with the corporation’s offer as set forth pursuant to
9879 s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1)
9880 of that shareholder’s estimate of the fair value of the shares and demand payment of that estimate
9881 plus accrued interest.

9882 (2) A shareholder who fails to notify the corporation in writing of that shareholder’s
9883 demand to be paid the shareholder’s stated estimate of the fair value plus accrued interest under
9884 subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand
9885 payment under this section and shall be entitled only to the payment offered by the corporation
9886 pursuant to s. 607.1322(2)(b)4.

9887

9888 **Commentary to Section 607.1326:**

9889 No substantive changes have been made to this section.

9890

9891 607.1330 Court action.

9892 (1) If a shareholder makes demand for payment under s. 607.1326 which remains
9893 unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment
9894 demand and petition the court to determine the fair value of the shares and accrued interest from
9895 the date of the corporate action. If the corporation does not commence the proceeding within the
9896 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence
9897 the proceeding in the name of the corporation.

9898 (2) The proceeding shall be commenced in the circuit court in the applicable county
9899 appropriate court of the county in which the corporation's principal office, or, if none, its registered
9900 office, in this state is located. If by virtue of the corporate action becoming effective the entity has
9901 become the corporation is a foreign eligible entity corporation without a registered office in this
9902 state, the proceeding shall be commenced in the county in this state in which the principal office
9903 or registered office of the domestic corporation merged with the foreign eligible entity corporation
9904 was located immediately before the time the corporate action became effective; if it has, and
9905 immediately before the corporate action became effective had, no principal office in this state, then
9906 in the county in which the corporation has, or immediately before the time the corporate action
9907 became effective had, an office in this state; or if none in this state, then in the county in which the
9908 corporation's registered office is or was last located. at the time of the transaction.

9909 (3) All shareholders, whether or not residents of this state, whose demands remain
9910 unsettled shall be made parties to the proceeding as in an action against their shares. The
9911 corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder
9912 party who is a resident of this state in the manner provided by law for the service of a summons
9913 and complaint and upon each nonresident shareholder party by registered or certified mail or by
9914 publication as provided by law.

9915 (4) The jurisdiction of the court in which the proceeding is commenced under subsection
9916 (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers
9917 to receive evidence and recommend a decision on the question of fair value. The appraisers shall
9918 have the powers described in the order appointing them or in any amendment to the order. The
9919 shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other
9920 civil proceedings. There shall be no right to a jury trial.

9921 (5) Each shareholder made a party to the proceeding is entitled to judgment for the
9922 amount of the fair value of such shareholder's shares, plus accrued interest, as found by the court.

9923 (6) The corporation shall pay each such shareholder the amount found to be due within
9924 10 days after final determination of the proceedings. Upon payment of the judgment, the
9925 shareholder shall cease to have any rights to receive any further consideration with respect to such

9926 ~~interest in the~~ shares other than any amounts ordered to be paid for court costs and attorney's fees
9927 under s. 607.1331.

9928

9929 **Commentary to Section 607.1330:**

9930 In subsection (2), the concept of "applicable county" (which has been added to the definitions in
9931 s. 607.01401) has been incorporated into this section. Some additional language has been added to
9932 deal with situations where the corporation, by virtue of the corporate action becoming effective,
9933 has become a foreign entity and what to do where that corporation did not have a principal office
9934 in Florida prior to the transaction. In addition, in subsection (6), language has been clarified such
9935 that, upon payment of the judgment, the shareholder ceases to have any right to receive any further
9936 consideration with respect to the shares rather than such shareholder ceasing to have any interest
9937 in the shares, given that other sections of Article 13 will have already caused the shareholder to
9938 cease to have any interest in the shares themselves. However, this provision is not intended to
9939 eliminate rights to receive reimbursement for court costs and attorney's fees that might be assessed
9940 under s. 607.1331 (and language has been added to reflect this concept).

9941

9942 Other than these clarifying changes, no substantive changes have been made to this section.

9943

9944 607.1331 Court costs and counsel fees.

9945 (1) The court in an appraisal proceeding shall determine all costs of the proceeding,
9946 including the reasonable compensation and expenses of appraisers appointed by the court. The
9947 court shall assess the costs against the corporation, except that the court may assess costs against
9948 all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the
9949 extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with
9950 respect to the rights provided by this chapter.

9951 (2) The court in an appraisal proceeding may also assess the fees and expenses of counsel
9952 and experts for the respective parties, in amounts the court finds equitable:

9953 (a) Against the corporation and in favor of any or all shareholders demanding
9954 appraisal if the court finds the corporation did not substantially comply with ss. 607.1320
9955 and 607.1322; or

9956 (b) Against either the corporation or a shareholder demanding appraisal, in favor of
9957 any other party, if the court finds that the party against whom the fees and expenses are
9958 assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights
9959 provided by this chapter.

9960 (3) If the court in an appraisal proceeding finds that the services of counsel for any
9961 shareholder were of substantial benefit to other shareholders similarly situated, and that the fees
9962 for those services should not be assessed against the corporation, the court may award to such
9963 counsel reasonable fees to be paid out of the amounts awarded the shareholders who were
9964 benefited.

9965 (4) To the extent the corporation fails to make a required payment pursuant to s.
9966 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall
9967 be entitled to recover from the corporation all costs and expenses of the suit, including
9968 attorneyseounsel fees.

9969

9970 **Commentary to Section 607.1331:**

9971 The existing statute follows the Model Act (and matches the corollary provision in FRLICA), so
9972 only minor clean-up changes have been made.

9973

9974 607.1332 Disposition of acquired shares.

9975 Shares acquired by a corporation pursuant to payment of the agreed value thereof or
9976 pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and
9977 disposed of by such corporation as authorized but unissued shares of the corporation, except that,
9978 in the case of a merger or share exchange, they may be held and disposed of as the plan of merger
9979 or share exchange otherwise provides. The shares of the survivor ~~surviving corporation~~ into which
9980 the shares of such shareholders demanding appraisal rights would have been converted had they
9981 assented to the merger shall have the status of authorized but unissued shares of the survivor
9982 ~~surviving corporation~~.

9983

9984 **Commentary to Section 607.1332:**

9985 This is not a Model Act provision. Rather it is an existing FBCA provision that matches the
9986 corollary provision in FRLCA. No substantive changes were made to this section.

9987

9988 607.1333 Limitation on corporate payment.

9989 (1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of
9990 payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such
9991 event, the shareholder shall, at the shareholder’s option:

9992 (a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such
9993 event be deemed withdrawn with the consent of the corporation; or

9994 (b) Retain his or her status as a claimant against the corporation and, if it is
9995 liquidated, be subordinated to the rights of creditors of the corporation, but have rights
9996 superior to the shareholders not asserting appraisal rights, and if the corporation ~~it~~ is not
9997 liquidated, retain his or her right to be paid for the shares, which right the corporation
9998 shall be obliged to satisfy when the restrictions of this section do not apply.

9999 (2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (1)(b)
10000 by written notice filed with the corporation within 30 days after the corporation has given written
10001 notice that the payment for shares cannot be made because of the restrictions of this section. If the
10002 shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or
10003 her notice of intent to assert appraisal rights.

10004

10005 **Commentary to Section 607.1333:**

10006 This is not a Model Act provision. Rather it is an existing FBCA provision that matches the
10007 corollary provision in FRLUCA. No substantive changes were made to this section.

10008

- 10009 607.1340 Other remedies limited.
- 10010 (1) A shareholder entitled to appraisal rights under this chapter may not challenge a
10011 completed corporate action for which appraisal rights are available unless such corporate action:
- 10012 (a) Was not authorized and approved in accordance with the applicable provisions of
10013 this chapter;
- 10014 (b) Was procured as a result of fraud, a material misrepresentation, or an omission of a
10015 material fact necessary to make statements made, in light of the circumstances in which they
10016 were made, not misleading.
- 10017 (2) Nothing in this section will operate to override or supersede any of the provisions of s.
10018 607.0832.
- 10019

10020 **Commentary to Section 607.1340:**

10021 Subsections (1) and (2) follow the wording of s. 13.40 (a) and (b) of the Model Act. While this
10022 language is somewhat different language from the language currently included in s. 607.1302(4),
10023 the changes are not considered substantive.

10024

10025 The proposal does not add subsections (2)(c) and (2)(d) of Model Act s. 13.40. However,
10026 subsection (2) has been added to the proposal to make clear that this provision is not intended to
10027 override the rights or operative provisions of Section 607.0832 relating to conflict of interest
10028 transactions, and that the failure to add these two Model Act provisions is not intended to prohibit
10029 a shareholder from contesting a completed conflict of interest transaction in accordance with (and
10030 subject to the burden of proof set forth in) s. 607.0832.

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ARTICLE 14
DISSOLUTION

607.1401 Dissolution by incorporators or directors.

If a corporation has not yet issued shares, its board of directors, or a majority of the
incorporators, if it has no board of ~~or directors, of a corporation that has not issued shares or has~~
~~not commenced business~~ may dissolve the corporation by delivering to the ~~D~~department of State
for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation ~~filing of its articles of incorporation;~~
- (3) ~~Either:~~
 - ~~(a) That none of the corporation’s shares have been issued, or~~
 - ~~(b) That the corporation has not commenced business;~~
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up have been distributed
to the shareholders, if shares were issued; and
- (6) That a majority of the incorporators or directors authorized the dissolution.

10049 **Commentary to Section 607.1401:**

10050 Minor non-substantive changes have been made to conform this section to the current version of
10051 the corollary section of the Model Act.

10052 Nearly all Model Act states, along with California and Delaware, have adopted very similar
10053 statutes regarding dissolution by incorporators or initial directors. California expressly allows
10054 dissolution where the corporation has not issued shares at the time of dissolution (Cal. Corp. Code.
10055 §1900.5(6) in a situation where: "the known assets of the corporation remaining after payment of,
10056 or adequately providing for, known debts and liabilities have been distributed to the persons
10057 entitled thereto or that the corporation acquired no known assets, as the case may be".) Other states,
10058 including Illinois and Maryland, permit dissolution by incorporators only where no shares have
10059 been issued, while Kansas and Pennsylvania permit dissolution only where the corporation has not
10060 commenced business. Eight states, including Nevada and Texas, require both that shares must not
10061 have been issued and business has not commenced.

10062

10063 607.1402 Dissolution by board of directors and shareholders; dissolution by written consent
10064 of shareholders.

10065 (1) A corporation’s board of directors may propose dissolution for submission to the
10066 shareholders by first adopting a resolution authorizing the dissolution.

10067 (2) For a proposal to dissolve to be adopted: ~~(a) T, it shall then be approved by the~~
10068 shareholders as provided in subsection (5). In submitting the proposal to dissolve to the
10069 shareholders for approval, the board of directors must recommend ~~dissolution that to~~ the
10070 shareholders approve the dissolution, unless (a) the board of directors determines that because of
10071 conflict of interest or other special circumstances it should make no recommendation, or (b) s.
10072 607.0826 applies. If either (a) or (b) applies, the board shall inform the shareholders of the basis
10073 for its proceeding in such manner and communicates the basis for its determination to the
10074 shareholders; and (b) The shareholders entitled to vote must approve the proposal to dissolve as
10075 provided in subsection (5).

10076 (3) The board of directors may set conditions for the approval of its submission of the
10077 proposal for dissolution ~~on any basis~~ by shareholders or for the effectiveness of the dissolution.

10078 (4) If the approval of the shareholders is to be given at a meeting, Tthe corporation shall
10079 notify, in accordance with s. 607.0705, each shareholder of record, regardless of whether or not
10080 entitled to vote, of the ~~proposed shareholders’~~ meeting of shareholders at which the dissolution is
10081 to be submitted for approval in accordance with s. 607.0705. The notice must also state that the
10082 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

10083 (5) Unless the articles of incorporation or the board of directors (acting pursuant to
10084 subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be
10085 adopted must be approved by a majority of all the votes entitled to be cast on ~~that~~ the proposal to
10086 dissolve.

10087 (6) Alternatively, without action of the board of directors, action to dissolve a corporation
10088 may be taken by the written consent of the shareholders pursuant to s. 607.0704.

10089

10090 **Commentary to Section 607.1402:**

10091 The language in subsections (1) through (4) has been modified to adopt many of the language
10092 changes in the Model Act in these provisions. None of these changes are substantive.

10093 There are two substantive differences between this section of the FBCA and the corollary Model
10094 Act provision. First, the Florida only provision in subsection (6) that allows shareholders to
10095 approve dissolution of the corporation by written consent without action of the board of directors
10096 has been retained. This non-Model Act provision was specifically added to the FBCA in 1989.
10097 Second, the statute continues the requirement in subsection (5) that the shareholders approve a
10098 proposal for dissolution by a vote of a majority of the shares entitled to vote on the proposal,
10099 compared to the requirement in the corollary provision of the Model Act only requiring approval
10100 by a majority of the quorum in attendance at a meeting called to consider the proposal.

10101

10102 607.1403 Articles of dissolution.

10103 (1) At any time after dissolution is authorized, the corporation may dissolve by
10104 delivering to the ~~D~~department of State for filing articles of dissolution which shall be signed
10105 ~~executed~~ in accordance with s. 607.0120 and which shall set forth:

10106 (a) The name of the corporation;

10107 (b) The date dissolution was authorized;

10108 (c) If dissolution was approved by the shareholders, a statement that the proposal
10109 to dissolve was duly approved by the shareholders in the manner required by this chapter
10110 and by the articles of incorporation the number — cast for dissolution by the shareholders
10111 was sufficient for approval.

10112 ~~(d) — If dissolution was approved by the shareholders and if voting by voting groups~~
10113 ~~was required, a statement that the number cast for dissolution by the shareholders was~~
10114 ~~sufficient for approval must be separately provided for each voting group entitled to vote~~
10115 ~~separately on the plan to dissolve.~~

10116 (2) The articles of dissolution shall take effect at the effective date determined in
10117 accordance with s. 607.0123. A corporation is dissolved upon the effective date of its articles of
10118 dissolution.

10119 (3) For purposes of s. 607.1401 – s. 607.1410, "dissolved corporation" means a corporation
10120 whose articles of dissolution have become effective and includes a successor entity, as defined in
10121 subsection (4).

10122 (4) As used in s. 607.1401 – s. 607.1410, the term "successor entity" includes a trust,
10123 receivership, or other legal entity governed by the laws of this state to which the remaining assets
10124 and liabilities of a dissolved corporation are transferred and which exists solely for the purposes
10125 of prosecuting and defending suits by or against the dissolved corporation, thereby enabling the
10126 dissolved corporation to settle and close the business of the dissolved corporation, to dispose of
10127 and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved
10128 corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but
10129 not for the purpose of continuing the activities and affairs for which the dissolved corporation was
10130 organized.

10131

10132 **Commentary to Section 607.1403:**

10133 The statute has been modified to make the clarifying language changes contained in the corollary
10134 version of the Model Act. These changes are not substantive.

10135 Two issues were considered:

10136 1. Subsection 1(c) of the FBCA was modified to conform to the Model Act. However, it
10137 removes the requirement that the vote of voting groups be noted in the articles of
10138 dissolution. This difference has existed in the FBCA since 1989.

10139
10140 2. The language "in accordance with s. 607.0120" in the FBCA in subsection (1) has been
10141 retained, although not in the corollary section of the Model Act. It has been in the statute
10142 since 1989 and has been retained as a reminder to users of the FBCA that they need to
10143 comply with the FBCA section on filing requirements in filing articles of dissolution.

10144
10145 Thirty-four states, including most Model Act states, along with Delaware and New York follow
10146 the general process of Model Act s. 14.03. Some states additionally require certain statements as
10147 to the settlement of debts, distribution of property, and the status of any pending litigation against
10148 the company. These are not in the Model Act or the existing FBCA provision, and have not been
10149 included.

10150
10151 Following dissolution, the existence of the corporation continues as a "dissolved corporation"
10152 while the corporation is being liquidated under s. 607.1405. However, after the dissolution
10153 becomes effective, the corporation can conduct no business other than to wind down and liquidate.

10154 Subsection (4) includes the definition of a "successor entity" that was previously included in s.
10155 607.1406(15). A successor entity is included within the definition of dissolved corporation under
10156 subsection (3).

10157

10158 607.1404 Revocation of dissolution.

10159 (1) A corporation may revoke its dissolution at any time prior to the expiration of 120 days
10160 following the effective date of the articles of dissolution.

10161 (2) Revocation of dissolution must be authorized in the same manner as the dissolution was
10162 authorized unless that authorization permitted revocation by action of the board of directors alone,
10163 in which event the board of directors may revoke the dissolution without shareholder action.

10164 (3) After the revocation of dissolution is authorized, the corporation may revoke the
10165 dissolution by delivering to the ~~Department of State~~, within the 120 day period following the
10166 effective date of the articles of dissolution, for filing articles of revocation of dissolution, together
10167 with a copy of its articles of dissolution, that set forth:

10168 (a) The name of the corporation;

10169 (b) The effective date of the dissolution that was revoked;

10170 (c) The date that the revocation of dissolution was authorized;

10171 (d) If the corporation's board of directors or incorporators revoked the dissolution, a
10172 statement to that effect;

10173 (e) If the corporation's board of directors revoked a dissolution authorized by the
10174 shareholders, a statement that revocation was permitted by action by the board of directors alone
10175 pursuant to that authorization; and

10176 (f) If shareholder action was required to revoke the dissolution, ~~the information required~~
10177 ~~by s. 607.1403(1)(c) or (d)~~ a statement that the revocation was authorized by the shareholders in
10178 the manner required by this chapter and by the articles of incorporation.

10179 (4) Revocation of dissolution is effective upon the effective date of the articles of revocation
10180 of dissolution.

10181 (5) When the revocation of dissolution is effective, it relates back to and takes effect as of
10182 the effective date of the dissolution and the corporation resumes carrying on its business as if
10183 dissolution had never occurred.

10184

10185 **Commentary to Section 607.1404:**

10186 The FBCA provision is identical to the Model Act.

10187 Many states allow a corporation to revoke dissolution as long as the revocation occurs prior to 120
10188 days after the effective date of the articles of dissolution. Delaware allows it for three years, while
10189 California allows for revocation prior to the distribution of assets, with no time limit. Four states,
10190 including New York, do not allow for revocation of a voluntarily dissolution.

10191

10192 607.1405 Effect of dissolution.

10193 (1) A ~~dissolved~~ corporation that has dissolved continues its corporate existence but the
10194 dissolved corporation may not carry on any business except that appropriate to wind up and
10195 liquidate its business and affairs, including:

10196 (a) Collecting its assets;

10197 (b) Disposing of its properties that will not be distributed in kind to its
10198 shareholders;

10199 (c) Discharging or making provision for discharging its liabilities;

10200 (d) Making distributions of ~~Distributing~~ its remaining assets ~~property~~ among its
10201 shareholders according to their interests; and

10202 (e) Doing every other act necessary to wind up and liquidate its business and affairs.

10203 (2) Dissolution of a corporation does not:

10204 (a) Transfer title to the corporation's property;

10205 (b) Prevent transfer of its shares or securities, ~~although the authorization to~~
10206 ~~dissolve may provide for closing the corporation's share transfer records;~~

10207 (c) Subject its directors or officers to standards of conduct different from those
10208 prescribed in ss. 607.0801-607.08590 ~~except as provided in s. 607.1421(4);~~

10209 (d) Change quorum or voting requirements for its board of directors or
10210 shareholders, change provisions for selection, resignation, or removal of its directors or
10211 officers or both; or change provisions for amending its bylaws;

10212 (e) Prevent commencement of a proceeding by or against the corporation in its
10213 corporate name;

10214 (f) Abate or suspend a proceeding pending by or against the corporation on the
10215 effective date of dissolution; or

10216 (g) Terminate the authority of the registered agent of the corporation.

10217 (3) A distribution in liquidation under this section may only be made by a dissolved corporation.
10218 For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board
10219 of directors may fix a record date for determining shareholders entitled to a distribution in liquidation,
10220 which date may not be retroactive. If the board of directors does not fix a record date for determining

10221 shareholders entitled to a distribution in liquidation, the record date is the date the board of directors
10222 authorizes the distribution in liquidation.

10223 (34) The directors, officers, and agents of a corporation dissolved pursuant to s. 607.1403
10224 shall not incur any personal liability thereby by reason of their status as directors, officers, and
10225 agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.

10226 (45) The name of a dissolved corporation ~~is not shall not be~~ available for assumption or use
10227 by another eligible entity corporation until 1 year ~~120 days~~ after the effective date of dissolution
10228 unless the dissolved corporation provides the ~~D~~department of ~~S~~State with an affidavit, signed
10229 ~~executed~~ as required pursuant to s. 607.0120, permitting the immediate assumption or use of the
10230 name by another eligible entity corporation.

10231 (56) For purposes of this section, the circuit court may appoint a trustee, custodian or
10232 receiver for any property owned or acquired by the corporation who may engage in any act
10233 permitted under subsection (1) if any director or officer of the dissolved corporation is unwilling
10234 or unable to serve or cannot be located.

10235

10236 **Commentary to Section 607.1405:**

10237 Subsections (1) and (2) of the FBCA follow subsections (a) and (b) of the corollary section of the
10238 Model Act. The reference to s. 607.1421(4) of the FBCA, which deals with possible personal
10239 liability of officers or directors in dissolution, has been removed because that provision was not
10240 retained in the FBCA.

10241 Distributions in liquidation that occur after dissolution are distinct from the pre-dissolution
10242 distributions governed by s. 607.06401. As a result, new subsection (3) has been added to allow
10243 for setting a record date for determining shareholders entitled to receive a distribution in
10244 liquidation.

10245 Subsections (3), (4), and (5) of the FBCA (renumbered as sections (4), (5) and (6) above) do not
10246 appear in the Model Act. Subsection (3) was added to the FBCA in 1989 to make clear that
10247 dissolution does not change the duty of care, fiduciary duty, limitations on liability or right to
10248 indemnification of officers, directors and agents of the dissolved corporation. Subsection (6)
10249 expressly allows a court to appoint a trustee, custodian or receiver to carry out the winding up
10250 process, presumably at the behest of creditors or shareholders who have a stake in the liquidation
10251 of the corporation if the directors or officers are unwilling to serve. Finally, subsection (5) deals
10252 with use of a corporate name following dissolution.

10253

10254 607.1406 Known claims against dissolved corporation.

10255 (1) A dissolved corporation may dispose of the known claims against it by giving written
10256 notice, satisfying the requirements of subsection (2), to its known claimants at any time after the
10257 effective date of the dissolution (but no later than the date which is 270 days prior to the date which
10258 is 3 years after the effective date of the dissolution).

10259 (2) The written notice must:

10260 (a) State the name of the corporation that is the subject of a dissolution;

10261 (b) State that the corporation is the subject of a dissolution and the effective date of
10262 the dissolution;

10263 (c) Specify the information that must be included in a claim;

10264 (d) State that a claim must be in writing and provide a mailing address where a claim
10265 may be sent;

10266 (e) State the deadline, which may not be fewer than 120 days after the date the
10267 written notice is received by the claimant, by which the dissolved corporation must receive
10268 the claim;

10269 (f) State that the claim will be barred if not received by the deadline;

10270 (g) State that the dissolved corporation may make distributions thereafter to
10271 other claimants and to the dissolved corporation's shareholders or persons interested
10272 without further notice; and

10273 (h) Be accompanied by a copy of ss. 607.1405-607.1410 of this chapter.

10274 (3) A dissolved corporation may reject, in whole or in part, a claim submitted by a
10275 claimant and received prior to the deadline specified in the written notice given pursuant to
10276 subsections (1) and (2) by mailing notice of the rejection to the claimant on or before the date
10277 which is the earlier of (i) 90 days after the dissolved corporation receives the claim and (ii) the
10278 date which is 150 days prior to the date which is 3 years after the effective date of the dissolution.
10279 A rejection notice sent by the dissolved corporation pursuant to this subsection must state that the
10280 claim will be barred unless the claimant, not later than 120 days after the claimant receives the
10281 rejection notice, commences an action in the circuit court in the applicable county against the
10282 dissolved corporation to enforce the claim.

10283 (4) A claim against the dissolved corporation is barred:

10284 (a) If a claimant who was given written notice pursuant to subsections (1) and (2)
10285 does not deliver the claim to the dissolved corporation by the specified deadline; or

10286 (b) If the claim was timely received by the dissolved corporation but was timely
10287 rejected by the dissolved corporation under subsection (3) and the claimant does not
10288 commence the required action in the applicable county within 120 days after the claimant
10289 receives the rejection notice.

10290 (5) For purposes of this section, "known claims" means any claim or liability that, as of
10291 the date of the giving of the written notice contemplated by subsections (1) and (2), either:

10292 (a) Has matured sufficiently on or prior to the effective date of the dissolution
10293 to be legally capable of assertion against the dissolved corporation; or

10294 (b) Is unmatured as of the effective date of the dissolution but will mature in
10295 the future solely based on the passage of time.

10296 Notwithstanding, a "known claim" does not include a claim based on an event occurring after the
10297 effective date of the dissolution or a claim that is a contingent claim.

10298 (6) The giving of any notice pursuant to the provisions of this section shall not revive
10299 any claim then barred or constitute acknowledgment by the dissolved corporation that any person
10300 to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense
10301 or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

10302 ~~(1) — A dissolved corporation or successor entity, as defined in subsection (15), may~~
10303 ~~dispose of the known claims against it by following the procedures described in subsections (2)~~
10304 ~~(3), and (4).~~

10305 ~~(2) — The dissolved corporation or successor entity shall deliver to each of its known claimants~~
10306 ~~written notice of the dissolution at any time after its effective date. The written notice shall:~~

10307 ~~(a) — Provide a reasonable description of the claim that the claimant may be entitled~~
10308 ~~to assert;~~

10309 ~~(b) — State whether the claim is admitted or not admitted, in whole or in part, and,~~
10310 ~~if admitted:~~

10311 ~~1. — The amount that is admitted, which may be as of a given date; and~~

10312 ~~2. — Any interest obligation if fixed by an instrument of indebtedness;~~

10313 ~~(c) — Provide a mailing address where a claim may be sent;~~

10314 ~~(d) State the deadline, which may not be fewer than 120 days after the effective~~
10315 ~~date of the written notice, by which confirmation of the claim must be delivered to the~~
10316 ~~dissolved corporation or successor entity; and~~

10317 ~~(e) State that the corporation or successor entity may make distributions thereafter~~
10318 ~~to other claimants and the corporation's shareholders or persons interested as having been~~
10319 ~~such without further notice.~~

10320 ~~(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim~~
10321 ~~made by a claimant pursuant to this subsection by mailing notice of such rejection to the claimant~~
10322 ~~within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of~~
10323 ~~3 years following the effective date of dissolution. A notice sent by the dissolved corporation or~~
10324 ~~successor entity pursuant to this subsection shall be accompanied by a copy of this section.~~

10325 ~~(4) A dissolved corporation or successor entity electing to follow the procedures described~~
10326 ~~in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons~~
10327 ~~with known claims, that are contingent upon the occurrence or nonoccurrence of future events or~~
10328 ~~otherwise conditional or unmatured, and request that such persons present such claims in~~
10329 ~~accordance with the terms of such notice. Such notice shall be in substantially the same form, and~~
10330 ~~sent in the same manner, as described in subsection (2).~~

10331 ~~(5) A dissolved corporation or successor entity shall offer any claimant whose known claim~~
10332 ~~is contingent, conditional, or unmatured such security as the corporation or such entity determines~~
10333 ~~is sufficient to provide compensation to the claimant if the claim matures. The dissolved~~
10334 ~~corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt~~
10335 ~~of such claim and, in all events, at least 150 days before expiration of 3 years after following the~~
10336 ~~effective date of dissolution. If the claimant offered such security does not deliver in writing to the~~
10337 ~~dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt~~
10338 ~~of such offer for security, the claimant is deemed to have accepted such security as the sole source~~
10339 ~~from which to satisfy his or her claim against the corporation.~~

10340 ~~(6) A dissolved corporation or successor entity which has given notice in accordance with~~
10341 ~~subsection (2) shall petition the circuit court in the county where the corporation's principal office~~
10342 ~~is located or was located at the effective date of dissolution to determine the amount and form of~~
10343 ~~security that will be sufficient to provide compensation to any claimant who has rejected the offer~~
10344 ~~for security made pursuant to subsection (5).~~

10345 ~~(7) A dissolved corporation or successor entity which has given notice in accordance with~~
10346 ~~subsection (2) shall petition the circuit court in the county where the corporation's principal office~~
10347 ~~is located or was located at the effective date of dissolution to determine the amount and form of~~
10348 ~~security which will be sufficient to provide compensation to claimants whose claims are known to~~
10349 ~~the corporation or successor entity but whose identities are unknown. The court shall appoint a~~

10350 ~~guardian ad litem to represent all claimants whose identities are unknown in any proceeding~~
10351 ~~brought under this subsection. The reasonable fees and expenses of such guardian, including all~~
10352 ~~reasonable expert witness fees, shall be paid by the petitioner in such proceeding.~~

10353 ~~(8) The giving of any notice or making of any offer pursuant to the provisions of this section~~
10354 ~~shall not revive any claim then barred or constitute acknowledgment by the dissolved corporation~~
10355 ~~or successor entity that any person to whom such notice is sent is a proper claimant, and shall not~~
10356 ~~operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person~~
10357 ~~to whom such notice is sent.~~

10358 ~~(9) A dissolved corporation or successor entity which has followed the procedures described~~
10359 ~~in subsections (2)-(7):~~

10360 ~~(a) Shall pay the claims admitted or made and not rejected in accordance with~~
10361 ~~subsection (3);~~

10362 ~~(b) Shall post the security offered and not rejected pursuant to subsection (5);~~

10363 ~~(c) Shall post any security ordered by the circuit court in any proceeding under~~
10364 ~~subsections (6) and (7); and~~

10365 ~~(d) Shall pay or make provision for all other known obligations of the corporation~~
10366 ~~or such successor entity.~~

10367 ~~Such claims or obligations shall be paid in full, and any such provision for payments shall~~
10368 ~~be made in full if there are sufficient funds. If there are insufficient funds, such claims and~~
10369 ~~obligations shall be paid or provided for according to their priority and, among claims of equal~~
10370 ~~priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be~~
10371 ~~distributed to the shareholders of the dissolved corporation; however, such distribution may not be~~
10372 ~~made before the expiration of 150 days from the date of the last notice of rejections given pursuant~~
10373 ~~to subsection (3). In the absence of actual fraud, the judgment of the directors of the dissolved~~
10374 ~~corporation or the governing persons of such successor entity as to the provisions made for the~~
10375 ~~payment of all obligations under paragraph (d) is conclusive.~~

10376 ~~(10) A dissolved corporation or successor entity which has not followed the procedures~~
10377 ~~described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims~~
10378 ~~and obligations, including all contingent, conditional, or unmatured claims known to the~~
10379 ~~corporation or such successor entity and all claims which are known to the dissolved corporation~~
10380 ~~or such successor entity but for which the identity of the claimant is unknown. Such claims shall~~
10381 ~~be paid in full, and any such provision for payment made shall be made in full if there are sufficient~~
10382 ~~funds. If there are insufficient funds, such claims and obligations shall be paid or provided for~~
10383 ~~according to their priority and, among claims of equal priority, ratably to the extent of funds legally~~

10384 available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved
10385 corporation.

10386 (11) ~~Directors of a dissolved corporation or governing persons of a successor entity which~~
10387 ~~has complied with subsection (9) or subsection (10) are not personally liable to the claimants of~~
10388 ~~the dissolved corporation.~~

10389 (12) ~~A shareholder of a dissolved corporation the assets of which were distributed pursuant~~
10390 ~~to subsection (9) or subsection (10) is not liable for any claim against the corporation in an amount~~
10391 ~~in excess of such shareholder's pro rata share of the claim or the amount distributed to the~~
10392 ~~shareholder, whichever is less.~~

10393 (13) ~~A shareholder of a dissolved corporation, the assets of which were distributed pursuant~~
10394 ~~to subsection (9), is not liable for any claim against the corporation, which claim is known to the~~
10395 ~~dissolved corporation or successor entity, on which a proceeding is not begun prior to the~~
10396 ~~expiration of 3 years following the effective date of dissolution.~~

10397 (14) ~~The aggregate liability of any shareholder of a dissolved corporation for claims against~~
10398 ~~the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not exceed the~~
10399 ~~amount distributed to the shareholder in dissolution.~~

10400 (15) ~~As used in ss. 601.1401—607.1409 this section, or s. 607.1407, the term "successor~~
10401 ~~entity" includes a trust, receivership, or other legal entity governed by the laws of this state to~~
10402 ~~which the remaining assets and liabilities of a dissolved corporation are transferred and which~~
10403 ~~exists solely for the purposes of prosecuting and defending suits by or against the dissolved~~
10404 ~~corporation, thereby enabling the dissolved corporation to settle and close the business of the~~
10405 ~~dissolved corporation, to dispose of and convey the property of the dissolved corporation, to~~
10406 ~~discharge the liabilities of the dissolved corporation, and to distribute to the dissolved~~
10407 ~~corporation's shareholders any remaining assets, but not for the purpose of continuing the activities~~
10408 ~~and affairs for which the dissolved corporation was organized.~~

10409

10410 **Commentary to Section 607.1406:**

10411 The current FBCA provisions dealing with claims against a dissolved corporation are largely
10412 Florida only provisions. The original s. 607.1406 was adopted in 1989 and, according to the
10413 commentary from the 1989 committee, was based on DGCL ss. 280, 281 and 282 as those statutes
10414 existed at that time. The revised section of the FBCA is largely based on the corollary section of
10415 the Model Act, with some language and structure borrowed from the corollary provision in
10416 RULLCA. However, some of the wording from the existing FBCA provision has been retained
10417 where the Subcommittee believes it reflects more clarity than the Model Act.

10418 The words "or successor entity" are no longer contained in the statute because the definition of
10419 "dissolved corporation" under s. 607.1403(3) now includes a successor entity

10420 The Model Act commentary describes what is a "known claim" (covered by s. 14.06) and what is an
10421 "other claim" (covered by s. 14.07), in the following manner:

10422 Sections 14.06 and 14.07 provide a simplified system for handling claims against a dissolved
10423 corporation. Section 14.06 deals solely with known claims while section 14.07 deals with
10424 unknown or subsequently arising claims. Known claims may be unliquidated, but a claim that
10425 is contingent or has not yet matured (or in certain cases has matured but has not been asserted)
10426 is not a "claim" for purposes of section 14.06(d). For example, an unmatured liability under a
10427 guarantee, a potential default under a lease, or an unasserted claim based upon a defective
10428 product manufactured by the dissolved corporation would not be a "claim" under section
10429 14.06."

10430 Notwithstanding, unlike the Model Act, s. 607.1406 treats claims that are unmatured as of the
10431 effective date of the dissolution, but that will mature solely with the passage of time, as known
10432 claims. An example would be a debt due under a promissory note that is not yet due or a trade
10433 payable that has been accrued for accounting purposes but is not yet due.

10434 A "known claim" does not include a claim that would accrue upon the occurrence of an event after
10435 the effective date of the dissolution or a claim that is a contingent claim. Examples would include
10436 an unmatured liability under a guarantee, a potential default under a lease, or an unasserted claim
10437 based on a defective product manufactured by the dissolved corporation.

10438 The principles of s. 607.1406 do not lengthen the statute of limitations applicable under general
10439 state law and claims that are not barred under s. 607.1406 may be made within the general statute
10440 of limitations.

10441 Section 607.1406 is voluntary. If the corporation does not follow this section in handling known
10442 claims in dissolution, the directors and the shareholders do not get the protections of this section
10443 and s. 607.1410.

10444 Under s. 607.1406, claimants who comply with the statutory requirements and are not barred have
10445 the ability to have recourse to the remaining assets of the corporation or to recover from
10446 shareholders. Such recovery from each shareholder is limited to the lesser of the respective
10447 shareholder's pro rata share of the claim or the total amount of assets received by the respective
10448 shareholder as a liquidating distribution. However, if s. 607.1406 is not followed, the shareholder
10449 could be liable for its share of any claim not barred by the regular statute of limitation up to the
10450 amount of the distribution which it received in liquidation. See s. 607.1408.

10451

10452 607.1407 Other Unknown claims against dissolved corporation.

10453 (1) A dissolved corporation ~~or successor entity, as defined in s. 607.1406(15),~~ may choose
10454 to execute ~~one of the following procedures to resolve payment of unknown claims against the~~
10455 dissolved corporation that are other than known claims. ~~(a) A dissolved corporation or successor~~
10456 ~~entity may file notice of its dissolution with the Department of State on the form prescribed by~~
10457 ~~the Department of State and request that persons with claims against the corporation which are~~
10458 ~~not known claims present them in accordance with the notice. The notice shall~~ must:

10459 (a) State the name of the corporation ~~and the date~~ that is the subject of the
10460 dissolution;

10461 (b) ~~Describe the information that must be included in a claim and provide a~~
10462 ~~mailing address to which the claim may be sent~~ State that the corporation is the subject of
10463 a dissolution and the effective date of the dissolution; and

10464 (c) Specify the information that must be included in a claim;

10465 (d) State that a claim must be in writing and provide a mailing address where a
10466 claim may be sent;

10467 (e) State that a claim against the corporation under this subsection will be
10468 barred unless a proceeding to enforce the claim is commenced within 4 years after the filing
10469 of the notice.

10470 (2) ~~A dissolved corporation or successor entity may, within 10 days after filing articles~~
10471 ~~of dissolution with the Department of State publish a "Notice of Corporate Dissolution." The notice~~
10472 ~~shall appear once a week for 2 consecutive weeks in a newspaper of general circulation in a county~~
10473 ~~in the state in which the corporation has its principal office, if any, or, if none, in a county in the~~
10474 ~~state in which the corporation owns real or personal property. Such newspaper shall meet the~~
10475 ~~requirements as are prescribed by law for such purposes. The notice shall:~~

10476 (a) ~~State the name of the corporation and the date of dissolution;~~

10477 (b) ~~Describe the information that must be included in a claim and provide a~~
10478 ~~mailing address to which the claim may be sent; and~~

10479 (c) ~~State that a claim against the corporation under this subsection will be barred~~
10480 ~~unless a proceeding to enforce the claim is commenced within 4 years after the date of the~~
10481 ~~second consecutive weekly publication of the notice authorized by this section.~~

10482 (23) If the dissolved corporation ~~or successor entity~~ complies with subsection (1) ~~or~~
10483 ~~subsection (2),~~ unless sooner barred by another statute limiting actions, the claim of each of the

10484 following claimants is barred unless the claimant commences a proceeding to enforce the claim
10485 against the dissolved corporation within 4 years after the date of filing the notice with the
10486 ~~Department of State or the date of the second consecutive weekly publication, as applicable:~~

10487 (a) A claimant who did not receive written notice under s. 607.1406(9) ~~or whose~~
10488 ~~claim was not provided for under s. 607.1406(1), whether such claim is based on an event~~
10489 ~~occurring before or after the effective date of dissolution.~~

10490 (b) A claimant whose claim was timely sent to the dissolved corporation but on
10491 which no action was taken by the dissolved corporation.

10492 (c) A claimant whose claim is not a known claim under s. 607.1406(5).

10493 ~~(4) A claim may be entered under this section:~~

10494 ~~(a) Against the dissolved corporation, to the extent of its undistributed assets; or~~

10495 ~~(b) If the assets have been distributed in liquidation, against a shareholder of the~~
10496 ~~dissolved corporation to the extent of such shareholder's pro rata share of the claim or the~~
10497 ~~corporate assets distributed to such shareholder in liquidation, whichever is less, provided~~
10498 ~~that the aggregate liability of any shareholder of a dissolved corporation arising under this~~
10499 ~~section, s. 607.1406, or otherwise may not exceed the amount distributed to the shareholder~~
10500 ~~in dissolution.~~

10501 (3) Nothing in this section shall preclude or relieve the corporation from its notification
10502 to claimants otherwise set forth in this chapter.

10503

10504 **Commentary to Section 607.1407:**

10505 The FBCA is one of two state corporate statutes (along with California) with a four year statute of
10506 limitations. Most jurisdictions have a three year limitations period (the statute of limitations under
10507 the Model Act) or five years (the statute of limitations in Delaware), while seven jurisdictions,
10508 including New York, provide no statute of limitations (instead, the statute of limitations is dictated
10509 by the underlying cause of action).

10510 The Model Act allows for posting on the dissolved corporation's website and newspaper
10511 publication as the means to notify potential claimants of a dissolved corporation. Section 607.1407
10512 previously included the right to notify claimants by either publication or the filing of a notice with
10513 the Department of State on a form prescribed by the Department. This statute eliminates the
10514 publication option based on the belief that filing with the Department is a more permanent,
10515 accessible notice to potential claimants than the publication of a notice in a newspaper of limited
10516 circulation.

10517 The principles of s. 607.1407 do not lengthen the statute of limitations applicable under general
10518 state law and claims that are not barred under s. 607.1407 may be made within the general statute
10519 of limitations.

10520 Section 607.1407 is voluntary. If the corporation does not follow this section in handling claims
10521 other than known claims in dissolution, the corporation, its board and its shareholders do not get
10522 the protections afforded by this section and by s. 607.1410.

10523 Section 607.1407 addresses problems created by possible claims that might rise long after the
10524 dissolution process is completed and the corporate assets distributed to shareholders. The problems
10525 raised by these claims are difficult. On the one hand, the application of a mechanical limitation
10526 period of a claim for injury that occurs after the period has expired may involve injustice to the
10527 plaintiff. On the other hand, to permit these suits generally could make it impossible to ever
10528 complete the winding up of the corporation, make suitable provisions for creditors and distribute
10529 the balance of the corporate assets to the shareholders. The approach taken in s. 607.1407 is to
10530 continue the liability of the dissolved corporation for an arbitrary period of time (three years in the
10531 Model Act provision; four years in the current corollary FBCA provision).

10532 Under s. 607.1407, claimants have the ability within this arbitrary statute of limitations to have
10533 recourse to the remaining assets of the corporation or to recover from shareholders. Such recovery
10534 from each shareholder is limited to the lesser of the respective shareholder's pro rata share of the
10535 claim or the total amount of assets received by the respective shareholder as a liquidating
10536 distribution. However, if s. 607.1407 is not followed, the shareholder could be liable for its share
10537 of any claim not barred by the regular statute of limitation up to the amount of the distribution
10538 which it received in liquidation. See s. 607.1408.

10539 Section 607.1407 allows a dissolved corporation to initiate a court proceeding to establish what, if
10540 any, provision should be made for contingent or unknown claims that are not reasonably expected
10541 to be barred after the limitations period in s. 607.1407(2). This provision is designed to permit the
10542 court to adopt procedures appropriate to the circumstances. If the dissolved corporation provides
10543 for security for claims under s. 607.1409(4), that section protects shareholders who receive
10544 distributions against those claims and also protects directors for a breach of their duty under s.
10545 607.1410(1) to discharge or make reasonable provision for payment of claims, thereby protecting
10546 the directors from liability for those distributions.

10547

10548 607.1408 Enforcement of claims against dissolved corporations.

10549 A claim that is not barred by s. 607.1406(4), by s. 607.1407(2), or by another statute limiting
10550 actions may be enforced:

10551 (a) Against the dissolved corporation, to the extent of its undistributed assets; or

10552 (b) Except as provided in s. 607.1409(4), if the assets have been distributed in
10553 liquidation, against a shareholder of the dissolved corporation to the extent of the
10554 shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder
10555 in liquidation, whichever is less, provided that the aggregate liability of any shareholder of
10556 a dissolved corporation arising under s. 607.1406, s. 607.1407, or otherwise may not
10557 exceed the total amount of assets distributed to the shareholder in dissolution.

10558

10559 **Commentary to Section 607.1408:**

10560 Although this section is a new section, it effectively keeps in the FBCA the voluntary claims
10561 provisions from ss. 607.1406 and 607.1407 of the existing statute that are beneficial to
10562 shareholders of those corporations that elect to utilize those particular sections to deal with the
10563 corporation's claims in dissolution.

10564

10565 607.1409 Court proceedings.
10566

10567 (1) A dissolved corporation that has filed a notice under s. 607.1407(1) may file an
10568 application with the circuit court in the applicable county, for a determination of the amount and
10569 form of security to be provided for payment of claims that are contingent or have not been made
10570 known to the dissolved corporation or that are based on an event occurring after the effective
10571 date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably
10572 estimated to arise after the effective date of dissolution. Provision need not be made for any
10573 claim that is or is reasonably anticipated to be barred under s. 607.1407(2).
10574

10575 (2) Within 10 days after the filing of the application under subsection (1), notice of the
10576 proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim
10577 whose identity and contingent claim is known to the dissolved corporation. Such notice shall be
10578 accompanied by a copy of ss. 607.1405-607.1410 of this chapter.

10579 (3) In any proceeding under this section, the court may appoint a guardian ad litem to
10580 represent all claimants whose identities are unknown. The reasonable fees and expenses of such
10581 guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.
10582

10583 (4) Provision by the dissolved corporation for security in the amount and the form
10584 ordered by the court under subsection (1) shall satisfy the dissolved corporation's obligations with
10585 respect to claims that are contingent, have not been made known to the dissolved corporation or
10586 are based on an event occurring after the effective date of dissolution, and such claims may not be
10587 enforced against a shareholder who received assets in liquidation.
10588

10589 **Commentary to Section 607.1409:**

10590 This section was added to the Model Act in 2000 to provide a procedure for handling unknown
10591 and contingent claims against the dissolved corporation. It has now been added to the FBCA.

10592 Subsection (4) was part of the current version of s. 607.1406, but has been moved here because
10593 those types of claims are now to be covered under s. 607.1407.

10594

10595 607.1410 Director duties.

10596

10597 (1) Directors shall cause the dissolved corporation to discharge or make reasonable
10598 provision for the payment of claims and make distributions in liquidation of assets to shareholders
10599 after payment or provision for claims.

10600

10601 (2) Directors of a dissolved corporation that has disposed of claims under ss. 607.1406,
10602 607.1407, or 607.1409 shall not be liable to any claimant or shareholder for breach of s.
10603 607.1410(1) with respect to claims against the dissolved corporation that are barred or satisfied in
10604 accordance with ss. 607.1406, 607.1407, or 607.1409.

10605

10606 **Commentary to Section 607.1410:**

10607 This is a new section. It is based on the corollary section of the Model Act (s. 14.09).

10608 Section 14.09 of the Model Act was added to the Model Act in 2000 and establishes the terms
10609 under which a director could be relieved of liability for unlawful distributions in liquidation under
10610 s. 607.1401 et seq., and thus avoid the general distribution liability under s. 607.06401. Although
10611 similar in large respect, the new terms under which a director could be relieved of such liability
10612 differ somewhat from the exculpatory provisions that previously had appeared in subsection (11)
10613 of s. 607.1406.

10614

10615 607.1420 Grounds for Administrative dissolution.

10616 (1) ~~The Department of State may commence a proceeding under s. 607.1421 to~~
10617 ~~administratively dissolve a corporation administratively if the corporation does not:~~

10618 (a) Deliver its annual report to the department ~~The corporation has failed to file its~~
10619 ~~annual report and pay the annual report filing fee by 5:00 p.m. Eastern Time on the third~~
10620 ~~Friday in September of each year;~~

10621 (b) Pay a fee or penalty due to the department under this chapter;

10622 (c) Appoint and maintain ~~The corporation is without a registered agent and~~ or ~~registered~~
10623 ~~office as required by s. 607.0501 in this state for 30 days or more;~~

10624 (de) Deliver for filing a statement of change under s. 607.0502 ~~The corporation does~~
10625 ~~not notify the department of State within 30 days after a change has occurred in the name or~~
10626 ~~address of the agent unless, within 30 days after the change occurred: that its the corporation's~~
10627 ~~registered agent or registered office has been changed, that its registered agent has resigned,~~
10628 ~~or that its registered office has been discontinued;~~

10629 1. The agent filed a statement of change under s. 607.05031; or

10630 2. The change was made in accordance with s. 607.0502(4);

10631 (d) ~~The corporation has failed to answer truthfully and fully, within the time prescribed~~
10632 ~~by this act, interrogatories propounded by the Department of State; or~~

10633 (e) The corporation's period of duration stated in its articles of incorporation expires ~~has~~
10634 ~~expired.~~

10635 (2) ~~The foregoing enumeration in subsection (1) of grounds for administrative dissolution~~
10636 ~~shall not exclude actions or special proceedings by the Department of Legal Affairs or any state~~
10637 ~~officials for the annulment or dissolution of a corporation for other causes as provided in any other~~
10638 ~~statute of this state.~~

10639 (2) Administrative dissolution of a corporation for failure to file an annual report must occur
10640 on the fourth Friday in September of each year. The department shall issue a notice in a record of
10641 administrative dissolution to the corporation dissolved for failure to file an annual report. Issuance
10642 of the notice may be by electronic transmission to a corporation that has provided the department
10643 with an e-mail address.

10644 (3) If the department determines that one or more grounds exist for administratively
10645 dissolving a corporation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the

10646 department shall serve notice in a record to the corporation of its intent to administratively dissolve
10647 the corporation. Issuance of the notice may be by electronic transmission to a corporation that has
10648 provided the department with an e-mail address.

10649 (4) If, within 60 days after sending the notice of intent to administratively dissolve pursuant
10650 to subsection (3), a corporation does not correct each ground for dissolution under paragraph
10651 (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable satisfaction of the
10652 department that each ground determined by the department does not exist, the department shall
10653 dissolve the corporation administratively and issue to the corporation a notice in a record of
10654 administrative dissolution that states the grounds for dissolution. Issuance of the notice of
10655 administrative dissolution may be by electronic transmission to a corporation that has provided the
10656 department with an e-mail address.

10657 (5) A corporation that has been administratively dissolved continues in existence but may
10658 only carry on activities necessary to wind up its activities and affairs, liquidate and distribute its
10659 assets, and notify claimants under ss. 607.1405, 607.1406 and 607.1407.

10660 (6) The administrative dissolution of a corporation does not terminate the authority of its
10661 registered agent for service of process.

10662

10663 **Commentary to Section 607.1420:**

10664 This provision has been updated and modernized to follow the substance of FRLCA s. 605.0714.

10665 The FBCA contains provisions allowing for administrative dissolution in other situations (old
10666 paragraph (1)(e) and subsection (2)). Neither of these grounds for administrative dissolution was
10667 included in the corollary provision of FRLCA, although both grounds were in the corollary
10668 section of Chapter 608 (in s. 608.448). In both cases, the Subcommittee believes that these
10669 provisions are almost never used, and the Division of Corporations has advised the Subcommittee
10670 that they have no objection to removing these provisions from the FBCA.

10671

10672 ~~607.1421—Procedure for and effect of administrative dissolution.~~

10673 ~~(1) If the Department of State determines that one or more grounds exist under s. 607.1420~~
10674 ~~for dissolving a corporation, it shall serve the corporation with notice of its intention to~~
10675 ~~administratively dissolve the corporation. If the corporation has provided the Department with an~~
10676 ~~electronic mail address, such notice shall be by electronic transmission. Administrative dissolution~~
10677 ~~for failure to file an annual report shall occur on the fourth Friday in September of each year. The~~
10678 ~~Department of State shall issue a certificate of dissolution to each dissolved corporation. Issuance~~
10679 ~~of the certificate of dissolution may be by electronic transmission to any corporation that has~~
10680 ~~provided the department with an electronic mail address.~~

10681 ~~(2) If the corporation does not correct each ground for dissolution under s. 607.1420(1)(b),~~
10682 ~~(c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each~~
10683 ~~ground determined by the department does not exist within 60 days of issuance of the notice, the~~
10684 ~~department shall administratively dissolve the corporation by issuing a certificate of dissolution~~
10685 ~~that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate~~
10686 ~~of dissolution may be by electronic transmission to any corporation that has provided the~~
10687 ~~department with an electronic mail address.~~

10688 ~~(3) A corporation administratively dissolved continues its corporate existence but may not~~
10689 ~~carry on any business except that necessary to wind up and liquidate its business and affairs under~~
10690 ~~s. 607.1405 and notify claimants under ss. 607.1406 and 607.1407.~~

10691 ~~(4) A director, officer, or agent of a corporation dissolved pursuant to this section,~~
10692 ~~purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and~~
10693 ~~liabilities of the corporation arising from such action and incurred subsequent to the corporation's~~
10694 ~~administrative dissolution only if he or she has actual notice of the administrative dissolution at~~
10695 ~~the time such action is taken; but such liability shall be terminated upon the ratification of such~~
10696 ~~action by the corporation's board of directors or shareholders subsequent to the reinstatement of~~
10697 ~~the corporation under ss. 607.1401–607.14401.~~

10698 ~~(5) The administrative dissolution of a corporation does not terminate the authority of its~~
10699 ~~registered agent.~~

10700

10701 **Commentary to Section 607.1421:**

10702 The substance of this section has been added to s. 607.1420 to follow the corollary FRLUCA
10703 model. As a result, this section has been eliminated.

10704 One of the subsections eliminated was subsection (4), which previously provided that:

10705 (4)A director, officer, or agent of a corporation dissolved pursuant to this section,
10706 purporting to act on behalf of the corporation, is personally liable for the debts, obligations,
10707 and liabilities of the corporation arising from such action and incurred subsequent to the
10708 corporation’s administrative dissolution only if he or she has actual notice of the
10709 administrative dissolution at the time such action is taken; but such liability shall be
10710 terminated upon the ratification of such action by the corporation’s board of directors or
10711 shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-
10712 607.14401.

10713 This subsection was not added to the corollary provisions of FRLUCA and is not in the Model Act.
10714 Its exclusion is not intended to say that a director or agent cannot be personally liable for the debts
10715 of a corporation that has been administratively dissolved, but rather to leave that topic to agency
10716 law and courts to make the determination under the particular circumstances.

10717

10718 607.1422 Reinstatement following administrative dissolution.

10719 (1) A corporation that is administratively dissolved under s. 607.1420~~4~~ or former s.
10720 607.1421 may apply to the ~~D~~department of State for reinstatement at any time after the effective
10721 date of dissolution. The corporation must submit all fees and penalties then owed by the
10722 corporation at the rates provided by laws at the time the corporation applies for reinstatement,
10723 together with an application for a reinstatement form prescribed and furnished by the ~~D~~department
10724 of State, which is ~~or a current uniform business report~~ signed by both the registered agent and an
10725 officer or director of ~~and all fees then owed by the corporation, and states: computed at the rate~~
10726 provided by law at the time the corporation applies for reinstatement.

10727 (a) The name of the corporation.

10728 (b) The street address of the corporation's principal office and mailing address.

10729 (c) The date of the corporation's organization.

10730 (d) The corporation's federal employer identification number or, if none, whether
10731 one has been applied for.

10732 (e) The name, title or capacity, and address of at least one officer or director of the
10733 corporation.

10734 (f) Additional information that is necessary or appropriate to enable the department
10735 to carry out this chapter.

10736 (2) In lieu of the requirement to file an application for reinstatement as described in
10737 subsection (1), an administratively dissolved corporation may submit all fees and penalties owed
10738 by the corporation at the rates provided by law at the time the corporation applies for reinstatement,
10739 together with a current annual report, signed by both the registered agent and an officer or director
10740 of the corporation, which contains the information described in subsection (1).

10741 (3) If the department determines that an application for reinstatement contains the
10742 information required under subsection (1) or subsection (2) and that the information is correct,
10743 upon payment of all required fees and penalties, the department shall reinstate the corporation.

10744 (4) When reinstatement under this section becomes effective:

10745 (a) The reinstatement relates back to and takes effect as of the effective date of the
10746 administrative dissolution.

10747 (b) The corporation may resume its activities and affairs as if the administrative
10748 dissolution had not occurred.

10749 (c) The rights of a person arising out of an act or omission in reliance on the
10750 dissolution before the person knew or had notice of the reinstatement are not affected.

10751 ~~(2) If the Department of State determines that the application contains the information~~
10752 ~~required by subsection (1) and that the information is correct, it shall reinstate the corporation.~~

10753 ~~(3) When the reinstatement is effective, it relates back to and takes effect as of the~~
10754 ~~effective date of the administrative dissolution and the corporation resumes carrying on its business~~
10755 ~~as if the administrative dissolution had never occurred.~~

10756 (54) The name of the dissolved corporation is shall not be available for assumption or use
10757 by another eligible entity corporation until 1 year after the effective date of dissolution unless the
10758 dissolved corporation provides the ~~Department of State~~ with an affidavit signed ~~executed~~ as
10759 required pursuant to ~~by~~ s. 607.0120 permitting the immediate assumption or use of the name by
10760 another eligible entity corporation.

10761 (65) If the name of the dissolved corporation has been lawfully assumed in this state by
10762 another business entity corporation, the ~~Department of State~~ shall require the dissolved
10763 corporation to amend its articles of incorporation to change its name before accepting its
10764 application for reinstatement.

10765

10766 **Commentary to Section 607.1422:**

10767 This section has been modified to make it consistent with the corollary section of FRLICA.

10768 The corollary provision of the Model Act limits administrative dissolution to a two-year period
10769 following the administrative dissolution. Florida is one of twenty-four jurisdictions, including
10770 Delaware, that do not expressly limit the period for reinstatement. Another twenty-four
10771 jurisdictions permit reinstatement for time periods between two and ten years after dissolution.
10772 This section retains the ability to reinstate a corporation at any time after dissolution.

10773

10774 607.1423 Judicial review of ~~appeal from~~ denial of reinstatement.

10775 (1) If the ~~D~~department of ~~S~~State denies a corporation’s application for reinstatement after
10776 following administrative dissolution, the department ~~it~~ shall serve the corporation under either s.
10777 607.0504(1) or s. 607.0504(2) with a written notice that explains the reason or reasons for denial.

10778 (2) Within 30 days after service of a notice of denial of reinstatement, a ~~After exhaustion of~~
10779 ~~administrative remedies, the corporation may appeal the denial of reinstatement to~~ by petitioning
10780 the circuit court in and for Leon County to set aside the dissolution ~~the appropriate court as~~
10781 ~~provided in s. 120.68 within 30 days after service of the notice of denial is perfected effected.~~ The
10782 petition must be served on the department and contain a copy of the department’s notice of
10783 administrative ~~corporation appeals by petitioning the court to set aside the dissolution and~~
10784 ~~attaching to the petition copies of the D~~department’s of State’s certificate of dissolution, the
10785 corporation’s application for reinstatement, and the department’s notice of denial.

10786 (3) The court may ~~summarily~~ order the ~~D~~department of ~~S~~State to reinstate the dissolved
10787 corporation or ~~may~~ take other action the court considers appropriate.

10788 (4) The court’s final decision may be appealed as in other civil proceedings.

10789

10790 **Commentary to Section 607.1423:**

10791 This section is revised to follow the wording of the corollary section of FRLICA. It also conforms
10792 this section with the change requested by the Department of State as to where these suits must be
10793 brought.

10794

10795 607.1430 Grounds for judicial dissolution.

10796 (1) A circuit court may dissolve a corporation or order such other remedy as provided in
10797 s. 607.1434:

10798 (4a) In a proceeding by the Department of Legal Affairs to dissolve a corporation
10799 if it is established that:

10800 1. The corporation obtained its articles of incorporation through fraud; or

10801 2. The corporation has continued to exceed or abuse the authority
10802 conferred upon it by law.

10803 ~~(b)~~The enumeration in subparagraphs 1. and 2. above paragraph (a) of grounds for
10804 involuntary dissolution does not exclude actions or special proceedings by the
10805 Department of Legal Affairs or any state official for the annulment or dissolution
10806 of a corporation for other causes as provided in any other statute of this state;

10807 ~~(b)(2)~~ In a proceeding by a shareholder to dissolve a corporation if it is established
10808 that:

10809 ~~(a)~~ 1. The directors are deadlocked in the management of the corporate
10810 affairs, the shareholders are unable to break the deadlock, and any of (i) irreparable
10811 injury to the corporation is threatened or being suffered, (ii) the business and affairs
10812 of the corporation can no longer be conducted to the advantage of the shareholders
10813 generally because of the deadlock, or (iii) both (i) and (ii); or

10814 ~~(b)~~ 2. The shareholders are deadlocked in voting power and have failed to
10815 elect successors to directors whose terms have expired or would have expired upon
10816 qualification of their successors;

10817 ~~(3)~~ ~~In a proceeding by a shareholder or group of shareholders in a corporation~~
10818 ~~having 35 or fewer shareholders if it is established that:~~

10819 ~~(a)~~ 3. The corporate assets are being misapplied or wasted, causing material
10820 injury to the corporation; or

10821 ~~(b)~~ 4. The directors or those in control of the corporation have acted, are
10822 acting, or will ~~are reasonably expected to~~ act in a manner that is illegal, oppressive
10823 or fraudulent;

10824 ~~(4)~~(c) In a proceeding by a creditor if it is established that:

10825 ~~(a)~~ 1. The creditor’s claim has been reduced to judgment, the execution
10826 on the judgment returned unsatisfied, and the corporation is insolvent; or

10827 ~~(b)~~ 2. The corporation has admitted in writing that the creditor’s claim is
10828 due and owing and the corporation is insolvent; ~~or~~

10829 ~~(d)~~ (d) In a proceeding by the corporation to have its voluntary dissolution
10830 continued under court supervision; or

10831 (e) In a proceeding by a shareholder if the corporation has abandoned its
10832 business and has failed within a reasonable period of time to liquidate and distribute its
10833 assets and dissolve.

10834 (2) Subsection (1)(b) shall not apply in the case of a corporation that, on the date of the filing
10835 of the proceeding, has shares which are:

10836 (a) A covered security under section 18(b)(1)(A) or (B) of the Securities
10837 Act of 1933; or

10838 (b) Not a covered security, but are held by at least 300 shareholders and the
10839 shares outstanding have a market value of at least \$20 million (exclusive of the value
10840 of such shares held by the corporation’s subsidiaries, senior executives, directors and
10841 beneficial shareholders and voting trust beneficial owners owning more than 10% of
10842 such shares).

10843 (3) A proceeding by a shareholder under paragraph (1)(b)4. asserting that the directors or
10844 those in control of the corporation have acted, are acting, or will act in a manner that is oppressive
10845 may only be brought by a shareholder who at the time that such proceeding is commenced under
10846 paragraph (1)(b)4. owns at least 10% of the outstanding shares of the corporation.

10847 (4) In the event of a deadlock situation that satisfies s. 607.1430(1)(b)1. or 2., if the
10848 shareholders are subject to a shareholder agreement that complies with s. 607.0732 and contains a
10849 deadlock sale provision, then such deadlock sale provision shall apply to the resolution of such
10850 deadlock in lieu of the court entering an order of judicial dissolution or an order directing the
10851 purchase of petitioner’s shares under s. 607.1436, so long as the provisions of such deadlock sale
10852 provision are initiated and effectuated (i) within the time periods specified for the corporation to
10853 act under s. 607.1436 and (ii) in accordance with the terms of such deadlock sale provision. As
10854 used in this section, the term "deadlock sale provision" means a provision in a shareholders’
10855 agreement that complies with s. 607.0732 which is or may be applicable in the event of a deadlock
10856 among the directors or shareholders of the corporation which neither the directors nor the
10857 shareholders (as applicable) of the corporation are able to break and which provides for a deadlock
10858 breaking mechanism, including, but not limited to: a redemption or a purchase and sale of shares

10859 or other equity securities, a governance change, a sale of the corporation or all or substantially all
10860 of the assets of the corporation, or a similar provision that, if initiated and effectuated, breaks the
10861 deadlock by causing the transfer of the shares or other equity securities, a governance change, or
10862 a sale of the corporation or all or substantially all of the corporation's assets.

10863 (5) In the event of oppressive action that satisfies s. 607.1430(1)(b)4., if the shareholders are
10864 subject to a shareholder agreement that complies with s. 607.0732 and contains an oppressive
10865 action sale provision, then such oppressive action sale provision shall address such shareholder
10866 asserted oppressive action in lieu of the court entering an order of judicial dissolution or an order
10867 directing the purchase of petitioner's shares under s. 607.1436, so long as the provisions of such
10868 oppressive action sale provision are initiated and effectuated (i) within the time periods specified
10869 for the corporation to act under s. 607.1436, and (ii) in accordance with the terms of such
10870 oppressive action sale provision. As used in this section, the term "oppressive action sale
10871 provision" means a provision in a shareholder agreement that complies with s. 607.0732 which is
10872 or may be applicable in the event of a shareholder's assertion of the occurrence or existence of
10873 oppressive action which neither the directors nor the shareholders (as applicable) of the corporation
10874 are able to address and which provides for a mechanism for addressing the occurrence or existence
10875 of such shareholder asserted oppressive action including, but not limited to: a redemption or
10876 purchase and sale of shares or other equity securities; the sale of the corporation or of all or
10877 substantially all of the assets of the corporation; or a similar provision that, if initiated and
10878 effectuated, causes the transfer of shares or other equity securities to be redeemed or purchased
10879 and sold or the sale of the corporation or of all or substantially all of the corporation's assets.

10880 (6) A deadlock sale provision or an oppressive action sale provision in a shareholder
10881 agreement that complies with s. 607.0732 which is not initiated and effectuated before the court
10882 enters an order of judicial dissolution under subparagraphs (1)(b)1., (1)(b)2. or (1)(b)4., as the case
10883 may be, or an order directing the purchase of petitioner's interest under s. 607.1436, does not
10884 adversely affect the rights of members and managers to seek judicial dissolution under
10885 subparagraphs (1)(b)1., (1)(b)2. or (1)(b)4., as the case may be, or the rights of the company or
10886 one or more shareholders to purchase the petitioner's interest under s. 607.1436. The filing of an
10887 action for judicial dissolution on the grounds described in subparagraphs (1)(b)1., (1)(b)2. or
10888 (1)(b)4., as the case may be, or an election to purchase the petitioner's interest under s. 607.1436,
10889 does not adversely affect the right of a shareholder to initiate an available deadlock sale provision
10890 or an oppressive action sale provision under the shareholder agreement that complies with s.
10891 607.0732 or to enforce a member-initiated or an automatically-initiated deadlock sale provision or
10892 oppressive action sale provision if the deadlock sale provision or the oppressive sale provision, as
10893 the case may be, is initiated and effectuated before the court enters an order of judicial dissolution
10894 under subparagraphs (1)(b)1., (1)(b)2. or (1)(b)4., as the case may be, or an order directing the
10895 purchase of petitioner's interest under s. 607.1436.

10896 (7) For purposes of subsections (1), (2) and (3), the term "shareholder" means a record
10897 shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

10898

10899 **Commentary to Section 607.1430:**

10900 Florida largely follows the corollary provision of the Model Act.

10901 This section changes existing law such that the rights of shareholders to petition the circuit court
10902 to seek judicial dissolution are limited to corporations other than those that are essentially public
10903 companies rather than under current Florida law where such rights are limited to shareholders of
10904 smaller corporations with 35 or fewer shareholders in Florida.

10905 Following the corollary provision of the Model Act, this section adds "oppressive" conduct as a
10906 grounds for judicial dissolution and changes the prospective trigger from "reasonably expected to
10907 act" to "will act." Previously, the FBCA did not include "oppression" of minority holders as a
10908 ground for judicial dissolution. However, to mitigate this provision, the revised statute only allows
10909 a shareholder owning more than 10% of the corporation's outstanding shares to assert oppression
10910 as a ground for judicial dissolution. Further, following language included in s. 605.0702, the
10911 revised statute includes provisions that, in the event a shareholder agreement that complies with s.
10912 607.0732 is in place which expressly provides a mechanism for addressing shareholder asserted
10913 oppressive action, such provision will be followed.

10914 The revised statute, conforming to s. 605.0702, adds provisions addressing the effect of
10915 shareholder agreements that expressly provide a mechanism for resolving deadlocks.

10916 Language has been added to s. 607.0732 to make clear that provisions in shareholder agreements
10917 that comply with that section and which provides mechanisms for how deadlocks or oppressive
10918 action are to be resolved or addressed are permissible and are not believed to be contrary to public
10919 policy.

10920 In connection with making this change, it is noted that certain protections are already in the FBCA
10921 for corporations faced with an action for judicial dissolution. First, under s. 607.1431(5), a court
10922 may award attorneys' fees and other reasonable expenses to a party who has been adversely
10923 affected by such actions if the court determines that a party who has commenced, continued, or
10924 participated in a proceeding under s. 607.1430 has acted arbitrarily, frivolously, vexatiously, or
10925 not in good faith in bringing such proceeding. Second, the corporation has an absolute right to
10926 purchase the interest in the corporation of the petitioning shareholder for fair value under s.
10927 607.1436, which provides the corporation and the remaining shareholders with an ability to end
10928 the litigation if they so choose.

10929

10930 607.1431 Procedure for judicial dissolution.

10931 (1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court in ~~of~~ the
10932 applicable county ~~where the corporation's principal office is or was last located, as shown by the~~
10933 ~~records of the Department of State, or, if none in this state, where its registered office is or was~~
10934 ~~last located.~~

10935 (2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation
10936 unless relief is sought against them individually.

10937 (3) A court in a proceeding brought under s. 607.1430 ~~to dissolve a corporation~~ may issue
10938 injunctions, appoint a receiver or custodian ~~pendent lite~~ during the proceeding with all powers and
10939 duties the court directs, take other action required to preserve the corporate assets wherever
10940 located, and carry on the business of the corporation until a full hearing can be held.

10941 (4) Within 30 days of the commencement of a proceeding under s. 607.1430(1)(b), the
10942 corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the
10943 shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the
10944 petitioner's shares under s. 607.1436 and accompanied by a copy of s. 607.1436.

10945 (4~~5~~) If the court determines that any party has commenced, continued, or participated in a
10946 proceeding ~~an action~~ under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not
10947 in good faith, the court may, in its discretion, award attorney's fees and other reasonable expenses
10948 to the other parties to the action who have been affected adversely by such actions.

10949

10950 **Commentary to Section 607.1431:**

10951 With some non-material differences, subsections (1)-(3) of the FBCA match their corresponding
10952 subsections in the Model Act. Subsection (5) of the FBCA is unique to the FBCA.

10953 The FBCA did not previously include subsection (d) of the corollary provision of the Model Act,
10954 which relates to notification to shareholders of their rights to purchase the holdings of the
10955 petitioning shareholders under s. 607.1436 of the FBCA. This subsection has been added to the
10956 FBCA in new subsection (4).

10957

10958 607.1432 Receivership or custodianship.

10959 (1) A court in a judicial proceeding brought under s. 607.1430 ~~to dissolve a corporation~~ may
10960 appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the
10961 business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to
10962 the proceeding and any interested persons designated by the court, before appointing a receiver or
10963 custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the
10964 corporation and all of its property wherever located.

10965 (2) The court may appoint a natural person or a eligible entity ~~corporation~~ authorized to act
10966 as a receiver or custodian. The eligible entity ~~corporation~~ may be a domestic eligible entity
10967 ~~corporation~~ or a foreign eligible entity ~~corporation~~ authorized to transact business in this state. The
10968 court may require the receiver or custodian to post bond, with or without sureties, in an amount
10969 the court directs.

10970 (3) The court shall describe the powers and duties of the receiver or custodian in its
10971 appointing order, which may be amended from time to time. Among other powers:

10972 (a) The receiver:

10973 1. May dispose of all or any part of the assets of the corporation wherever
10974 located, at a public or private sale, if authorized by the court; and

10975 2. May sue and defend in his, ~~or her,~~ or its own name as receiver of the
10976 corporation in all courts of this state.

10977 (b) The custodian may exercise all of the powers of the corporation, through or
10978 in place of its board of directors or officers, to the extent necessary to manage the affairs
10979 of the corporation in the best interests of its shareholders and creditors.

10980 (4) The court during a receivership may redesignate the receiver a custodian, and during
10981 a custodianship may redesignate the custodian a receiver, if doing so is determined by the court to
10982 be in the best interests of the corporation and its shareholders and creditors.

10983 (5) The court from time to time during the receivership or custodianship may order
10984 compensation paid and expense disbursements or reimbursements made to the receiver or
10985 custodian and his, ~~or her,~~ or its counsel from the assets of the corporation or proceeds from the
10986 sale of the assets.

10987 (6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of
10988 a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state,
10989 whenever the court deems that circumstances exist requiring the appointment of such a receiver.
10990 The court may appoint such an ancillary receiver for a foreign corporation even though no receiver

10991 has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership
10992 when an order entered by a court of competent jurisdiction in the other state provides for a
10993 receivership of the corporation.

10994

10995 **Commentary to Section 607.1432:**

10996 Subsections (1)-(5) of this section of the FBCA are materially the same as their counterpart
10997 subsections in the Model Act. The only difference appears in subsection (1). The Model Act
10998 provision provides that a receiver or custodian cannot be appointed during the 90-day period in
10999 which the corporation and other shareholders are given the right in s. 607.1436 to purchase the
11000 shares of the complaining shareholder. The corollary provision of the FBCA does not include that
11001 limitation, and that limitation has not been added to this section. In exigent circumstances, the
11002 court should have the right to immediately appoint a receiver or custodian during such 90-day
11003 period, even if it turns out that the receiver or custodian can be dismissed after a purchase of the
11004 complaining shareholders' interest is completed under s. 607.1436.

11005 Subsection (6) of the FBCA has been retained in the statute even though it is not in the Model Act.

11006

11007 607.1433 Judgment of dissolution.

11008 (1) If after a hearing in a proceeding under s. 607.1430 the court determines that one or more
11009 grounds for judicial dissolution described in s. 607.1430 exist, it may enter a judgment dissolving
11010 the corporation and specifying the effective date of the dissolution, and the clerk of the court shall
11011 deliver a certified copy of the judgment to the ~~D~~epartment of ~~S~~tate, which shall file it.

11012 (2) After entering the judgment of dissolution, the court shall direct the winding up and
11013 liquidation of the corporation’s business and affairs in accordance with s. 607.1405 and the
11014 notification of claimants in accordance with ss. 607.1406 and 607.1407, subject to the provisions
11015 of subsection (3).

11016 (3) In a proceeding for judicial dissolution, the court may require all creditors of the
11017 corporation to file with the clerk of the court or with the receiver, in such form as the court may
11018 prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it
11019 shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for
11020 filing of claims. The court shall prescribe the method by which such notice of the deadline for
11021 filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may
11022 extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs
11023 of claim on or before the date so fixed shall ~~may~~ be barred, ~~by order of court~~, from participating
11024 in the distribution of the assets of the corporation. Nothing in this section affects the enforceability
11025 of any recorded mortgage or lien or the perfected security interest or rights of a person in
11026 possession of real or personal property.

11027

11028 **Commentary to Section 607.1433:**

11029 Subsections (1) and (2) of s. 607.1433 generally follow the Model Act. One minor clean-up
11030 change was made in subsection (2) to require notice to potential claimants in accordance with s.
11031 607.1407, consistent with the Model Act language.

11032 Florida is one of nine jurisdictions (including California) that limits the claims to four months (or
11033 120 days) after the date of the order. Some other jurisdictions (including New York) provide for
11034 a six month period. The Model Act does not have a comparable subsection.

11035

- 11036 607.1434 Alternative remedies to judicial dissolution.
- 11037 (1) In a proceeding an action for dissolution under pursuant to s. 607.1430, the court
11038 may, as an alternative to directing the dissolution of the corporation and upon a showing of
11039 sufficient merit to warrant such remedy:
- 11040 (a~~1~~) Appoint a receiver or custodian ~~pendent lite~~ during the proceeding as
11041 provided in s. 607.1432;
- 11042 (b~~2~~) Appoint a provisional director as provided in s. 607.1435;
- 11043 (c~~3~~) Order a purchase of the complaining shareholder’s shares pursuant to s.
11044 607.1436; or
- 11045 (d~~4~~) Upon proof of good cause, make any order or grant any equitable relief
11046 other than dissolution ~~or liquidation~~ as in its discretion it may deem appropriate.
- 11047 (2) Alternative remedies, such as the appointment of a receiver or custodian, may also be
11048 ordered in the discretion of the court, upon a showing of sufficient merit to warrant such remedy,
11049 in advance of directing the dissolution of the corporation or, after a judgment of dissolution is
11050 entered, to assist in facilitating the winding up of the corporation.
- 11051

11052 **Commentary to Section 607.1434:**

11053 Section 607.1434 was added to the FBCA in 1994 to enumerate and clarify the alternative remedies
11054 available for actions brought under s. 607.1430. The "sufficient merit" phrase in the opening clause
11055 is intended to require that none of these remedies be imposed unless the petitioner meets the burden
11056 of proving the necessity of such relief. This section is intended to explicitly recognize the existing
11057 equity powers of courts to fashion a remedy other than dissolution in circumstances where the
11058 grounds for judicial dissolution are present.

11059 A minor change was included in subsection (2) to match a similar change made in Section
11060 607.1431(3).

11061

11062 607.1435 Provisional director.

11063 (1) In a proceeding under s. 607.1430, aA provisional director may be appointed in the
11064 discretion of the court if it appears that such action by the court will remedy the grounds alleged
11065 by the complaining shareholder to support the jurisdiction of the court under s. 607.1430. A
11066 provisional director may be appointed notwithstanding the absence of a vacancy on the board of
11067 directors, and such director shall have all the rights and powers of a duly elected director, including
11068 the right to notice of and to vote at meetings of directors, until such time as the provisional director
11069 is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the
11070 shareholders sufficient either to elect a majority of the board of directors or, if greater than majority
11071 voting is required by the articles of incorporation or the bylaws, to elect the requisite number of
11072 directors needed to take action. A provisional director shall be an impartial person who is neither
11073 a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation,
11074 and whose further qualifications, if any, may be determined by the court.

11075 (2) A provisional director shall report from time to time to the court concerning the matter
11076 complained of, or the status of the deadlock, if any, and of the status of the corporation’s business,
11077 as the court shall direct. No provisional director shall be liable for any action taken or decision
11078 made, except as directors may be liable under s. 607.0831. In addition, the provisional director
11079 shall submit to the court, if so directed, recommendations as to the appropriate disposition of the
11080 action. Whenever a provisional director is appointed, any officer or director of the corporation
11081 may, from time to time, petition the court for instructions clarifying the duties and responsibilities
11082 of such officer or director.

11083 (3) In any proceeding under which a provisional director is appointed pursuant to this
11084 section, the court shall allow reasonable compensation to the provisional director for services
11085 rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts
11086 shall be paid by the corporation.

11087

11088 **Commentary to Section 607.1435:**

11089 This section was added to the FBCA in 1994. It allows a court, on its own or at the request of one
11090 of the parties, under circumstances where the court by such an action can remedy a situation under
11091 s. 607.1430, to appoint a provisional director to act with full power and authority along with the
11092 corporation’s other directors. The remedy, which could be used to break a deadlock on the board
11093 of directors, is considered less intrusive on corporate management than the appointment of a
11094 receiver or custodian.

11095 Because the remedy discussed in s. 607.1435 can only be granted in connection with a suit for
11096 dissolution, a new standalone section has been added to the FBCA (s. 607.0749) to allow a court
11097 to appoint a provisional director in the event of a deadlock even if no party is seeking to dissolve
11098 the corporation.

11099

11100 607.1436 Election to purchase instead of dissolution.

11101 (1) In a proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ to dissolve a corporation, the
11102 corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all
11103 shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to
11104 this section shall be irrevocable unless the court determines that it is equitable to set aside or
11105 modify the election.

11106 (2) An election to purchase pursuant to this section may be filed with the court at any time
11107 within 90 days after the filing of the petition under s. 607.1430(1)(b) ~~(2) or (3)~~ or at such later time
11108 as the court in its discretion may allow. If the election to purchase is filed by one or more
11109 shareholders, the corporation shall, within 10 days thereafter, give written notice to all
11110 shareholders, other than the petitioner. The notice must state the name and number of shares owned
11111 by the petitioner and the name and number of shares owned by each electing shareholder and must
11112 advise the recipients of their right to join in the election to purchase shares in accordance with this
11113 section. Shareholders who wish to participate must file notice of their intention to join in the
11114 purchase no later than 30 days after the effective date of the notice to them. All shareholders who
11115 have filed an election or notice of their intention to participate in the election to purchase thereby
11116 become parties to the proceeding and shall participate in the purchase in proportion to their
11117 ownership of shares as of the date the first election was filed, unless they otherwise agree or the
11118 court otherwise directs. After an election has been filed by the corporation or one or more
11119 shareholders, the proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ may not be discontinued or settled,
11120 nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court
11121 determines that it would be equitable to the corporation and the shareholders, other than the
11122 petitioner, to permit such discontinuance, settlement, sale, or other disposition.

11123 (3) If, within 60 days after the filing of the first election, the parties reach agreement as to
11124 the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order
11125 directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the
11126 parties.

11127 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the
11128 court, upon application of any party, may shall stay the proceeding to dissolve under s.
11129 607.1430(1)(b) proceeding and shall, whether or not the proceeding is stayed, determine the fair
11130 value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430
11131 was filed or as of such other date as the court deems appropriate under the circumstances.

11132 (5) Upon determining the fair value of the shares, the court shall enter an order directing the
11133 purchase upon such terms and conditions as the court deems appropriate, which may include
11134 payment of the purchase price in installments, when necessary in the interests of equity, provision
11135 for security to assure payment of the purchase price and any additional costs, fees, and expenses
11136 as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation

11137 of shares among such shareholders. In allocating the petitioner’s shares among holders of different
 11138 classes of shares, the court shall attempt to preserve any ~~the~~ existing distribution of voting rights
 11139 among holders of different classes and series insofar as practicable and may direct that holders of
 11140 any a specific class or classes or series shall not participate in the purchase. Interest may be allowed
 11141 at the rate and from the date determined by the court to be equitable; however, if the court finds
 11142 that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or
 11143 otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning
 11144 shareholder had probable grounds for relief under s. 607.1430(1)(b)(~~3~~), it may award expenses to
 11145 the petitioning shareholder, including reasonable fees and expenses of counsel and of any experts
 11146 employed by petitioner.

11147 (6) ~~The~~ Upon entry of an order under subsection (3) or subsection (5), shall be subject to the
 11148 provisions of subsection (8), and the order shall not be entered unless and until the award is
 11149 determined by the court to be permitted under the provisions of subsection (8). In determining
 11150 compliance with s. 607.06401, the court may rely on an affidavit from the corporation as to
 11151 compliance with that section as of the measurement date. Upon entry of an order under subsection
 11152 (3) or subsection (5), the court shall dismiss the petition to dissolve the corporation under s.
 11153 607.1430(1)(b) and the petitioning shareholder shall no longer have any rights or status as a
 11154 shareholder of the corporation, except the right to receive the amounts awarded by the order of the
 11155 court, which shall be enforceable in the same manner as any other judgment.

11156 (7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the
 11157 date the order becomes final ~~unless, before that time, the corporation files with the court a notice~~
 11158 ~~of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which~~
 11159 ~~articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of~~
 11160 ~~dissolution, the corporation shall be dissolved in accordance with the provisions of ss. 607.1405~~
 11161 ~~and 607.1406, and the order entered pursuant to subsection (5) shall no longer be of any force or~~
 11162 ~~effect, except that the court may award the petitioning shareholder reasonable fees and expenses~~
 11163 ~~of counsel and any experts in accordance with the provisions of subsection (5) and the petitioner~~
 11164 ~~may continue to pursue any claims previously asserted on behalf of the corporation.~~

11165 (8) Any award pursuant to an order under subsection (3) or subsection (5), other than an
 11166 award of fees and expenses pursuant to subsection (5), is subject to the provisions of s. 607.06401.
 11167 Unless otherwise provided in the court’s order, the effect of the distribution under s. 607.06401
 11168 shall be measured as of the date of the court's order under subsection (3) or subsection (5).

11169

11170 **Comments to Section 607.1436:**

11171 This section largely follows the Model Act.

11172 Section 14.36(g) of the Model Act no longer includes the right to dissolve the corporation in lieu
 11173 of completing the purchase based on the purchase price determined by the court. This change was
 11174 made because the Corporate Laws Committee determined that giving the corporation the option to
 11175 purchase and then reversing its course and dissolving would be unfair to petitioning shareholders
 11176 and discourage them from making such petitions. The revised FBCA eliminates subsection (7) for
 11177 this reason.

11178 Eliminating subsection (7) also eliminates the concerns raised by the decision in Jones v. Pfaff, 77
 11179 So.3rd 884 (2nd DCA, Florida, 2012). In that case, the court determined, in a situation where the
 11180 corporation elected not to complete its purchase of the petitioning shareholders' shares under s.
 11181 607.1436, but rather elected to wind up and liquidate, that such action moved the liquidation under
 11182 the auspices of a voluntary dissolution and thus eliminated the jurisdiction of the court to oversee
 11183 the dissolution proceedings.

11184 In subsection (4), the requirement that the court stay the dissolution proceeding while determining
 11185 the fair value of the shares to be purchased has been eliminated in favor of giving the court the
 11186 option to do so under appropriate circumstances. While it may be appropriate to stay the dissolution
 11187 proceeding under many circumstances, this change leaves the court with the discretion to continue
 11188 to monitor the activities of the corporation and to take other equitable actions, as it deems
 11189 appropriate, and to continue the dissolution proceedings while the purchase process is being
 11190 completed in those circumstances where the court determines that such oversight remains
 11191 appropriate. That may also include, for example, the equitable power to require the corporation to
 11192 post a bond where that may be reasonable or appropriate.

11193 Under subsection (8), after entry of an order under subsection (5), the petitioner is a creditor with
 11194 respect to the corporation or the electing shareholder who participate in the purchase, but any
 11195 payments to be made by the corporation, other than expenses awarded under s. subsection (5) fall
 11196 within the definition of "distribution" under s. 607.06401. Subsection (8) provides that the
 11197 evaluation of whether the "distribution" is permissible under the requirements of s. 607.06401
 11198 shall be tested at the time of the order unless the order expressly provides that such determination
 11199 shall be made at the time of payment. A cross reference of this section has been added to
 11200 subsection (6) to make clear that the Court should consider the measurement under subsection
 11201 (8) before dismissing the petition to dissolve the corporation under that subsection.

11202

11203 607.14401 Deposit with Department of Financial Services.

11204 Assets of a dissolved corporation that should be transferred to a creditor, claimant, or
11205 shareholder of the corporation who cannot be found or who is not competent to receive them shall
11206 be reduced to cash and deposited, ~~within 6 months from the date fixed for the payment of the final~~
11207 ~~liquidating distribution~~, with the Department of Financial Services for safekeeping, ~~where such~~
11208 ~~assets shall be held as abandoned property~~. When the creditor, claimant, or shareholder furnishes
11209 satisfactory proof of entitlement to the amount ~~or assets~~ deposited, the Department of Financial
11210 Services shall pay such person ~~the creditor, claimant, or shareholder~~ or his or her representative
11211 that amount ~~or those assets~~.

11212

11213 **Commentary to Section 607.14401:**

11214 This provision has been modified to match the corollary provision in the Model Act.

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ARTICLE 15

FOREIGN CORPORATIONS

607.1501 Authority of foreign corporation to transact business required; activities not constituting transacting business.

(1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the ~~D~~department of State.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) Maintaining, defending, mediating, arbitrating, or settling any proceeding.

(b) Carrying on any activity concerning the internal affairs of the foreign corporation, including hholding meetings of its shareholders or the board of directors ~~or shareholders or carrying on other activities concerning internal corporate affairs.~~

(c) Maintaining bank accounts in financial institutions.

(d) Maintaining ~~officers offices~~ offices or agencies for the transfer, exchange, and registration of ~~the corporation's own~~ securities of the foreign corporation or maintaining trustees or depositaries with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages, or ~~and~~ security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages or ~~and~~ security interests in property securing the debts, and holding, protecting, or maintaining property so acquired.

(i) Transacting business in interstate commerce.

(j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.

11243 (k) Owning and controlling a subsidiary corporation incorporated in or limited liability
11244 company formed in, or transacting business within, this state; voting the stock of any such
11245 subsidiary corporation; or voting the membership interests of any such limited liability
11246 company, which it has lawfully acquired.

11247 (l) Owning a limited partnership interest in a limited partnership that is transacting ~~doing~~
11248 business within this state, unless the ~~such~~ limited partner manages or controls the partnership
11249 or exercises the powers and duties of a general partner.

11250 (m) Owning, protecting and maintaining, without more, real or personal property.

11251 (3) The list of activities in subsection (2) is not an exhaustive list of activities that do not
11252 constitute transacting business within the meaning of subsection (1).

11253 (4) This section ~~has no application to the question of whether any~~ does not apply in
11254 determining the contacts or activities that may subject a foreign corporation is subject to service
11255 of process, taxation, or regulation ~~and suit in~~ under any the law of this state other than this chapter.

11256

11257 **Note to Article 15 generally:**

11258 Article 15 is largely based on the substance contained in Article 9 of FRLCA. At the same time,
11259 a number of sections are in different places than where they are found in FRLCA, so as to make
11260 the form of this Article 15 continue to follow the structure of the current version of Article 15 in
11261 the FBCA. Further, a number of changes have been made where appropriate to integrate into
11262 Article 15 some of the modifications in the Model Act, and corollary changes in Article 9 of
11263 FRLCA are proposed. However, the Model Act's change in terminology to reflect the registration
11264 concept in the Model Act has not been incorporated.

11265 **Commentary to Section 607.1501:**

11266 Florida substantially follows the Model Act's list of transactions that do not constitute transacting
11267 business in the state. Florida's list contains all of the transactions listed under the Model Act and
11268 adds two additional types of transactions (under subsections (2)(k) and (2)(l)) as well.
11269 Modifications have been made to reflect changes in subsection (2) from s. 605.0905 of
11270 FRLCA. Further, subsections (a), (b), (c), (g), (h), and (m) reflect changes based on the 2016
11271 version of the Model Act.

11272 Subsection (3) does not appear in the Model Act. Modifications to this section reflect changes to
11273 bring this subsection into conformity with s. 605.0905 of FRLCA.

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607.15015 Governing law.

(1) The law of the state or other jurisdiction under which a foreign corporation exists governs:

(a) The organization and internal affairs of the foreign corporation; and

(b) The interest holder liability of its shareholders.

(2) A foreign corporation may not be denied a certificate of authority by reason of a difference between the laws of its jurisdiction of formation and the laws of this state.

(3) A certificate of authority does not authorize a foreign corporation to engage in any business or exercise any power that a corporation may not engage in or exercise in this state.

11285 **Commentary to Section 607.15015:**

11286 This section is based largely on the language used in s. 605.0901 of FRLCA. It also is similar to
11287 s. 15.01 of the Model Act, although it does not use the Model Act wording regarding "registration"
11288 to do business in this State. Subsection (2) is replaced in s. 607.1503(4)

11289

11290 607.1502 Effect of failure to have a certificate of ~~Consequences of transacting business~~
11291 without authority.

11292 (1) A foreign corporation transacting business in this state or its successors ~~without a~~
11293 ~~certificate of authority~~ may not prosecute or maintain an action or proceeding in any court in this
11294 state until it has obtained ~~obtains~~ a certificate of authority to transact business in this state.

11295 (2) The successor to a foreign corporation that transacted business in this state without a
11296 certificate of authority and the assignee of a cause of action arising out of that business may not
11297 prosecute or maintain a proceeding based on that cause of action in a any court in this state until
11298 the foreign corporation or its successor has obtained ~~obtains~~ a certificate of authority to transact
11299 business in this state.

11300 (3) A court may stay a proceeding commenced by a foreign corporation or its successor or
11301 assignee until it determines whether the foreign corporation or its successor requires a certificate
11302 of authority. If it so determines, the court may further stay the proceeding until the foreign
11303 corporation or its successor has obtained ~~obtains the a~~ certificate of authority to transact business
11304 in this state.

11305 (4) A foreign corporation which transacts business in this state without obtaining a certificate
11306 of authority to do so shall be ~~is~~ liable to this state for the years or parts thereof during which it
11307 transacted business in this state without obtaining a certificate of authority in an amount equal to
11308 all fees and penalties ~~taxes which that~~ would have been imposed by this chapter ~~act~~ upon the
11309 foreign ~~such~~ corporation had it duly applied for and received a certificate of authority to transact
11310 business in this state as required under ~~by~~ this chapter ~~act~~. In addition to the payments thus
11311 prescribed, ~~such~~ the foreign corporation may, to the extent ordered by a court of competent
11312 jurisdiction, be ~~shall be~~ liable for a civil penalty of not less than \$500 but not ~~or~~ more than \$1,000
11313 for each year or part thereof during which it transacts business in this state without a certificate of
11314 authority. The ~~Department of State~~ may collect all penalties due under this subsection ~~and may~~
11315 ~~bring an action in circuit court to recover all penalties and fees due and owing the state.~~

11316 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of a foreign corporation to ~~have~~
11317 ~~obtain~~ a certificate of authority to transact business in this state does not impair the validity of any
11318 of its contracts, deeds, mortgages, security interests, or corporate acts or prevent the foreign
11319 corporation ~~it~~ from defending an action or any proceeding in this state.

11320 (6) A shareholder, officer or director of a foreign corporation is not liable for the debts,
11321 obligations, or other liabilities of the foreign corporation solely because the foreign corporation
11322 transacted business in this state without a certificate of authority.

11323 (7) Section 607.15015(1) applies even if a foreign corporation fails to have a certificate of
11324 authority to transact business in this state.

11325 (8) If a foreign corporation transacts business in this state without a certificate of
11326 authority or cancels its certificate of authority, it appoints the secretary of state as its agent for
11327 service of process for rights of action arising out of the transaction of business in this state.

11328

11329 **Commentary to Section 607.1502:**

11330 This section has been harmonized with s. 605.0904 of FRLCA.

11331 The word "maintain" is defined in the commentary to s. 15.02 of the Model Act as follows:

11332 The distinction between "maintaining" and "defending" an action or proceeding is
11333 determined on the basis of whether affirmative relief is sought. Such a nonregistered
11334 foreign corporation may interpose any defense or permissive or mandatory counterclaim to
11335 defeat a claimed recovery, but may not obtain a judgment based on the counterclaim until it
11336 has registered.

11337 The word "maintain" in the derivative action sections of Article 7 is used in a different context
11338 than the context in which it is used in Article 15. The use of the same word in Article 7 (which
11339 deals with maintaining an interest in the corporation during the pendency of the derivative action
11340 proceeding) should not be confused with the way the word "maintain" is being used in Article
11341 15.

11342 The changes to subsection (4) clarifying when payment of the described penalty is required
11343 reflects the current position of the Department of State not to collect this penalty unless required
11344 to do so by a court of competent jurisdiction.

11345

11346 607.1503 Application for certificate of authority.

11347 (1) A foreign corporation may apply for a certificate of authority to transact business in
11348 this state by delivering an application to the ~~Department of State~~ for filing. Such application shall
11349 be made on forms prescribed ~~and furnished~~ by the ~~Department of State~~. The application must
11350 contain the following and shall set forth:

11351 (a) ~~The name of the foreign corporation and, as long as its name satisfies the~~
11352 ~~requirements of if the name does not comply with s. 607.0401, an alternate name adopted~~
11353 ~~pursuant to but if its name does not satisfy such requirements, a corporate name that~~
11354 ~~otherwise satisfies the requirements of s. 607.1506.;~~

11355 (b) The name of the foreign corporation's jurisdiction of incorporation under the
11356 law of which it is incorporated.;

11357 (c) Its date of incorporation and period of duration;

11358 (d) The principal office and mailing street address of the foreign corporation its
11359 principal office.;

11360 (e) The name and street address of its registered office in this state of, and the
11361 written acceptance by, the foreign corporation's initial and the name of its registered agent
11362 at that office in this state.;

11363 (f) The names and usual business addresses of its current directors and officers.;

11364 (g) ~~Such a~~ Additional information as may be necessary or appropriate in order to
11365 enable the ~~Department of State~~ to determine whether the foreign ~~such~~ corporation is
11366 entitled to file an application for certificate of authority to transact business in this state
11367 and to determine and assess the fees ~~and taxes~~ payable as prescribed in this chapter ~~aet~~.

11368 (2) The foreign corporation shall deliver with ~~a~~ the completed application under
11369 subsection (1) a certificate of existence or a record (~~or a document~~ of similar import), duly
11370 authenticated, not more than 90 days prior to delivery of the application to the ~~Department of~~
11371 ~~State~~ signed by the secretary of state or other official having custody of the foreign corporation's
11372 publicly filed corporate records in its ~~the~~ jurisdiction of incorporation under the law of which it is
11373 ~~incorporated~~. A translation of the certificate, under oath of the translator, must be attached to a
11374 certificate which is in a language other than the English language.

11375 (3) ~~A foreign corporation shall not be denied authority to transact business in this state~~
11376 ~~by reason of the fact that the laws of the jurisdiction under which such corporation is organized~~
11377 ~~governing its organization and internal affairs differ from the laws of this state.~~

11378 **Commentary to Section 607.1503:**

11379 This section is harmonized with s. 605.0902 of FRLCA.

11380 The requirement for an English translation in subsection (2) is consistent with the language in s.
11381 607.0120(5).

11382

11383 607.1504 Amended certificate of authority.

11384 (1) A foreign corporation authorized to transact business in this state shall deliver for
11385 filing an amendment to its ~~make application to the Department of State to obtain an amended~~
11386 certificate of authority to reflect a change in any of the following if it changes:

11387 (a) Its ~~corporate~~ name on the records of the department;

11388 (b) ~~The period of its duration; or~~

11389 (c) The jurisdiction of its incorporation.

11390 (c) The name and street address in this state of the foreign corporation's registered
11391 agent in this state, unless the change was timely made in accordance with s. 607.0502 or
11392 s. 607.05031.

11393 (2) The amendment must be filed within 90 days after the occurrence of a change
11394 described in subsection (1), must be signed by an officer of the foreign corporation, and must state
11395 the following ~~Such application shall be made within 90 days after the occurrence of any change~~
11396 ~~mentioned in subsection (1), shall be made on forms prescribed by the Department of State, and~~
11397 ~~shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver with the~~
11398 ~~completed application, a certificate, or a document of similar import, authenticated as of a date not~~
11399 ~~more than 90 days prior to delivery of the application to the Department of State by the Secretary~~
11400 ~~of State or other official having custody of corporate records in the jurisdiction under the laws of~~
11401 ~~which it is incorporated, evidencing the amendment. A translation of the certificate, under oath or~~
11402 ~~affirmation of the translator, must be attached to a certificate that is in a language other than~~
11403 ~~English. The application shall set forth:~~

11404 (a) The name of the foreign corporation as it appears on the records of the
11405 ~~D~~department of State.

11406 (b) The jurisdiction of its incorporation.

11407 (c) The date the foreign corporation ~~it~~ was authorized to do business in this state.

11408 (d) If the name of the foreign corporation has been changed, the name relinquished;
11409 ~~the and its new name, a statement that the change of name has been effected under the laws~~
11410 ~~of the jurisdiction of its incorporation, and the date the change was effected.~~

11411 (e) If the amendment changes its period of duration, a statement of such change.

11412 (f) If the amendment changes the jurisdiction of incorporation of the foreign
11413 corporation, a statement of that ~~such~~ change.

11414 (3) The requirements of s. 607.1503 for obtaining an original certificate of authority apply to
11415 obtaining an amended certificate under this section unless the department or other official having
11416 custody of the foreign corporation’s publicly filed records in its jurisdiction of incorporation did
11417 not require an amendment to effectuate the change on its records.

11418 (4) Subject to subsection (3), a foreign corporation authorized to do business in this state may
11419 make application to the department to obtain an amended certificate of authority to add, remove,
11420 or change the name, title, capacity, or address of an officer or director of the foreign corporation.

11421

11422 **Commentary to Section 607.1504:**

11423 This section has been harmonized with s. 605.0907 of FRLCA.

11424

11425 607.1505 Effect of a certificate of authority.

11426 (1) Unless the department determines that an application for a A certificate of authority of a
11427 authorizes the foreign corporation to which it is issued to transact business in this state does not
11428 comply with the filing requirements of this chapter, subject, however, to the right of the
11429 Department of State shall, upon payment of all filing fees, authorize the foreign corporation to
11430 transact business in this state and file the application for to suspend or revoke the certificate of
11431 authority as provided in this act.

11432 (2) The filing by the department of an application for a certificate of authority means that the
11433 foreign corporation that filed the application to transact business in this state has obtained a
11434 certificate of authority to transact business in this state and is authorized to transact business in
11435 this state, subject, however, to the right of the department to suspend or revoke the certificate of
11436 authority as provided in this chapter. A foreign corporation with a valid certificate of authority has
11437 the same but no greater rights and has the same but no greater privileges as, and except as otherwise
11438 provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later
11439 imposed on, a domestic corporation of like character.

11440 (3) ~~This act does not authorize this state to regulate the organization or internal affairs of a~~
11441 ~~foreign corporation authorized to transact business in this state.~~

11442

11443 **Commentary to Section 607.1505:**

11444 This section has been harmonized with s. 605.0903 of FRLUCA.

11445 The language deleted in subsection (2) is now covered in s. 607.15015(3). While the language used
11446 in that section is slightly different than the wording in the existing FBCA (based on the wording
11447 in the corollary section of FRLUCA), it is not intended to be a substantive change to existing law.

11448

11449 607.1506 Corporate name of foreign corporation.

11450 (1) A foreign corporation whose name is unavailable under or whose name does is-not
 11451 otherwise comply with entitled to file an application for a certificate of authority unless the
 11452 corporate name of such foreign such corporation satisfies the requirements of s. 607.0401 shall use
 11453 an alternate name that complies with . If the corporate name of a foreign corporation does not
 11454 satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a certificate
 11455 of authority to transact business in this state.: An alternate name adopted for use in this state shall
 11456 be cross-referenced to the actual name of the foreign corporation in the records of the department,
 11457 provided that no cross reference is required if the alternate name involves no more than adding the
 11458 suffix "corporation," "company," or "incorporated" or the abbreviation "Corp.," or "Inc.," or Co."
 11459 or the designation "Corp.," or "Inc." or "Co." to the name. If the actual name of the foreign
 11460 corporation subsequently becomes available in this state and the foreign corporation elects to
 11461 operate in this state under its actual name, or the foreign corporation chooses to change its alternate
 11462 name, a record approving the election or change, as the case may be, by its directors or
 11463 shareholders, and signed as required pursuant to s. 607.0120, shall be delivered to the department
 11464 for filing.

11465 (a) ~~May add the word "corporation," "company," or "incorporated" or the~~
 11466 ~~abbreviation "Corp.," or "Inc.," or "Co.," or the designation "Corp," or "Inc," or "Co," as~~
 11467 ~~will clearly indicate that it is a corporation instead of a natural person, partnership, or other~~
 11468 ~~business entity; or~~

11469 (b) ~~May use an alternate name to transact business in this state if its real name is~~
 11470 ~~unavailable. Any such alternate corporate name, adopted for use in this state, shall be cross-~~
 11471 ~~referenced to the real corporate name in the records of the Division of Corporations. If the~~
 11472 ~~corporation's real corporate name becomes available in this state or the corporation~~
 11473 ~~chooses to change its alternate name, a copy of the resolution of its board of directors~~
 11474 ~~changing or withdrawing the alternate name, executed as required by s. 607.0120, shall be~~
 11475 ~~delivered for filing.~~

11476 (2) A The corporate name (including the alternate name) of a foreign corporation that adopts
 11477 an alternate name under subsection (1) and obtains a certificate of authority with the alternate name
 11478 need not comply with s. 865.09 with respect to the alternate name. must be distinguishable upon
 11479 the records of the Division of Corporations from:

11480 (a) ~~Any corporate name of a corporation incorporated or authorized to transact~~
 11481 ~~business in this state;~~

11482 (b) ~~The alternate name of another foreign corporation authorized to transact~~
 11483 ~~business in this state;~~

11484 ~~(c)The corporate name of a not for profit corporation incorporated or authorized to~~
11485 ~~transact business in this state; and~~

11486 ~~(d)The names of all other entities or filings, except fictitious name registrations~~
11487 ~~pursuant to s. 865.09, organized or registered under the laws of this state that are on file~~
11488 ~~with the Division of Corporations.~~

11489 (3) So long as a foreign corporation maintains a certificate of authority with an alternate
11490 name, a foreign corporation shall transact business in this state under the alternate name unless the
11491 corporation is authorized under s. 865.09 to transact business in this state under another name.

11492 (4) If a foreign corporation authorized to transact business in this state changes its
11493 corporate name to one that does not comply with ~~satisfy the requirements of~~ s. 607.0401, it may
11494 not thereafter transact business in this state ~~under the changed name~~ until it complies with
11495 subsection (1) adopts a name satisfying the requirements of s. 607.0401 and obtains an amended
11496 certificate of authority under s. 607.1504.

11497 (5) Notwithstanding the foregoing, a foreign corporation may register under a name that
11498 is not otherwise distinguishable on the records of the department with the written consent of the
11499 other entity if the consent is filed with the department at the time of registration of such name and
11500 if such name is not identical to the name of the other entity.

11501

11502 **Commentary to Section 607.1506:**

11503 This section has been harmonized with s. 605.0906 of FRLCA.

11504 Subsection (5), consistent with s. 607.0401(1)(e) with respect to domestic corporations, allows a
11505 name otherwise unavailable to be used by consent. The section also provides that the department
11506 shall deny such a request if the name of the entity requested with consent is identical to the name
11507 of the other entity.

11508

11509 607.1507 Registered office and registered agent of foreign corporation.

11510 (1) Each foreign corporation authorized to transact business in this state shall designate and
11511 ~~must~~ continuously maintain in this state:

11512 (a) A registered office, which ~~that~~ may be the same as ~~any~~ of its places of business
11513 in this state; and

11514 (b) A registered agent, which must ~~who may~~ be:

11515 1. An individual who resides in this state and whose business address
11516 office is identical to the address of ~~with~~ the registered office; or

11517 2. A domestic entity which is an authorized entity and whose business
11518 address is identical to the address of the registered office, or another foreign entity
11519 authorized to transact business in this state which is an authorized entity and whose
11520 business address ~~corporation or not for profit corporation as defined in chapter 617,~~
11521 ~~the business office of which is identical to the address of~~ with the registered office;
11522 ~~or~~

11523 3. ~~Another foreign corporation or foreign not for profit corporation~~
11524 ~~authorized pursuant to this chapter or chapter 617, to transact business or conduct~~
11525 ~~its affairs in this state the business office of which is identical with the registered~~
11526 ~~office.~~

11527 (2) This section does not apply to corporations which are required by law to designate the
11528 Chief Financial Officer as their attorney for the service of process, associations subject to the
11529 provisions of chapter 665, and banks and trust companies subject to the provisions of the financial
11530 institutions codes.

11531 (32) Each initial A-registered agent, and each appointed pursuant to this section or a
11532 successor registered agent that is appointed, pursuant to s. 607.1508 on whom process may be
11533 served shall each file a statement in writing with the Department of State, in the such form and
11534 manner as shall be prescribed by the department, accepting the appointment as a-registered agent
11535 while simultaneously with his or her being designated as the registered agent. The Such statement
11536 of acceptance must provide shall state that the registered agent is familiar with, and accepts, the
11537 obligations of that position.

11538 (4) The duties of a registered agent are as follows:

11539 (a) To forward to the foreign corporation at the address most recently supplied
11540 to the registered agent by the foreign corporation, a process, notice or demand pertaining to
11541 the foreign corporation which is served on or received by the registered agent;

11542 (b) If the registered agent resigns, to provide the notice required under s.
11543 607.1509 to the foreign corporation at the address most recently supplied to the registered
11544 agent by the foreign corporation.

11545 (5) The department shall maintain an accurate record of the registered agents and registered
11546 offices for the service of process and shall promptly furnish any information disclosed thereby
11547 promptly upon request and payment of the required fee.

11548 (6) A foreign corporation may not prosecute or maintain any action in a court in this state
11549 until the foreign corporation complies with the provisions of this section, pays to the department
11550 the amounts required by this chapter, and, to the extent ordered by a court of competent
11551 jurisdiction, pays to the department a penalty of \$5 for each day it has failed to so comply or \$500,
11552 whichever is less.

11553 (7) A court may stay a proceeding commenced by a foreign corporation until the
11554 corporation complies with this section.

11555

11556 **Commentary to Section 607.1507:**

11557 This section has been harmonized with s. 607.0501 of the FBCA.

11558 The change to subsection (1)(a) is to make it consistent with s. 607.0501 of the FBCA and the
11559 corollary section of FRLCA. It is not intended to a substantive change.

11560 New subsection (6) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
11561 commenced by a corporation until the corporation complies with this section. The change in
11562 subsection (6) relating to payment of a penalty reflects the current position of the Department of
11563 State not to collect this penalty unless required to do so by a court of competent jurisdiction.

11564

11565 607.1508 Change of registered office and registered agent of foreign corporation.

11566 (1) In order to change its registered agent or registered office address, a foreign corporation
11567 authorized to transact business in this state may deliver ~~change its registered office or registered~~
11568 ~~agent by delivering~~ to the ~~D~~department of State for filing a statement of change containing the
11569 following that sets forth:

11570 (a) The ~~its~~ name of the foreign corporation.;

11571 (b) The name ~~street address~~ of its current registered office.;

11572 (c) If the current registered agent is to be changed, the name of the new registered
11573 agent.

11574 (d) The street address of its current registered office for its current registered
11575 agent.

11576 (e) If the street address of the current registered office is to be changed, the new
11577 street address of the ~~its new~~ registered office;

11578 (d) ~~The name of its current registered agent;~~

11579 (e) ~~If the current registered agent is to be changed, the name of its new registered~~
11580 ~~agent and the new agent's written consent (either on the statement or attached to it) to the~~
11581 ~~appointment;~~

11582 (f) ~~That, after the change or changes are made, the street address of its registered~~
11583 ~~office and the business office of its registered agent will be identical; and~~

11584 (g) ~~That such change was authorized by resolution duly adopted by its board of~~
11585 ~~directors or by an officer of the corporation so authorized by the board of directors.~~

11586 (2) ~~If a registered agent changes the street address of her or his business office, she or he may~~
11587 ~~change the street address of the registered office of any foreign corporation for which she or he is~~
11588 ~~the registered agent by notifying the corporation in writing of the change and signing (either~~
11589 ~~manually or in facsimile) and delivering to the Department of State for filing a statement of change~~
11590 ~~that complies with the requirements of paragraphs (1)(a)-(f) and recites that the corporation has~~
11591 ~~been notified of the change. If the registered agent is changed, the written acceptance of the~~
11592 ~~successor registered agent described in s. 607.1507(3) must also be included in or attached to the~~
11593 ~~statement of change.~~

11594 (3) A statement of change is effective when filed by the department.

11595 (4) The changes described in this section may also be made on the foreign corporation's
11596 annual report or in an application for reinstatement filed with the department under s. 607.1622.
11597

11598 **Commentary to Section 607.1508:**

11599 This section has been harmonized with s. 607.0502 of the FBCA and s. 605.0114 of FRLCA.

11600

11601 607.1509 Resignation of registered agent of foreign corporation.

11602 (1) A registered agent may resign as agent for a foreign corporation by delivering to the
11603 department for filing a signed statement of resignation containing the name of the foreign
11604 corporation. The registered agent of a foreign corporation may resign his or her agency
11605 appointment by signing and delivering to the Department of State for filing a statement of
11606 resignation and mailing a copy of such statement to the corporation at the corporation's principal
11607 office address shown in its most recent annual report or, if none, shown in its application for a
11608 certificate of authority or other most recently filed document. The statement of resignation must
11609 state that a copy of such statement has been mailed to the corporation at the address so stated. The
11610 statement of resignation may include a statement that the registered office is also discontinued.

11611 (2) After delivering the statement of resignation to the department for filing, the registered
11612 agent shall promptly mail a copy to the foreign corporation at its current mailing address. The
11613 agency appointment is terminated as of the 31st day after the date on which the statement was filed
11614 and, unless otherwise provided in the statement, termination of the agency acts as a termination of
11615 the registered office.

11616 (3) A registered agent is terminated upon the earlier of:

11617 (a) The 31st day after the department files the statement of resignation; or

11618 (b) When a statement of change or other record designating a new registered
11619 agent is filed by the department.

11620 (4) When a statement of resignation takes effect, the registered agent ceases to have
11621 responsibility for a matter thereafter tendered to it as agent for the foreign corporation. The
11622 resignation does not affect contractual rights that the foreign corporation has against the agent or
11623 that the agent has against the foreign corporation.

11624 (5) A registered agent may resign from a foreign corporation regardless of whether the
11625 foreign corporation has active status.

11626

11627 **Commentary to Section 607.1509:**

11628 This section has been harmonized with s. 607.0503 of the FBCA and s. 605.0115 of FRLCA.

11629

- 11630 607.15091 Change of name or address by registered agent.
- 11631 (1) If a registered agent changes his or her name or address, the agent may deliver to the
- 11632 department for filing a statement of change that provides the following:
- 11633 (a) The name of the foreign corporation represented by the registered agent.
- 11634 (b) The name of the registered agent as currently shown in the records of the department
- 11635 for the corporation.
- 11636 (c) If the name of the registered agent has changed, its new name.
- 11637 (d) If the address of the registered agent has changed, the new address.
- 11638 (e) A statement that the registered agent has given the notice required under subsection
- 11639 (2).
- 11640 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 11641 changes made by the statement filed with the department to the represented foreign corporation.
- 11642

11643 **Commentary to Section 607.15091:**

11644 This section has been harmonized with s. 607.05031 of the FBCA. It replaces s. 607.1509(2).

11645

11646 607.15092 Delivery of notice or other communication.

11647 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
11648 or other communication includes delivery by hand, the United States Postal Service, a commercial
11649 delivery service, and electronic transmission, all as more particularly described in s. 607.0141.

11650 (2) Except as provided in subsection (3), delivery to the department is effective only when
11651 a notice or other communication is received by the department.

11652 (3) If a check is mailed to the department for payment of an annual report fee or the annual
11653 supplemental fee required under s. 607.193, the check shall be deemed to have been received by
11654 the department as of the postmark date appearing on the envelope or package transmitting the
11655 check if the envelope or package is received by the department.

11656

11657 **Commentary to Section 607.15092:**

11658 This section has been harmonized with s. 607.05032 of the FBCA which, in turn, was derived from

11659 s. 605.0118 of FRLCA. It is new to the FBCA.

11660

11661 607.15101 Service of process, notice, or demand on a foreign corporation.

11662 (1) A foreign corporation may be served with process required or authorized by law by
11663 serving on its registered agent.

11664 (2) If a foreign corporation ceases to have a registered agent or if its registered agent
11665 cannot with reasonable diligence be served, the process required or permitted by law may instead
11666 be served on the chair of the board, the president, any vice president, the secretary, or the treasurer
11667 of the foreign corporation at the principal office of the foreign corporation in this state.

11668 (3) If the process cannot be served on a foreign corporation pursuant to subsection (1) or
11669 subsection (2), the process may be served on the secretary of state as an agent of the foreign
11670 corporation.

11671 (4) Service of process on the secretary of state may be made by delivering to and leaving
11672 with the department duplicate copies of the process.

11673 (5) Service is effectuated under subsection (3) on the date shown as received by the
11674 department.

11675 (6) The department shall keep a record of each process served on the secretary of state
11676 pursuant to this section and record the time of and the action taken regarding the service.

11677 (7) Any notice or demand on a foreign corporation under this chapter may be given or
11678 made to the chair of the board, the president, any vice president, the secretary, or the treasurer of
11679 the foreign corporation; to the registered agent of the foreign corporation at the registered office
11680 of the foreign corporation in this state; or to any other address in this state that is in fact the
11681 principal office of the foreign corporation in this state.

11682 (8) This section does not affect the right to serve process, give notice, or make a demand
11683 in any other manner provided by law.

11684 ~~The registered agent of a foreign corporation authorized to transact business in this state is~~
11685 ~~the corporation's agent for service of process, notice, or demand required or permitted by law to~~
11686 ~~be served on the foreign corporation.~~

11687 ~~(2) — A foreign corporation may be served by registered or certified mail, return receipt~~
11688 ~~requested, addressed to the secretary of the foreign corporation at its principal office shown in its~~
11689 ~~application for a certificate of authority or in its most recent annual report if the foreign~~
11690 ~~corporation:~~

11691 ~~(a) Has no registered agent or its registered agent cannot with reasonable diligence~~
11692 ~~be served;~~

11693 ~~(b)Has withdrawn from transacting business in this state under s. 607.1520; or~~

11694 ~~(c)Has had its certificate of authority revoked under s. 607.1531.~~

11695 ~~(3) Service is perfected under subsection (2) at the earliest of:~~

11696 ~~(a)The date the foreign corporation receives the mail;~~

11697 ~~(b)The date shown on the return receipt, if signed on behalf of the foreign~~
11698 ~~corporation; or~~

11699 ~~(c)Five days after its deposit in the United States mail, as evidenced by the~~
11700 ~~postmark, if mailed postpaid and correctly addressed.~~

11701 ~~(4) This section does not prescribe the only means, or necessarily the required means, of~~
11702 ~~servicing a foreign corporation. Process against any foreign corporation may also be served in~~
11703 ~~accordance with chapter 48 or chapter 49.~~

11704 ~~(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made~~
11705 ~~in accordance with the procedures for notice to or demand on domestic corporations under s.~~
11706 ~~607.0504.~~

11707

11708 **Commentary to Section 607.15101:**

11709 This section has been harmonized with s. 607.0504 of the FBCA.

11710

11711 607.1520 Withdrawal and cancellation of certificate of authority for of foreign
11712 corporation.

11713 (1) To cancel its certificate of authority to transact business in this state, a foreign
11714 corporation must deliver to the department for filing a notice of withdrawal of certificate of
11715 authority. The certificate of authority is canceled when the notice of withdrawal becomes effective
11716 pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be signed by an
11717 officer or director and state the following:

11718 (a) The name of the foreign corporation as it appears on the records of the
11719 department.

11720 (b) The name of the foreign corporation's jurisdiction of incorporation.

11721 (c) The date the foreign corporation was authorized to transact business in this
11722 state.

11723 (d) That the foreign corporation is withdrawing its certificate of authority in this
11724 state.

11725 (e) That it revokes the authority of its registered agent to accept service on its behalf
11726 and appoints the secretary of state as its agent for service of process based on a cause of
11727 action arising during the time it was authorized to transact business in this state;

11728 (f) A mailing address to which the secretary of state may mail a copy of any process
11729 served on the secretary of state under paragraph (e); and

11730 (g) A commitment to notify the department in the future of any change in its mailing
11731 address.

11732 ~~A foreign corporation authorized to transact business in this state may not withdraw from~~
11733 ~~this state until it obtains a certificate of withdrawal from the Department of State.~~

11734 ~~(2) — A foreign corporation authorized to transact business in this state may apply for a~~
11735 ~~certificate of withdrawal by delivering an application to the Department of State for filing. The~~
11736 ~~application shall be made on forms prescribed and furnished by the Department of State and shall~~
11737 ~~set forth:~~

11738 ~~(a) The name of the foreign corporation and the jurisdiction under the law of which~~
11739 ~~it is incorporated;~~

11740 ~~(b) That it is not transacting business in this state and that it surrenders its authority~~
11741 ~~to transact business in this state;~~

11742 ~~(c) That it revokes the authority of its registered agent to accept service on its behalf~~
11743 ~~and appoints the Department of State as its agent for service of process based on a cause~~
11744 ~~of action arising during the time it was authorized to transact business in this state;~~

11745 ~~(d) A mailing address to which the Department of State may mail a copy of any~~
11746 ~~process served on it under paragraph (c); and~~

11747 ~~(e) A commitment to notify the Department of State in the future of any change in~~
11748 ~~its mailing address.~~

11749 (23) After the withdrawal of the foreign corporation is effective, service of process on the
11750 secretary of state ~~Department of State~~ under this section is service on the foreign corporation. Upon
11751 receipt of the process, the secretary of state ~~Department of State~~ shall mail a copy of the process
11752 to the foreign corporation at the mailing address set forth under subsection (1)(f) ~~(2)~~.

11753

11754 **Commentary to Section 607.1520:**

11755 This section has been harmonized with s. 605.0910 of FRLCA.

11756

11757 607.1521 Withdrawal deemed on conversion to domestic filing entity.

11758 A foreign corporation authorized to transact business in this state that converts to a
11759 domestic corporation or another domestic eligible entity that is organized, incorporated, registered
11760 or otherwise formed through the delivery of a record to the department for filing is deemed to have
11761 withdrawn its certificate of authority on the effective date of the conversion.

11762

11763 **Commentary to Section 607.1521:**

11764 This section is new to the FBCA. It is based on s. 605.0911 of FRLCA and s. 15.08 of the Model
11765 Act.

11766

11767 607.1522 Withdrawal on dissolution, merger, or conversion to **certain** nonfiling
11768 entities.

11769
11770 (1) A foreign corporation that is authorized to transact business in this state that has
11771 dissolved and completed winding up, has merged into a foreign eligible entity that is not authorized
11772 to transact business in this state, or has converted to a domestic or foreign eligible entity that is not
11773 organized, incorporated, registered or otherwise formed through the public filing of a record, shall
11774 deliver a notice of withdrawal of certificate of authority to the department for filing in accordance
11775 with s. 607.1520.

11776 (2) After a withdrawal under this section of a foreign corporation that has converted to
11777 another type of entity is effective, service of process in any action or proceeding based on a cause
11778 of action arising during the time the foreign corporation was authorized to transact business in this
11779 state may be made pursuant to s. 607.15101.

11780

11781 **Commentary to Section 607.1522:**

11782 This section is new to the FBCA. It is based on s. 605.0912 of FRLCA and s. 15.09 of the Model
11783 Act.

11784

11785 607.1523 Action by Department of Legal Affairs.

11786

11787 The Department of Legal Affairs may maintain an action to enjoin a foreign corporation

11788 from transacting business in this state in violation of this chapter.

11789

11790 **Commentary to Section 607.1523:**

11791 This section is new to the FBCA. It is based on s. 605.0913 of FRLCA and s. 15.12 of the Model
11792 Act.

11793

11794 607.1530 ~~Grounds for~~ Revocation of certificate of authority to transact business.

11795 (1) ~~A The Department of State may commence a proceeding under s. 607.1531 to revoke~~
11796 ~~the certificate of authority of a foreign corporation authorized to transact business in this state may~~
11797 ~~be revoked by the department if:~~

11798 (a~~1~~) The foreign corporation ~~does not deliver~~ has failed to file its annual report
11799 to with the Department of State by 5 p.m. Eastern Time on the third Friday in September
11800 of each year;

11801 (b~~2~~) The foreign corporation does not pay, ~~within the time required by this act,~~
11802 ~~any a fees, taxes, or penalty penalties due to the department under this chapter imposed by~~
11803 ~~this act or other law;~~

11804 (c~~3~~) The foreign corporation ~~does not appoint and maintain a is without a~~
11805 ~~registered agent as required by s. 607.1507; or registered office in this state for 30 days or~~
11806 ~~more.~~

11807 (d~~4~~) The foreign corporation does not deliver for filing a statement of a change
11808 under notify the Department of State under s. 607.1508 within 30 days after the change in
11809 the name or address of the agent has occurred, unless, within 30 days after the change
11810 occurred either: or s. 607.1509 that its registered agent has resigned or that its registered
11811 office has been discontinued within 30 days of the resignation or discontinuance.

11812 1. The registered agent files a statement of change under s. 607.15091; or

11813 2. The change was made in accordance with s. 607.1508(4) or s.
11814 607.1504(1)(c);

11815 (e) The foreign corporation has failed to amend its certificate of authority to reflect
11816 a change in its name on the records of the department or its jurisdiction of incorporation;

11817 (f) The foreign corporation's period of duration stated in its articles of incorporation
11818 has expired;

11819 (g~~5~~) An incorporator, director, officer, or agent of the foreign corporation signs
11820 ~~signed~~ a document that she or he knew was false in a any material respect with the intent
11821 ~~that the document be delivered to the Department of State for filing;~~

11822 (h~~6~~) The ~~Department of State~~ receives a duly authenticated certificate from the
11823 secretary of state or other official having custody of corporate records in the jurisdiction
11824 under the law of which the foreign corporation is incorporated stating that it has been

11825 dissolved or is no longer active on the official's records; or disappeared as the result of a
11826 merger.

11827 (i7) The foreign corporation has failed to answer truthfully and fully, within the
11828 time prescribed by this chapter ~~act~~, interrogatories propounded by the ~~D~~department of
11829 State.

11830 (2) Revocation of a foreign corporation's certificate of authority for failure to file an
11831 annual report shall occur on the fourth Friday in September of each year. The department shall
11832 issue a notice in a record of the revocation to the revoked foreign corporation. Issuance of the
11833 notice may be by electronic transmission to a foreign corporation that has provided the department
11834 with an e-mail address.

11835 (3) If the department determines that one or more grounds exist under paragraph (1)(b)
11836 for revoking a foreign corporation's certificate of authority, the department shall issue a notice in
11837 a record to the foreign corporation of the department's intent to revoke the certificate of authority.
11838 Issuance of the notice may be by electronic transmission to a foreign corporation that has provided
11839 the department with an e-mail address.

11840 (4) If, within 60 days after the department sends the notice of intent to revoke in
11841 accordance with subsection (3), the foreign corporation does not correct each ground for
11842 revocation or demonstrate to the reasonable satisfaction of the department that each ground
11843 determined by the department does not exist, the department shall revoke the foreign corporation's
11844 authority to transact business in this state and issue a notice in a record of revocation which states
11845 the grounds for revocation. Issuance of the notice may be by electronic transmission to a foreign
11846 corporation that has provided the department with an e-mail address.

11847 (5) Revocation of a foreign corporation's certificate of authority does not terminate the
11848 authority of the registered agent of the corporation.

11849

11850 **Commentary to Section 607.1530:**

11851 This provision has been updated and modernized to follow the substance of FRLCA s. 605.0908.

11852 Subsection (5) has been added from s. 607.0531(4) since s. 607.0131 is being removed.

11853

11854 ~~607.1531—Procedure for and effect of revocation.~~

11855 ~~(1) If the Department of State determines that one or more grounds exist under s. 607.1530~~
11856 ~~for revocation of a certificate of authority, the Department of State shall serve the foreign~~
11857 ~~corporation with notice of its intent to revoke the foreign corporation’s certificate of authority. If~~
11858 ~~the foreign corporation has provided the department with an electronic mail address, such notice~~
11859 ~~shall be by electronic transmission. Revocation for failure to file an annual report shall occur on~~
11860 ~~the fourth Friday in September of each year. The department shall issue a certificate of revocation~~
11861 ~~to each revoked corporation. Issuance of the certificate of revocation may be by electronic~~
11862 ~~transmission to any corporation that has provided the department with an electronic mail address.~~

11863 ~~—(2) If the foreign corporation does not correct each ground for revocation under s.~~
11864 ~~607.1530(2) (7) or demonstrate to the reasonable satisfaction of the Department of State that each~~
11865 ~~ground determined by the Department of State does not exist within 60 days after issuance of~~
11866 ~~notice, the Department of State shall revoke the foreign corporation’s certificate of authority by~~
11867 ~~issuing a certificate of revocation that recites the ground or grounds for revocation and its effective~~
11868 ~~date. Issuance of the certificate of revocation may be by electronic transmission to any foreign~~
11869 ~~corporation that has provided the department with an electronic mail address.~~

11870 ~~—(3) The authority of a foreign corporation to transact business in this state ceases on the date~~
11871 ~~shown on the certificate revoking its certificate of authority.~~

11872 ~~—(4) Revocation of a foreign corporation’s certificate of authority does not terminate the~~
11873 ~~authority of the registered agent of the corporation.~~

11874

11875 **Commentary to Section 607.1531:**

11876 The substance of this section has been added to s. 607.1530 of the FBCA in order to follow the
11877 corollary FRLCA model. As a result, this section has been eliminated.

11878

11879 607.15315 ~~Revocation; application for Reinstatement following revocation of certificate~~
11880 ~~of authority.~~

11881 (1)(a) ~~A foreign corporation the certificate of authority of which has been revoked pursuant~~
11882 ~~to s. 607.1530 or former s. 607.1531 may apply to the Department of State for reinstatement at~~
11883 ~~any time after the effective date of revocation of authority. The application must~~ foreign
11884 corporation applying for reinstatement must submit all fees and penalties then owed by the foreign
11885 corporation at rates provided by law at the time the foreign corporation applies for reinstatement,
11886 together with an application for reinstatement prescribed and furnished by the department, which
11887 is signed by both the registered agent and an officer or director of the company and states:

11888 (a)1. ~~Recite the name under which of the foreign corporation is authorized to~~
11889 ~~transact business in this state and the effective date of its revocation of authority;.~~

11890 (b)2. ~~The street address of the corporation's principal office and mailing address~~
11891 ~~State that the ground or grounds for revocation of authority either did not exist or have~~
11892 ~~been eliminated and that no further grounds currently exist for revocation of authority;.~~

11893 (c)3. ~~The jurisdiction of State that the foreign corporation's formation and the~~
11894 ~~date on which it became qualified to transact business in this state. name satisfies the~~
11895 ~~requirements of s. 607.1506; and~~

11896 4. ~~State that all fees owed by the corporation and computed at the rate provided by~~
11897 ~~law at the time the foreign corporation applies for reinstatement have been paid; or~~

11898 (d) ~~The foreign corporation's federal employer identification number or, if none,~~
11899 ~~whether one has been applied for.;~~

11900 (e) ~~The name, title or capacity, and address of at least one officer or director of~~
11901 ~~the corporation.~~

11902 (f) ~~Additional information that is necessary or appropriate to enable the~~
11903 ~~department to carry out this chapter.~~

11904 (2) ~~In lieu of the requirement to file an application for reinstatement as described in~~
11905 ~~subsection (1), a foreign corporation whose certificate of authority has been revoked may submit~~
11906 ~~all fees and penalties owed by the corporation at the rates provided by law at the time the~~
11907 ~~corporation applies for reinstatement, together with a current annual report, signed by both the~~
11908 ~~registered agent and an officer or director of the corporation, which contains the information~~
11909 ~~described in subsection (1).~~

11910 ~~(b)As an alternative, the foreign corporation may submit a current annual report,~~
11911 ~~signed by the registered agent and an officer or director, which substantially complies with~~
11912 ~~the requirements of paragraph (a).~~

11913 (3) If the department determines that an application for reinstatement contains the
11914 information required under subsection (1) or subsection (2) and that the information is correct,
11915 upon payment of all required fees and penalties, the department shall reinstate the foreign
11916 corporation's certificate of authority.

11917 ~~(2) If the Department of State determines that the application contains the information~~
11918 ~~required by subsection (1) and that the information is correct, it shall cancel the certificate of~~
11919 ~~revocation of authority and prepare a certificate of reinstatement that recites its determination and~~
11920 ~~prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on the~~
11921 ~~corporation under s. 607.0504(2).~~

11922 ~~(43) When a~~ the reinstatement becomes ~~is effective, it relates back to and takes effect as of the~~
11923 ~~effective date of the revocation of authority and the foreign corporation may resume its activities~~
11924 ~~in this state resumes carrying on its business as if the revocation of authority had not never~~
11925 ~~occurred.~~

11926 (54) The name of the foreign corporation whose ~~the~~ certificate of authority of which has
11927 been revoked is not available for assumption or use by another eligible entity corporation ~~until 1~~
11928 year after the effective date of revocation of authority unless the corporation provides the
11929 Department of State with an affidavit signed ~~executed~~ as required by s. 607.0120 which
11930 authorizes ~~permitting~~ the immediate assumption or use of the name by another corporation.

11931 (65) If the name of the foreign corporation applying for reinstatement ~~has been lawfully~~
11932 assumed in this state by another eligible entity corporation, ~~the Department of State shall require~~
11933 the foreign corporation to comply with s. 607.1506 before accepting its application for
11934 reinstatement.

11935

11936 **Commentary to Section 607.15315:**

11937 This section has been modified to harmonize with s. 605.0909 of FRLCA.

11938

11939 607.1532 **Judicial review of denial of reinstatement** ~~Appeal from revocation.~~

11940 (1) If the ~~D~~department of State denies a foreign corporation's application for reinstatement
11941 after revocation of its certificate of authority, the department shall serve the foreign corporation
11942 under s. 607.15101 with a written notice that explains the reason or reasons for the denial ~~revokes~~
11943 ~~the authority of any foreign corporation to transact business in this state pursuant to the provisions~~
11944 ~~of this act, such foreign corporation may likewise appeal to the circuit court of the county where~~
11945 ~~the registered office of such corporation in this state is situated by filing with the clerk of such~~
11946 ~~court a petition setting forth a copy of its application for authority to transact business in this state~~
11947 ~~and a copy of the certificate of revocation given by the Department of State, whereupon the matter~~
11948 ~~shall be tried de novo by the court, and the court shall either sustain the action of the Department~~
11949 ~~of State or direct the department to take such action as the court deems proper.~~

11950 (2) Within 30 days after service of a notice of denial of reinstatement, a foreign corporation
11951 may appeal the denial by petitioning the circuit court in and for Leon County to set aside the
11952 revocation. The petition must be served on the department and contain a copy of the department's
11953 notice of revocation, the foreign corporation's application for reinstatement, and the department's
11954 notice of denial. ~~Appeals from all final orders and judgments entered by the circuit court under~~
11955 ~~this section in review of any ruling or decision of the Department of State may be taken as in other~~
11956 ~~civil actions.~~

11957 (3) The circuit court may order the department to reinstate the certificate of authority of the
11958 foreign corporation or take other action the court considers appropriate.

11959 (4) The circuit court's final decision may be appealed as in other civil proceedings.

11960

11961 **Commentary to Section 607.1532:**

11962 This section substantially follows s. 607.1423 of the FBCA.

11963 In subsection (2), Florida, unlike the Model Act, provides for a trial de novo. The Model Act (as
11964 is the case for the majority of Model Act states), does not specify the burden of proof applicable
11965 to an appeal.

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ARTICLE 16

RECORDS AND REPORTS

607.1601 Corporate records.

(1) A corporation shall keep ~~as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and 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.~~

(2) ~~A corporation shall maintain accurate accounting records.~~

(3) ~~A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.~~

(4) ~~A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.~~

(5) ~~A corporation shall keep a copy of the following records~~ maintain the following records:

(a) ~~Its articles or restated articles of incorporation, as and all amendments to them currently in effect;~~

(b) Any notices to shareholders referred to in s. 607.0120(11)(e) specifying facts on which a filed document is dependent, if those facts are not included in the articles of incorporation or otherwise available as specified in s. 607.0120(11)(e);

(~~b~~c) ~~Its bylaws or restated bylaws, as and all amendments to them currently in effect;~~

(~~e~~) ~~Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;~~

(~~d~~) ~~The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;~~

(~~e~~) All ~~W~~written communications within the past 3 years to all shareholders generally or to all shareholders of a class or series within the past 3 years, including the financial statements furnished for the past 3 years under s. 607.1620;

11999 (e) Minutes of all meetings of, and records of all actions taken without a meeting
12000 by, its shareholders, its board of directors, and any board committees established under s.
12001 607.0825;

12002 (f) A list of the names and business street addresses of its current directors and
12003 officers; and

12004 (g) Its most recent annual report delivered to the ~~D~~department of ~~S~~State under s.
12005 607.1622.
12006

12007 (2) A corporation shall maintain all annual financial statements prepared for the
12008 corporation for its last three fiscal years (or such shorter period of existence) and any audit or other
12009 reports with respect to such financial statements.

12010 (3) A corporation shall maintain accounting records in a form that permits preparation
12011 of its financial statements.

12012 (4) A corporation shall maintain a record of its current shareholders in alphabetical order by
12013 class or series of shares showing the address of, and the number and class or series of shares held
12014 by, each shareholder. Nothing contained in this subsection (4) shall require the corporation to
12015 include in such record the electronic mail address or other electronic contact information of a
12016 shareholder.

12017 (5) A corporation shall maintain the records specified in this section in a manner so that they
12018 may be available for inspection within a reasonable time.

12019

12020 **Commentary to Section 607.1601:**

12021 This section has been modified to conform to the language used in the 2016 version of the Model
12022 Act. While the changes are not considered substantive, the Model Act language is considered
12023 clearer and easier to understand. Specifically, the deletion of the words "keep as permanent
12024 records" in subsection (1) and the adoption of the word "maintain" (which is used in the Model
12025 Act for this purpose) as to records required to be kept, is not considered or intended to be a
12026 substantive change or to change the duty to maintain the records required to be maintained under
12027 subsection (1).

12028 At some time in the future, the Section may wish to consider changes to the record keeping
12029 requirements to allow shareholder records to be maintained in a blockchain. However, a decision
12030 on that topic is believed to be premature for consideration.

12031

12032

12033 607.1602 Inspection of records by shareholders.

12034 (1) A shareholder of a corporation is entitled to inspect and copy, during regular business
12035 hours at the corporation’s principal office, any of the records of the corporation described in s.
12036 607.1601(51), excluding minutes of meetings of, and records of actions taken without a meeting
12037 by, the corporation's board of directors and any board committees established under s. 607.0825,
12038 if the shareholder gives the corporation written notice of the shareholder's ~~his or her~~ demand at
12039 least 5 business days before the date on which the shareholder ~~he or she~~ wishes to inspect and
12040 copy.

12041 (2) A shareholder of a corporation is entitled to inspect and copy, during regular business
12042 hours at a reasonable location specified by the corporation, any of the following records of the
12043 corporation if the shareholder meets the requirements of subsection (3) and gives the corporation
12044 written notice of the shareholder's ~~his or her~~ demand at least 5 business days before the date on
12045 which he or she wishes to inspect and copy:

12046 (a) Excerpts from minutes of any meeting of, or records of any actions taken without
12047 a meeting by, the corporation's board of directors, and board committees maintained in
12048 accordance with s. 607.1601(1) records of any action of a committee of the board of directors
12049 while acting in place of the board of directors on behalf of the corporation, minutes of any
12050 meeting of the shareholders, and records of action taken by the shareholders or board of
12051 directors without a meeting, to the extent not subject to inspection under subsection (1);

12052 (b) The financial statements of the corporation maintained in accordance with s.
12053 607.1601(2);

12054 (c) Accounting records of the corporation;

12055 (d) The record of shareholders maintained in accordance with s. 607.1601(4)
12056 and

12057 (de) any other books and records.

12058 (3) A shareholder may inspect and copy the records described in subsection (2) only if:

12059 (a) The shareholder’s demand is made in good faith and for a proper purpose;

12060 (b) The shareholder’s demand describes with reasonable particularity the shareholder’s
12061 ~~his or her~~ purpose and the records the shareholder ~~he or she~~ desires to inspect; and

12062 (c) The records are directly connected with the shareholder’s purpose.

12063 (4) The corporation may impose reasonable restrictions on the disclosure, use, or distribution
12064 of, and reasonable obligations to maintain the confidentiality of, records described in subsection
12065 (2).

12066 ~~(4) A shareholder of a Florida corporation, or a shareholder of a foreign corporation~~
12067 ~~authorized to transact business in this state who resides in this state, is entitled to inspect and copy,~~
12068 ~~during regular business hours at a reasonable location in this state specified by the corporation, a~~
12069 ~~copy of the records of the corporation described in s. 607.1601(5)(b) and (f), if the shareholder~~
12070 ~~gives the corporation written notice of his or her demand at least 15 business days before the date~~
12071 ~~on which he or she wishes to inspect and copy.~~

12072 (5) For any meeting of shareholders for which the record date for determining shareholders
12073 entitled to vote at the meeting is different than the record date for notice of the meeting, any person who
12074 becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at
12075 the meeting is entitled to obtain from the corporation upon request the notice and any other information
12076 provided by the corporation to shareholders in connection with the meeting, unless the corporation has
12077 made such information generally available to shareholders by posting it on its website or by other
12078 generally recognized means. Failure of a corporation to provide such information does not affect the
12079 validity of action taken at the meeting.

12080 (6) The right of inspection granted by this section may not be abolished or limited by a
12081 corporation's articles of incorporation or bylaws.

12082 ~~(57)~~ This section does not affect:

12083 (a) The right of a shareholder to inspect and copy records under s. 607.0720 or, if the
12084 shareholder is in litigation with the corporation, to the same extent as any other litigant; or

12085 (b) The power of a court, independently of this chapter ~~aet~~, to compel the production of
12086 corporate records for examination, and to impose reasonable restrictions as provided in s.
12087 607.1604(3), provided that, in the case of production of records described in subsection (2) of
12088 this section at the request of a shareholder, the shareholder has met the requirements of
12089 subsection (3).

12090 ~~(68)~~ A corporation may deny any demand for inspection made pursuant to subsection (2) if
12091 the demand was made for an improper purpose, or if the demanding shareholder has within 2 years
12092 preceding his or her demand sold or offered for sale any list of shareholders of the corporation or
12093 any other corporation, has aided or abetted any person in procuring any list of shareholders for any
12094 such purpose, or has improperly used any information secured through any prior examination of
12095 the records of the corporation or any other corporation.

12096 (79) A shareholder may not sell or otherwise distribute any information or records
12097 inspected under this section, except to the extent that such use is for a proper purpose as defined
12098 in subsection (311).

12099 (810) For purposes of this section, the term "shareholder" means a record shareholder,
12100 ~~includes a beneficial shareholder, and an unrestricted owner whose shares are held in a voting trust~~
12101 beneficial owner or by a nominee on his or her behalf.

12102 (911) For purposes of this section, a "proper purpose" means a purpose reasonably related
12103 to such person's interest as a shareholder.

12104 (12) The rights of a shareholder to obtain records under subsections (1) and (2) shall also
12105 apply to the records of subsidiaries of the corporation.

12106

12107 **Commentary to Section 607.1602:**

12108 Changes have been made to conform this provision of the FBCA with the Model Act. The non-
12109 Model Act provisions contained in subsections (2)(d), (8), (9) and (11) have been retained. These
12110 provisions have been in the FBCA for many years. However, the civil penalty in subsection (9)
12111 has been eliminated, with the view that Courts faced with an issue under subsection (9) will
12112 determine the level of penalty or equitable relief that is appropriate under the circumstances.

12113

12114 607.1603 Scope of inspection right.

12115 (1) A shareholder's ~~may appoint an agent or attorney has the same to exercise the~~
12116 shareholder's inspection and copying rights as the shareholder he or she represents under s.
12117 607.1602.

12118 (2) The corporation may, if reasonable, satisfy the right of a shareholder to copy records
12119 under s. 607.1602 ~~includes, if reasonable, by furnishing to the shareholder right to receive copies~~
12120 made by photographic, xerographic, or other means photocopy or other means chosen by the
12121 corporation, including furnishing copies through an electronic transmission.

12122 (3) The corporation may impose a reasonable charge, ~~covering to cover the costs of labor and~~
12123 ~~material, for providing~~ copies of any documents ~~provided to the shareholder. The charge, which~~
12124 may not exceed the estimated cost of production or reproduction of the records be based on an
12125 estimate of such costs. If the records are kept in other than written form, the corporation shall
12126 convert such records into written form upon the request of any person entitled to inspect the same.
12127 The corporation shall bear the costs of converting any records described in s. 607.1601(51). The
12128 requesting shareholder shall bear the costs, including the cost of compiling the information
12129 requested, incurred to convert any records described in s. 607.1602(2).

12130 (4) ~~If requested by a shareholder, †The corporation may shall comply at its expense with a~~
12131 shareholder's demand to inspect the records of shareholders under s. 607.1602(2)(ed) by providing
12132 the shareholder him or her with a list of its shareholders that was of the nature described in s.
12133 607.1601(34). Such a list must be compiled no earlier than the date of the shareholder's demand
12134 as of the last record date for which it has been compiled or as of a subsequent date if specified by
12135 the shareholder.

12136

12137 **Commentary to Section 607.1603:**

12138 Changes have been made to conform this section with the Model Act.

12139

12140 607.1604 Court-ordered inspection.

12141 (1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) ~~or (4)~~ to
12142 inspect and copy any records required by that subsection to be available for inspection, the circuit
12143 court in the applicable county ~~where the corporation's principal office (or, if none in this state, its~~
12144 ~~registered office) is located~~ may summarily order inspection and copying of the records demanded
12145 at the corporation's expense upon application of the shareholder. If the court orders inspection and
12146 copying of the records demanded under s. 607.1601(1), it shall also order the corporation to pay
12147 the shareholder's expenses incurred, including reasonable attorney's fees, incurred to obtain the
12148 order and enforce its rights under this section.

12149 (2) If a corporation does not within a reasonable time allow a shareholder who complies
12150 with s. 607.1602(2) to inspect and copy ~~any other record~~ the records required by that section, the
12151 shareholder who complies with s. ~~607.1602(2) and~~ 607.1602(3); may apply to the circuit court in
12152 the applicable county ~~where the corporation's principal office (or, if none in this state, its registered~~
12153 ~~office) is located~~ for an order to permit inspection and copying of the records demanded. The court
12154 shall dispose of an application under this subsection on an expedited basis.

12155 (3) If the court orders inspection and ~~or~~ copying of the records demanded under s.
12156 607.1602(2), it may impose reasonable restrictions on the disclosure, use, or distribution of, and
12157 reasonable obligations to maintain the confidentiality of, such records, and it shall also order the
12158 corporation to pay the shareholder's expenses incurred ~~costs~~, including reasonable attorney's fees,
12159 ~~reasonably~~ incurred to obtain the order and enforce its rights under this section unless the
12160 corporation, ~~or the officer, director, or agent, as the case may be, proves~~ establishes that the
12161 corporation ~~it or she or he~~ refused inspection in good faith because the corporation ~~it or she or he~~
12162 had:

12163 (a) A reasonable basis for doubt about the right of the shareholder to inspect or copy
12164 the records demanded; or

12165 (4b) ~~If the court orders inspection or copying of the records demanded, it may impose~~
12166 Required reasonable restrictions on the disclosure, use, or distribution of, and reasonable
12167 obligations to maintain the confidentiality of, such use or distribution of the records demanded
12168 to which ~~by~~ the demanding shareholder had been unwilling to agree.

12169

12170 **Commentary to Section 607.1604:**

12171 Changes were made to confirm this section to the corollary provision of the Model Act. These
12172 changes are not believed to be substantive.

12173

12174 607.1605 ~~Inspection of records by directors~~ **rights of directors.**

12175 (1) A director of a corporation is entitled to inspect and copy the books, records, and
12176 documents of the corporation at any reasonable time to the extent reasonably related to the
12177 performance of the director’s duties as a director, including duties as a member of a board
12178 committee, but not for any other purpose or in any manner that would violate any duty to the
12179 corporation.

12180 (2) The circuit court of the applicable county ~~in which the corporation’s principal office or,~~
12181 ~~if none in this state, its registered office is located~~ may order inspection and copying of the books,
12182 records, and documents at the corporation’s expense, upon application of a director who has been
12183 refused such inspection rights, unless the corporation establishes that the director is not entitled to
12184 such inspection rights. The court shall dispose of an application under this subsection on an
12185 expedited basis.

12186 (3) If an order is issued, the court may include provisions protecting the corporation from
12187 undue burden or expense and prohibiting the director from using information obtained upon
12188 exercise of the inspection rights in a manner that would violate a duty to the corporation, and may
12189 also order the corporation to reimburse the director for the director’s costs, including reasonable
12190 counsel fees, incurred in connection with the application.

12191

12192 **Commentary to Section 607.1605:**

12193 This provision was added to the FBCA in 2003 and is identical to the corollary provision in the
12194 Model Act.

12195

12196

12197 607.1620 Financial statements for shareholders.

12198 (1) Upon the written request of any shareholder ~~Unless modified by resolution of the~~
12199 ~~shareholders within 120 days of the close of each fiscal year,~~ a corporation shall deliver ~~furnish or~~
12200 make available to the requesting shareholder the corporation's ~~its shareholders~~ annual financial
12201 statements for the most recent fiscal year of the corporation ~~which may be consolidated or~~
12202 ~~combined statements of the corporation and one or more of its subsidiaries, as appropriate, that~~
12203 ~~include a balance sheet as of the end of the fiscal year, an income statement for that year, and a~~
12204 statement of cash flows for that year. If annual financial statements are have been prepared for the
12205 corporation on the basis of generally accepted accounting principles for such specified period, the
12206 corporation shall deliver or make available such financial statements to the requesting shareholder.
12207 ~~the annual financial statements must also be prepared on that basis.~~(2) If the annual financial
12208 ~~statements are to be~~ delivered or made available to the requesting ~~its~~ shareholder are audited or
12209 otherwise reported upon by a public accountant, ~~his or her~~ the report of the public accountant shall
12210 also be delivered or made available to the requesting shareholder. ~~must accompany them. If not,~~
12211 ~~the statements must be accompanied by a statement of the president or the person responsible for~~
12212 ~~the corporation's accounting records:~~

12213 (a) ~~Stating his or her reasonable belief whether the statements were prepared on~~
12214 ~~the basis of generally accepted accounting principles and, if not, describing the basis of~~
12215 ~~preparation; and~~

12216 (b) ~~Describing any respects in which the statements were not prepared on a basis~~
12217 ~~of accounting consistent with the statements prepared for the preceding year.~~

12218 (32) ~~Any~~ A corporation required by subsection (1) to deliver or make available ~~furnish~~
12219 annual financial statements to a requesting shareholder ~~its shareholders~~ shall deliver or make
12220 available ~~furnish~~ such annual financial statements to such ~~each~~ shareholder within five (5) business
12221 days after the request if the annual financial statements have already been prepared and are
12222 available, or, if the annual financial statements have not been prepared, shall notify the shareholder
12223 within five (5) business days that the annual financial statements have not yet been prepared and
12224 shall deliver or make available such annual financial statements to the shareholder within 120 days
12225 after the request ~~or the close of each fiscal year~~ or within such additional time thereafter as is
12226 reasonably necessary to enable the corporation to prepare its annual financial statements if, for
12227 reasons beyond the corporation's control, it is unable to prepare its annual financial statements
12228 within the prescribed period. ~~Thereafter, on written request from a shareholder who was not~~
12229 ~~furnished the statements, the corporation shall furnish him or her the latest annual financial~~
12230 ~~statements.~~

12231 (3) If requested by the requesting shareholder in its written request under subsection (1), the
12232 corporation shall promptly notify all other shareholders that the annual financial statements that
12233 have or are to be delivered or made available to the requesting shareholder have been or are being

12234 made available to the requesting shareholder and will also be delivered or made available to any
12235 other shareholder who makes its own written request to the corporation under subsection (1).

12236 ~~(4) If a corporation does not comply with the shareholder’s request for annual financial~~
12237 ~~statements pursuant to this section within [30] days of delivery of such request to the corporation,~~
12238 ~~the circuit court in the county where the corporation’s principal office (or, if none in this state, its~~
12239 ~~registered office) is located may, upon application of the shareholder, summarily order the~~
12240 ~~corporation to furnish such financial statements. If the court orders the corporation to furnish the~~
12241 ~~shareholder with the financial statements demanded, it shall also order the corporation to pay the~~
12242 ~~shareholder’s costs, including reasonable attorney’s fees, reasonably incurred to obtain the order~~
12243 ~~and otherwise enforce its rights under this section.~~

12244 (45) A corporation may fulfill its responsibilities under this section by delivering the
12245 specified annual financial statements, by posting the specified annual financial statements on its
12246 website, by any other generally recognized means, or in any other manner permitted by the
12247 applicable rules and regulations of the United States Securities and Exchange Commission ~~The~~
12248 ~~requirement to furnish annual financial statements as described in this section shall be satisfied by~~
12249 ~~sending such annual financial statements by mail or electronic transmission. If a corporation has~~
12250 ~~an outstanding class of securities registered under s. 12 of the Securities Exchange Act of 1934, as~~
12251 ~~amended, the requirement to furnish annual financial statements may be satisfied by complying~~
12252 ~~with 17 C.F.R. s. 240.14a-16, as amended, with respect to the obligation of a corporation to furnish~~
12253 ~~an annual financial report to shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.~~

12254 (5) Notwithstanding the provisions of subsections (1), (2) and (3) of this section:

12255 (a) As a condition to delivering or making available annual financial statements to
12256 any requesting shareholder, the corporation may require the requesting shareholder to agree
12257 to reasonable restrictions on the confidentiality, use and distribution of such annual financial
12258 statements; and

12259 (b) The corporation may, if it reasonably determines that the shareholder’s request is
12260 not made in good faith or for a proper purpose, decline to deliver or make available such
12261 annual financial statements to that shareholder.

12262 (6) If a corporation does not respond to a shareholder’s request for annual financial statements
12263 pursuant to this section in accordance with subsection (3) within the applicable period specified in
12264 subsection (2):

12265 (a) The requesting shareholder may apply to the circuit court in the applicable county
12266 for an order requiring delivery of or access to the requested annual financial statements. The
12267 court shall dispose of an application under this subsection on an expedited basis.

12268 (b) If the court orders delivery or access to the requested annual financial statements,
12269 it may impose reasonable restrictions on their confidentiality, use or distribution.

12270 (c) In such proceeding, if the corporation has declined to deliver or make available
12271 such annual financial statements because the shareholder had been unwilling to agree to
12272 restrictions proposed by the corporation on the confidentiality, use and distribution of such
12273 financials statements, the corporation shall have the burden of demonstrating that the
12274 restrictions proposed by the corporation were reasonable.

12275 (d) In such proceeding, if the corporation has declined to deliver or make available
12276 such annual financial statements pursuant to s. 607.1620(5)(b), the corporation shall have the
12277 burden of demonstrating that it had reasonably determined that the shareholder's request was
12278 not made in good faith or for a proper purpose.

12279 (7) If the court orders delivery or access to the requested annual financial statements it shall
12280 order the corporation to pay the shareholder's expenses incurred to obtain such order unless the
12281 corporation establishes that it had refused delivery or access to the requested annual financial
12282 statements because the shareholder had refused to agree to reasonable restrictions on the
12283 confidentiality, use or distribution of the annual financial statements or that the corporation had
12284 reasonably determined that the shareholder's request was not made in good faith or for a proper
12285 purpose.

12286

12287 **Commentary to Section 607.1620:**

12288 Until 1978, the Model Act required only that the annual financial statements be furnished on
12289 request. Twenty-five jurisdictions currently follow that model. Eighteen jurisdictions follow the
12290 post-1978 Model Act model by requiring that the annual financial statements be furnished to all
12291 shareholders. In the 2016 revision to the Model Act, the Model Act has reversed itself yet again
12292 and now only requires the annual financial statements to be made available upon request.

12293 This provision takes a middle ground and requires that annual financial statements be delivered to
12294 or made available to a requesting shareholder. Like the corollary provision of the Model Act, it
12295 does not prescribe what constitutes annual financial statements, and there is extensive commentary
12296 in the comments to the corollary section of the Model Act that discusses what might constitute
12297 annual financial statements of a particular corporation under particular circumstances.

12298 New subsections (5), (6) and (7) are derived from the 2016 version of the Model Act. Further, the
12299 ability of the corporation's shareholders to waive the requirement to deliver annual financial
12300 statements has been eliminated in favor of the Model Act provision. Finally, while a shareholder
12301 must request annual financial statements before the corporation becomes obligated to provide
12302 them, new subsection (3) has been added to require that the corporation notify its other
12303 shareholders that annual financial statements are being delivered or made available to a requesting
12304 shareholder, and that such annual financial statements will be delivered or made available to any
12305 other shareholder who requests them in the manner provided in subsection (1).

12306

12307 ~~607.1621—Other reports to shareholders.~~

12308 ~~(1) If a corporation indemnifies or advances expenses to any director or, officer, employee,~~
12309 ~~or agent under ss. 607.0850 through 607.0859 otherwise than by court order or action by the~~
12310 ~~shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the~~
12311 ~~corporation shall report the indemnification or advance in writing to the shareholders with or~~
12312 ~~before the notice of the next shareholders' meeting, or prior to such meeting if the indemnification~~
12313 ~~or advance occurs after the giving of such notice but prior to the time such meeting is held, which~~
12314 ~~report shall include a statement specifying the persons paid, the amounts paid, and the nature and~~
12315 ~~status at the time of such payment of the litigation or threatened litigation.~~

12316 ~~(2) If a corporation issues or authorizes the issuance of shares for promises to render services~~
12317 ~~in the future, the corporation shall report in writing to the shareholders the number of shares~~
12318 ~~authorized or issued, and the consideration received by the corporation, with or before the notice~~
12319 ~~of the next shareholders' meeting.~~

12320

12321 **Commentary to Section 607.1621:**

12322 Section 607.1621 of the FBCA was added to the FBCA in 1989. It was based on an earlier version
12323 of the Model Act as it existed at the time. Subsection (1) requires Florida corporations to report to
12324 shareholders as to certain matters relating to indemnification and advancement of expenses.
12325 Subsection (2) requires disclosure to shareholders when shares are issued by the corporation for
12326 promises to render future services. This provision is no longer in the Model Act

12327 In its decision to recommend removal of this section from the FBCA, the Subcommittee was
12328 concerned that notwithstanding the fact that this section has been in the statute for many years, it
12329 is a trap for the unwary, because many users of the FBCA are not aware of the provision. The
12330 Subcommittee also concluded that, in its view, this section is unnecessary because shareholders
12331 can demand information about these types of matters under s. 607.1602 under appropriate
12332 circumstances.

12333

12334 607.1622 Annual report for Department of State department.

12335 (1) Each domestic corporation and each foreign corporation authorized to transact
12336 business in this state shall deliver to the ~~Department of State~~ department for filing ~~an a sworn~~
12337 annual report ~~on such forms as the Department of State prescribes~~ that states the following sets
12338 forth:

12339 (a) The name of the corporation or, if a foreign corporation, the name under which
12340 the foreign corporation is authorized to transact business in this ~~and the state or country~~
12341 under the law of which it is incorporated.

12342 (b) The date of its incorporation and ~~or~~, if a foreign corporation, the jurisdiction
12343 of its incorporation and the date on which it became qualified to transact ~~was admitted to~~
12344 ~~do~~ business in this state;

12345 (c) The street address of its principal office and the mailing address of the
12346 corporation;

12347 (d) The corporation's federal employer identification number, if any, or, if none,
12348 whether one has been applied for;

12349 (e) The names and business street addresses of its directors and principal officers;
12350 and

12351 (f) ~~The street address of its registered office and the name of its registered agent~~
12352 ~~at that office in this state;~~

12353 (g) ~~Language permitting a voluntary contribution of \$5 per taxpayer, which~~
12354 ~~contribution shall be transferred into the Election Campaign Financing Trust Fund. A~~
12355 ~~statement providing an explanation of the purpose of the trust fund shall also be included;~~
12356 ~~and~~

12357 (fh) Any ~~Such~~ additional information that is ~~as may be~~ necessary or appropriate
12358 to enable the ~~D~~department of State carry out the provisions of this chapter ~~aet.~~

12359 (2) ~~Proof to the satisfaction of the Department of State that on or before May 1 such~~
12360 ~~report was deposited in the United States mail in a sealed envelope, properly addressed with~~
12361 ~~postage prepaid, shall be deemed compliance with this requirement.~~

12362 (2) If an annual report contains the name and address of a registered agent which differs
12363 from the information shown in the records of the department immediately before the annual report
12364 becomes effective, the differing information in the annual report is considered a statement of
12365 change under s. 607.0502.

12366 (3) If an annual report does not contain the information required ~~in~~ by this section, the
12367 ~~Department of State~~ shall promptly notify the reporting domestic corporation or foreign
12368 corporation ~~in writing and return the report to it for correction.~~ If the report is corrected to contain
12369 the information required ~~in subsection (1) by this section~~ and delivered to the ~~Department of State~~
12370 within 30 days after the effective date of the notice, it is ~~deemed to be~~ will be considered timely
12371 delivered filed.

12372 (4) ~~Each report shall be executed by the corporation by an officer or director or, if the~~
12373 ~~corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation~~
12374 ~~by such receiver or trustee, and the signing thereof shall have the same legal effect as if made~~
12375 ~~under oath, without the necessity of appending such oath thereto.~~

12376 (45) The first annual report must be delivered to the ~~Department of State~~ department
12377 between January 1 and May 1 of the year following the calendar year in which a domestic
12378 corporation's articles of incorporation became effective or the was incorporated or a foreign
12379 corporation obtained its certificate of authority was authorized to transact business in this state.
12380 Subsequent annual reports must be delivered to the ~~Department of State~~ between January 1 and
12381 May 1 of ~~each the subsequent~~ calendar years thereafter. If one or more forms of annual report are
12382 submitted for a calendar year, the department shall file each of them and make the information
12383 contained in them part of the official record. The first form of annual report filed in a calendar year
12384 shall be considered the annual report for that calendar year, and each report filed after that one in
12385 the same calendar year shall be treated as an amended report for that calendar year.

12386 (56) Information in the annual report must be current as of the date the annual report is
12387 delivered to the department for filing ~~executed on behalf of the corporation.~~

12388 (7) ~~If an additional updated report is received, the department shall file the document and~~
12389 ~~make the information contained therein part of the official record.~~

12390 (68) A domestic corporation or foreign ~~Any~~ corporation that fails failing to file an annual
12391 report that which complies with the requirements of this section may not shall not be permitted to
12392 prosecute, or maintain or defend any action in any court of this state until the such report is filed
12393 and all fees and penalties taxes due under this chapter act are paid, and shall be subject to
12394 dissolution or cancellation of its certificate of authority to transact de business as provided in this
12395 chapter act.

12396 (79) The department shall prescribe the forms, which may be in an electronic format, on
12397 which to make the annual report called for in this section and may substitute the uniform business
12398 report, pursuant to s. 606.06, as a means of satisfying the requirement of this chapter part.

12399 (10) As a condition of a merger under s. 607.1101, each party to a merger which exists
12400 under the laws of this state, and each party to the merger which exists under the laws of another

12401 jurisdiction and has a certificate of authority to transact business or conduct its affairs in this state,
12402 must be active and current in filing its annual reports in the records of the department through
12403 December 31 of the calendar year in which the articles of merger are submitted to the department
12404 for filing.

12405 (11) As a condition of a conversion of an entity to a corporation under s. 607.11930, the
12406 entity, if it exists under the laws of this state, or if it exists under the laws of another jurisdiction
12407 and has a certificate of authority to transact business or conduct its affairs in this state, must be
12408 active and current in filing its annual reports in the records of the department through December
12409 31 of the calendar year in which the articles of conversion are submitted to the department for
12410 filing.

12411 (12) As a condition of a conversion of a domestic corporation to another type of entity
12412 under s. 607.11930, the domestic corporation converting to the other type of entity must be active
12413 and current in filing its annual reports in the records of the department through December 31 of
12414 the calendar year in which the articles of conversion are submitted to the department for filing.

12415 (13) As a condition of a share exchange between a corporation and another entity under
12416 s. 607.1102, the corporation, and each other entity that is a party to the share exchange which exists
12417 under the laws of this state, and each party to the share exchange which exists under the laws of
12418 another jurisdiction and has a certificate of authority to transact business or conduct its affairs in
12419 this state, must be active and current in filing its annual reports in the records of the department
12420 through December 31 of the calendar year in which the articles of share exchange are submitted
12421 to the department for filing.

12422 (14) As a condition of domestication of a domestic corporation into a foreign jurisdiction
12423 under s. 607.11920, the domestic corporation domesticating into a foreign jurisdiction must be
12424 active and current in filing its annual reports in the records of the department through December
12425 31 of the calendar year in which the articles of domestication are submitted to the department for
12426 filing.

12427

12428 **Commentary to Section 607.1622:**

12429 This section has been modified to conform the language in this section to the corollary provision
12430 from FRLUCA (s. 605.0212) that was adopted in 2013.

12431 Subsections (10), (11), (12) and (13) are derived from s. 605.0212 and require that the corporation
12432 has filed an annual report before the corporation can make filings regarding mergers, share
12433 exchanges and conversions. Subsection (14) relating to domestications is new, but follows the
12434 same premise.

12435

ARTICLES 17, 18 AND 19

TRANSITION AND MISCELLANEOUS PROVISIONS

12436
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607.1701 Application to existing domestic corporation.

This ~~chapter~~ act applies to all domestic corporations in existence on _____ [the effective date of the new FBCA] ~~July 1, 1990~~, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

12448 **Commentary to Section 607.1701:**

12449

12450 The change in the effective date that the new FBCA applies to existing Florida corporations has
12451 been updated to the date that the new FBCA will become effective.

12452

12453 607.1702 Application to qualified foreign corporations.

12454

12455 A foreign corporation authorized to transact business in this state on _____ [the
12456 effective date of the new FBCA] ~~July 1, 1990~~, is subject to this chapter, is deemed to be
12457 authorized to transact business in this state, and ~~act~~ but is not required to obtain a new certificate
12458 of authority to transact business under this chapter ~~act~~.

12459

12460 **Commentary to Section 607.1702:**

12461

12462 The change in the effective date that the new FBCA applies to existing foreign corporations
12463 authorized to transact business in Florida has been updated to the date that the new FBCA will
12464 become effective. The additional language added to this statute conforms to the current wording
12465 of s. 17.02 of the Model Act. It is not considered a substantive change.

12466

12467 607.1711 Application to foreign and interstate commerce.

12468

12469 The provisions of this chapter ~~act~~ apply to commerce with foreign nations and among the
12470 several states only insofar as the same may be permitted under the Constitution and laws of the
12471 United States.

12472

12473 **Commentary to Section 607.1711:**

12474

12475 No substantive change has been made to this section.

12476

12477 ~~607.1801—Domestication of foreign corporations.~~

12478

12479 ~~(1) As used in this section, the term "corporation" includes any incorporated~~
12480 ~~organization, private law corporation (whether or not organized for business purposes), public law~~
12481 ~~corporation, partnership, proprietorship, joint venture, foundation, trust, association, or similar~~
12482 ~~entity.~~

12483

12484 ~~(2) Any foreign corporation may become domesticated in this state by filing with the~~
12485 ~~Department of State:~~

12486

12487 ~~(a) A certificate of domestication which shall be executed in accordance with~~
12488 ~~subsection (7) and filed and recorded in accordance with s. 607.0120; and~~

12489

12490 ~~(b) Articles of incorporation, which shall be executed, filed, and recorded in~~
12491 ~~accordance with ss. 607.0120 and 607.0202.~~

12492

12493 ~~(3) The certificate of domestication shall certify:~~

12494

12495 ~~(a) The date on which and jurisdiction where the corporation was first formed,~~
12496 ~~incorporated, or otherwise came into being;~~

12497

12498 ~~(b) The name of the corporation immediately prior to the filing of the certificate~~
12499 ~~of domestication;~~

12500

12501 ~~(c) The name of the corporation as set forth in its articles of incorporation filed in~~
12502 ~~accordance with paragraph (2)(b); and~~

12503

12504 ~~(d) The jurisdiction that constituted the seat, siege social, or principal place of~~
12505 ~~business or central administration of the corporation, or any other equivalent thereto under~~
12506 ~~applicable law, immediately prior to the filing of the certificate of domestication.~~

12507

12508 ~~(4) Upon filing with the Department of State of the certificate of domestication and~~
12509 ~~articles of incorporation, the corporation shall be domesticated in this state, and the corporation~~
12510 ~~shall thereafter be subject to this act, except that notwithstanding the provision of s. 607.0203 the~~
12511 ~~existence of the corporation shall be deemed to have commenced on the date the corporation~~
12512 ~~commenced its existence in the jurisdiction in which the corporation was first formed,~~
12513 ~~incorporated, or otherwise came into being.~~

12514

12515 ~~(5) The domestication of any corporation in this state shall not be deemed to affect any~~
12516 ~~obligations or liabilities of the corporation incurred prior to its domestication.~~

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~~(6) — The filing of a certificate of domestication shall not affect the choice of law applicable to the corporation, except that, from the date the certificate of domestication is filed, the law of this state, including this act, shall apply to the corporation to the same extent as if the corporation has been incorporated as a corporation of this state on that date.~~

~~(7) — The certificate of domestication shall be signed by any corporation officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director, however named or described, and who is authorized to sign the certificate of domestication on behalf of the corporation.~~

12528 **Commentary to Section 607.1801:**

12529

12530 This section has been eliminated, as the topic of domestications is now covered in ss. 607.11920-
12531 607.11924.

12532

12533 607.1805 Procedures for conversion to professional service corporation.

12534

12535 A corporation that is organized for profit under the laws of this state and that is engaged
12536 solely in carrying out the professional services provided by a corporation organized under
12537 chapter 621 may change its corporate nature to that of a professional service corporation if it
12538 complies with chapter 621.

12539

12540

12541 **Commentary to Section 607.1805:**

12542

12543 No change has been made to this section.

12544

12545

12546 607.1904 Estoppel.

12547

12548 No body of persons acting as a corporation shall be permitted to set up the lack of legal
12549 organization as a defense to an action against them as a corporation, nor shall any person sued on
12550 a contract made with the corporation or sued for an injury to its property or a wrong done to its
12551 interests be permitted to set up the lack of such legal organization in his or her defense.

12552

12553 **Commentary to Section 607.1904:**

12554

12555 No change has been made to this section.

12556

12557 607.1907 **Saving provision** ~~Effect of repeal of prior acts.~~

12558

12559 (1) (1) Except as provided in subsection (2), the repeal of a statute by this act does not
12560 ~~affect: to procedural provisions, Law c. 2019-_____ does not affect a pending action or proceeding~~
12561 ~~or a right accrued before the effective date of Law c. 2019-_____, and a pending civil action or~~
12562 ~~proceeding may be completed, and a right accrued may be enforced, as if Law c. 2019-_____ had not~~
12563 ~~become effective.~~

12564

12565 (a) ~~The operation of the statute or any action taken under it before its repeal,~~
12566 ~~including, without limiting the generality of the foregoing, the continuing validity of any~~
12567 ~~provision of the articles of incorporation or bylaws of a corporation authorized by the~~
12568 ~~statute at the time of its adoption;~~

12569

12570 (b) ~~Any ratification, right, remedy, privilege, obligation, or liability acquired,~~
12571 ~~accrued, or incurred under the statute before its repeal;~~

12572

12573 (c) ~~Any violation of the statute, or any penalty, forfeiture, or punishment incurred~~
12574 ~~because of the violation, before its repeal; or~~

12575

12576 (d) ~~Any proceeding, merger, consolidation, sale of assets, reorganization, or~~
12577 ~~dissolution commenced under the statute before its repeal, and the proceeding, merger,~~
12578 ~~consolidation, sale of assets, reorganization, or dissolution may be completed in~~
12579 ~~accordance with the statute as if it had not been repealed.~~

12580

12581 (2) If a penalty or punishment ~~imposed~~ for violation of a statute or rule ~~repealed by~~
12582 ~~this act~~ is reduced by this act Law c. 2019-_____, the penalty, ~~or punishment~~ if not already
12583 imposed, shall be imposed in accordance with Law c. 2019-_____ ~~this act.~~

12584

12585 **Commentary to Section 607.1907:**

12586

12587 This section largely follows s. 17.03 of the Model Act. Because this proposal is not a complete
12588 repeal of the FBCA, the more extensive savings provisions that were previously included in
12589 existing s. 607.1907 and in the corollary provision of FRLUCA, s. 605.1106, were not considered
12590 to be appropriate under the circumstances.

12591

12592 607.1908 Severability clause.

12593

12594 If any provision of this chapter or its application to any person or circumstance is held
12595 invalid, the invalidity does not affect other provisions or applications of this chapter which can
12596 be given effect without the invalid provision or application, and to this end the provisions of this
12597 chapter are severable.

12598

12599

12600 **Commentary to Section 607.1908:**

12601

12602 This section has been added to the FBCA. It is derived from s. 605.1107 of FRLCA.

12603

12604 607.193 Supplemental corporate fee.

12605

12606 (1) In addition to any other taxes imposed by law, an annual supplemental corporate fee
12607 of \$88.75 is imposed on each business entity that is authorized to transact business in this state
12608 and is required to file an annual report with the Department of State under s. 605.0212, s.
12609 607.1622, or s. 620.1210.

12610

12611 (2) (a) The business entity shall remit the supplemental corporate fee to the
12612 Department of State at the time it files the annual report required by s. 605.0212, s.
12613 607.1622, or s. 620.1210.

12614

12615 (b) In addition to the fees levied under ss. 605.0213, 607.0122, and 620.1109
12616 and the supplemental corporate fee, a late charge of \$400 shall be imposed if the
12617 supplemental corporate fee is remitted after May 1 except in circumstances in which a
12618 business entity was administratively dissolved or its certificate of authority was revoked
12619 due to its failure to file an annual report and the entity subsequently applied for
12620 reinstatement and paid the applicable reinstatement fee.

12621

12622 **Commentary to Section 607.193:**

12623

12624 No changes have been proposed to this section.

12625

12655 (e) The articles of incorporation of a general cooperative association or a limited
12656 cooperative association.

12657 (f) The certificate of trust of a statutory trust or similar record of a business trust.

12658 (g) The articles of incorporation of a real estate investment trust.

12659 . . .

12660

12661 **Commentary to Sections 605.0102(16), 605.0102(55) and 605.0102(58):**

12662 Modifications to the definitions of "department," "private organic records," and "public organic
12663 records" reflect clean-up changes based on s. 607.01401 of the FBCA.

12664

12665 605.0105 Operating Agreement; Scope, function and limitations.

12666 ...

12667 (3) An operating agreement may not do any of the following:

12668 (i) Vary the grounds for dissolution specified in s. 605.0702; provided, however
12669 that a deadlock resolution mechanism or an oppressive action sale provision shall not
12670 violate this provision;

12671 ...

12672

12673 **Commentary to Section 605.0105:**

12674 Changes have been made to make clear that members may include a deadlock resolution
12675 mechanism or an oppressive action sale provision in the operating agreement. This is in
12676 conformity with s. 605.0702.

12677

12678 605.0112 Name.

12679 (1) The name of a limited liability company:

12680 (a) Must contain the words “limited liability company” or the abbreviation “L.L.C.” or
12681 “LLC,” as will clearly indicate that it is a limited liability company instead of a natural person,
12682 partnership, corporation, or other business entity.

12683 (b) Must be distinguishable in the records of the ~~Division of Corporations of the~~
12684 department from the names of all other entities or filings that are on file with the department
12685 ~~division~~, except fictitious name registrations pursuant to s. 865.09, general partnership
12686 registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s.
12687 620.9001 which are organized, registered, or reserved under the laws of this state; however, a
12688 limited liability company may register under a name that is not otherwise distinguishable on the
12689 records of the ~~division~~ department with the written consent of the ~~owner~~ other entity if the consent
12690 is filed with the ~~division~~ department at the time of registration of such name and if such name is
12691 not identical to the name of the other entity. A name that is different from the name of another
12692 entity or filing due to any of the following is not considered distinguishable:

12693 1. A suffix.

12694 2. A definite or indefinite article.

12695 3. The word “and” and the symbol “&.”

12696 4. The singular, plural, or possessive form of a word.

12697 5. ~~A recognized abbreviation of a root word.~~

12698 6.—A punctuation mark or a symbol.

12699 (c) May not contain language stating or implying that the limited liability company is
12700 organized for a purpose other than a purpose authorized in this chapter and its articles of
12701 organization.

12702 (d) May not contain language stating or implying that the limited liability company is
12703 connected with a state or federal government agency or a corporation or other entity chartered
12704 under the laws of the United States.

12705 (2) Subject to s. 605.0905, this section applies to a foreign limited liability company
12706 transacting business in this state which has a certificate of authority to transact business in this
12707 state or which has applied for a certificate of authority.

12708 (3) In the case of a limited liability company in existence before July 1, 2007, and registered
12709 with the department, the requirement in this section that the name of a limited liability company

12710 be distinguishable from the names of other entities and filings applies only if the limited liability
12711 company files documents on or after July 1, 2007, which would otherwise have affected its name.

12712 (4) A limited liability company in existence before January 1, 2014, which was registered with
12713 the department and is using an abbreviation or designation in its name authorized under previous
12714 law, may continue using the abbreviation or designation in its name until it dissolves or amends
12715 its name in the records of the department.

12716 (5) The name of the limited liability company must be filed with the department for public
12717 notice only, and the act of filing alone does not create any presumption of ownership beyond that
12718 which is created under the common law.

12719 (6) A limited liability company in existence before _____, 20 [the effective date
12720 of these amendments] that has a name that does not clearly indicate that it is a limited liability
12721 company instead of a natural person, partnership, corporation, or other business entity may
12722 continue using its name until it dissolves or amends its name in the records of the department.

12723

12724 **Commentary to Section 605.0112:**

12725 The changes made in subsections (1)(a) and (1)(b) are changes made to conform this section of
12726 FRLUCA to the changes made in the proposed version of s. 607.0401 of the FBCA. The addition
12727 of subsection (6) is a grandfathering provision for names that are being used in Florida by limited
12728 liability companies when the proposed changes become effective and that are not in conformity
12729 with this provision as modified.

12730

12731 605.01125 Reserved name.

12732 (1) A person may reserve the exclusive use of the name of a limited liability company,
12733 including an alternate name for a foreign limited liability company whose name is not available,
12734 by delivering an application to the department for filing. The application must set forth the name
12735 and address of the applicant and the name proposed to be reserved. If the department finds that the
12736 name of the limited liability company applied for is available, it shall reserve the name for the
12737 applicant's exclusive use for a nonrenewable 120-day period.

12738 (2) The owner of a reserved name of a limited liability company may transfer the reservation
12739 to another person by delivering to the department a signed notice of the transfer that states the
12740 name and address of the transferee.

12741 (3) The department may revoke any reservation if, after a hearing, it finds that the application
12742 therefor or any transfer thereof was not made in good faith.

12743

12744 **Commentary to Section 605.01125:**

12745 This section conforms to new s. 607.0402 and allows for the reservation of the name of a limited
12746 liability company.

12747

12748 605.0113 Registered agent.

12749 (1) Each limited liability company and each foreign limited liability company that has a
12750 certificate of authority under s. 605.0902 shall designate and continuously maintain in this state:

12751 (a) A registered office, which may be the same as its place of business in this state; and

12752 (b) A registered agent, who must be:

12753 1. An individual who resides in this state and whose business address is identical to
12754 the address of the registered office; or

12755 2. ~~A foreign or domestic entity authorized to transact business in this state whose~~
12756 ~~business address is identical to the address of the registered office.~~ Another domestic
12757 entity that is an authorized entity and whose business address is identical to the address of
12758 the registered office, or a foreign entity authorized to transact business in this state that is
12759 an authorized entity and whose business address is identical to the address of the
12760 registered office.

12761 . . .

12762 (5) A limited liability company and each foreign limited liability company that has a
12763 certificate of authority under s. 605.0902 may not prosecute ~~or~~, maintain, ~~or defend~~ an action in
12764 a court in this state until the limited liability company complies with the provisions of this
12765 section, pays to the department any amounts required under this chapter, and, to the extent
12766 ordered by a court of competent jurisdiction, pays to the department a penalty of \$5 for each day
12767 it has failed to so comply or \$500, whichever is less.

12768 (6) For purposes of this section, an authorized entity shall mean:

12769 (a) A corporation for profit;

12770 (b) A limited liability company;

12771 (c) A limited liability partnership; or

12772 (d) A limited partnership, including a limited liability limited partnership.

12773

12774 **Commentary to Sections 605.0113(1) and 605.0113(5):**

12775 Changes add the concept of authorized entity to Chapter 605 as a subtype of entities that are
12776 permitted to act as registered agents in this state. This change substantively conforms this
12777 section to revised ss. 607.0501 and 607.1507 of the FBCA.

12778

12779 605.0114 Change of registered agent or registered office.

12780 (1) In order to change its registered agent or registered office address, a limited liability
12781 company or a foreign limited liability company may deliver to the department for filing a
12782 statement of change containing the following:

12783 (a) The name of the limited liability company or foreign limited liability company.

12784 (b) The name of its current registered agent.

12785 (c) If the current registered agent is to be changed, the name of the new registered
12786 agent.

12787 (d) The street address of its current registered office for its current registered agent.

12788 (e) If the street address of the current registered office is to be changed, the new street
12789 address of the registered office in this state.

12790 . . .

12791

12792 **Commentary to Section 605.0114(1):**

12793 The minor changes in this section are derived from clean-up changes made in s. 607.0502(1) and
12794 s. 607.1508(1) of the FBCA.

12795

12796 605.0115 Resignation of registered agent.

12797 . . .

12798 (2) After delivering the statement of resignation ~~with~~ to the department for filing, the
12799 registered agent shall mail a copy to the limited liability company's or foreign limited liability
12800 company's current mailing address.

12801

12802 **Commentary to Section 605.0115(2):**

12803 Makes a minor clarifying change based on a change made in s. 607.0503 of the FBCA.

12804

12805 605.0116 Change of name or address by registered agent.

12806 (1) If a registered agent changes his or her name or address, the agent may deliver to the
12807 department for filing a statement of change that provides the following:

12808 (a) The name of the limited liability company or foreign limited liability company
12809 represented by the registered agent.

12810 (b) The name of the registered agent as currently shown in the records of the department
12811 for the limited liability company or foreign limited liability company.

12812 (c) If the name of the registered agent has changed, its new name.

12813 (d) If the address of the registered agent has changed, the new address.

12814 (e) A statement tThat the registered agent has given the notice required under subsection
12815 (2).

12816 (2) A registered agent shall promptly furnish notice of the statement of change and the changes
12817 made by the statement filed with the department to the represented limited liability company or
12818 foreign limited liability company.

12819

12820 **Commentary to Section 605.0116:**

12821 The minor changes in this section are derived from clean-up changes made in s. 607.0531 and s.
12822 607.1509 of the FBCA.

12823

12824 605.0117 Service of process, notice or demand.

12825 (1) A limited liability company or registered foreign limited liability company may be served
12826 with process, ~~notice, or a demand~~ required or authorized by law by serving on its registered agent.

12827 (2) If a limited liability company or registered foreign limited liability company ceases to have
12828 a registered agent or if its registered agent cannot with reasonable diligence be served, the process;
12829 ~~notice, or demand~~ required or permitted by law may instead be served:

12830 (a) On a member of a member-managed limited liability company or registered foreign
12831 limited liability company; or

12832 (b) On a manager of a manager-managed limited liability company or registered
12833 foreign limited liability company.

12834 (3) If the process, ~~notice, or demand~~ cannot be served on a limited liability company or
12835 registered foreign limited liability company pursuant to subsection (1) or subsection (2), the
12836 process, ~~notice, or demand~~ may be served on the Secretary of State department as an agent of the
12837 company.

12838 (4) Service with of process, ~~notice, or a demand~~ on the Secretary of State department may be
12839 made by delivering to and leaving with the department duplicate copies of the process, ~~notice, or~~
12840 ~~demand~~.

12841 (5) Service is effectuated under subsection (3) on the date shown as received by the
12842 department.

12843 (6) The department shall keep a record of each process, ~~notice, and demand~~ served pursuant
12844 to this section and record the time of and the action taken regarding the service.

12845 (7) Any notice or demand on a limited liability company or registered foreign limited liability
12846 company under this chapter may be given or made to any member of a member-managed limited
12847 liability company or registered foreign limited liability company and to any manager of a manager-
12848 managed limited liability company or registered foreign limited liability company; to the registered
12849 agent of the limited liability company or registered foreign limited liability company at the
12850 registered office of the limited liability company or registered foreign limited liability company in
12851 this state; or to any other address in this state that is in fact the principal office of the limited
12852 liability company or registered foreign limited liability company in this state.

12853 (78) This section does not affect the right to serve process, notice, or a demand in any
12854 other manner provided by law.

12855

12856 **Commentary to Section 605.0117:**

12857 The revisions to this section track changes made in revised s. 607.0504 and 607.15101 that
12858 bifurcate between service of process and notices and demands to the limited liability company.

12859

12860 605.0118 Delivery of record.

12861 . . .

12862 (3) If a check is mailed to the department for payment of an annual report fee or the annual
12863 supplemental fee required under s. 607.193, the check shall be deemed to have been received by
12864 the department as of the postmark date appearing on the envelope or package transmitting the
12865 check if the envelope or package is received by the department.

12866

12867 **Commentary to Section 605.0118(3):**

12868 This cleanup change conforms this section to revised ss. 607.05032 and 607.15092 of the FBCA.

12869

12870 605.0207 Effective date and time.

12871 Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document
12872 delivered to the department for filing under this chapter may specify an effective time and a
12873 delayed effective date. In the case of initial articles of organization, a prior effective date may be
12874 specified in the articles of organization if such date is within 5 business days before the date of
12875 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the
12876 department is effective:

12877 (1) If the record filed does not specify an effective time and does not specify a prior or
12878 a delayed effective date, on the date and at the time the record is filed accepted, as evidenced by
12879 the department's endorsement of the date and time on the filing record.

12880 (2) If the record filed specifies an effective time, but not a prior or delayed effective
12881 date, on the date the record is filed at the time specified in the filing record.

12882 (3) If the record filed specifies a delayed effective date, but not an effective time, at
12883 12:01 a.m. on the earlier of:

12884 (a) The specified date; or

12885 (b) The 90th day after the record is filed.

12886 (4) If the record filed specifies a delayed effective date and an effective time, at the
12887 specified time on the earlier of:

12888 (a) The specified date; or

12889 (b) The 90th day after the record is filed.

12890 (4~~5~~) If the record filed is the initial articles of organization and specifies an effective
12891 date before the effective date of the filing, but no effective time, at 12:01 a.m. on the later of:

12892 (a) The specified date; or

12893 (b) The 5th business day before the record is filed.

12894 (5~~6~~) If the record filed is the initial articles of organization and specifies an effective
12895 time and a delayed effective date, at the specified time on the earlier of:

12896 (a) ~~The specified date; or~~

12897 (b) ~~The 90th day after the record is filed.~~

12898 (6) ~~If the record specifies an effective time and~~ a date before the date of the filing, at the
12899 specified time on the later of:

12900 (a) The specified date; or

12901 (b) The 5th business day before the date of the filing.

12902 (7) If a filed document does not specify the time zone or place at which a date or time
12903 or both is to be determined, the date or time or both at which it becomes effective shall be those
12904 prevailing at the place of filing in this state.

12905

12906 **Commentary to Section 605.0207:**

12907 This section makes clean-up changes based on the revised version of s. 607.0123 of the FBCA.

12908

12909

12910 605.0209 Correcting filed record.

12911 . . .

12912 (3) A statement of correction:

12913 (a) May not state a delayed effective date;

12914 (b) Must be signed by the person correcting the filed record;

12915 (c) Must identify the filed record to be corrected (including its filing date) or attach a
12916 copy of it to the statement of correction;

12917 (d) Must specify the inaccuracy or defect to be corrected; and

12918 (e) Must correct the inaccuracy or defect.

12919

12920 **Commentary to Section 605.0209(3):**

12921 This correction is based on clean-up changes made to s. 607.0124(2) of the FBCA.

12922

12923 605.0210 Duty of department to file; review of refusal to file; transmission of information by
12924 department.

12925 . . .

12926 (7) If the department refuses to file a record delivered to its office for filing, the person
12927 who submitted the record for filing may petition the circuit court in and for Leon County, Florida
12928 to compel filing of the record. The record and the explanation ~~of~~ from the department of the
12929 refusal to file must be attached to the petition. The court may decide the matter in a summary
12930 proceeding and the court may summarily order the department to file the record or take other
12931 action the court considers appropriate. The court's final decision may be appealed as in other
12932 civil proceedings.

12933

12934 **Commentary to Section 605.0210:**

12935 This change to s. 605.0210(7) conforms this section with the changes made in s. 607.0126.

12936

12937

12938 605.0211 Certificate of status.

12939

12940 (2) The department, upon request and payment of the requisite fee, shall furnish a
12941 certificate of status for a foreign limited liability company if the records filed show that the
12942 department has filed a certificate of authority. A certificate of status for a foreign limited liability
12943 company must state the following:

12944 (a) The foreign limited liability company’s name and any current alternate name
12945 adopted under s. 605.0906(1) for use in this state.

12946 ...

12947 (3) Subject to any qualification stated in the certificate of status, a certificate of status
12948 issued by the department is conclusive evidence that the domestic limited liability company is in
12949 existence and is of active status in this state or the foreign limited liability company is authorized
12950 to transact business in this state and is of active status in this state.

12951

12952 **Commentary to Sections 605.0211(2)(a) and 605.0211(3):**

12953 Changes conform this section to revised s. 607.0128 of the FBCA.

12954

12955 605.0215 Certificates to be received in evidence and evidentiary effect of **certified** copy of
12956 filed document.

12957 All certificates issued by the department in accordance with this chapter shall be taken and
12958 received in all courts, public offices, and official bodies as prima facie evidence of the facts
12959 stated. A certificate from the department delivered with a copy of a document filed by the
12960 department bearing the signature of the Secretary of State (which may be in facsimile), and the
12961 seal of this state, is conclusive evidence that the original document is on file with the department.

12962

12963 **Commentary to Section 605.0215:**

12964 Changes conform this section to the revised version of s. 607.0127 of the FBCA

12965

12966 605.04092 Conflict of interest transactions.

12967 (1) As used in this section, the following terms and definitions apply:

12968 (a) A member or manager is “indirectly” a party to a transaction if that member or
12969 manager has a material financial interest in or is a director, officer, member, manager, or partner
12970 of a person, other than the limited liability company, who is a party to the transaction.

12971 (b) A member or manager has an “indirect material financial interest” if a ~~spouse or other~~
12972 family member has a material financial interest in the transaction, other than having an indirect
12973 interest as a member or manager of the limited liability company, or if the transaction is with an
12974 entity, other than the limited liability company, which has a material financial interest in the
12975 transaction and controls, or is controlled by, the member or manager or another person specified
12976 in this subsection.

12977 (c) “Member’s conflict of interest transaction” means a transaction between a limited
12978 liability company and one or more of its members, or another entity in which one or more of the
12979 limited liability company’s members is directly or indirectly a party to the transaction, other than
12980 being an indirect party as a result of being a member of the limited liability company, and has a
12981 direct or indirect material financial interest or other material interest.

12982 (d) “Manager’s conflict of interest transaction” means a transaction between a limited
12983 liability company and one or more of its managers, or another entity in which one or more of the
12984 limited liability company’s mangers is directly or indirectly a party to the transaction, other than
12985 being an indirect party as a result of being a member of the limited liability company, and has a
12986 direct or indirect material financial interest or other material interest.

12987 (ee) “Fair to the limited liability company” means that the transaction, as a whole, is
12988 beneficial to the limited liability company and its members, taking into appropriate account
12989 whether it is:

- 12990 1. Fair in terms of the member’s or manager’s dealings with the limited liability
12991 company in connection with that transaction; and
- 12992 2. Comparable to what might have been obtainable in an arm’s length transaction.

12993 (f) “Family member” includes (i) the member’s or manager’s spouse, or (ii) a child,
12994 stepchild, parent, step parent, grandparent, sibling, step sibling or half sibling of the member or
12995 manager or the member’s or manager’s spouse.

12996 (g) “Material financial interest” or “other material interest” means a financial or other
12997 interest in the transaction that would reasonably be expected to impair the objectivity of the
12998 member’s or manager’s judgment when participating in the action on the authorization of the
12999 transaction.

13000 (2) If the requirements of this section have been satisfied, a member’s conflict of interest
13001 transaction or a manager’s conflict of interest transaction between a limited liability company and
13002 one or more of its members or managers, or another entity in which one or more of the limited
13003 liability company’s members or managers have a financial or other interest, is not void or voidable
13004 because of that relationship or interest; because the members or managers are present at the
13005 meeting of the members or managers at which the transaction was authorized, approved,
13006 effectuated, or ratified; or because the votes of the members or managers are counted for such
13007 purpose.

13008 (3) If a member’s conflict of interest transaction or a manager’s conflict of interest transaction
13009 is fair to the limited liability company at the time it is authorized, approved, effectuated, or ratified,
13010 the fact that a member or manager of the limited liability company is directly or indirectly a party
13011 to the transaction, other than being an indirect party as a result of being a member or manager of
13012 the limited liability company, or has a direct or indirect material financial interest or other interest
13013 in the transaction, other than having an indirect interest as a result of being a member or manager
13014 of the limited liability company, is not grounds for equitable relief and does not give rise to an
13015 award of damages or other sanctions.

13016 (4)

13017 (a) In a proceeding (i) challenging the validity of a member’s conflict of interest
13018 transaction or a manager’s conflict of interest transaction or (ii) seeking equitable relief, award
13019 of damages or other sanctions with respect to a member’s conflict of interest transaction or a
13020 manager’s conflict of interest transaction ~~described in subsection (3)~~, the person challenging the
13021 validity or seeking equitable relief, award of damages or other sanctions has the burden of
13022 proving the lack of fairness of the transaction if:

13023 1. In a manager-managed limited liability company, the material facts of the
13024 transaction and the member’s or manager’s interest in the transaction were disclosed or
13025 known to the managers or a committee of managers who voted upon the transaction and the
13026 transaction was authorized, approved, or ratified by a majority of the disinterested managers
13027 even if the disinterested managers constitute less than a quorum; however, the transaction
13028 cannot be authorized, approved, or ratified under this subsection solely by a single manager;
13029 and

13030 2. In a member-managed limited liability company, or a manager-managed limited
13031 liability company in which the managers have failed to or cannot act under subparagraph
13032 1., the material facts of the transaction and the member’s or manager’s interest in the
13033 transaction were disclosed or known to the members who voted upon such transaction and
13034 the transaction was authorized, approved, or ratified by a majority-in-interest of the
13035 disinterested members even if the disinterested members constitute less than a quorum;

13036 however, the transaction cannot be authorized, approved, or ratified under this subsection
13037 solely by a single member; or

13038 (b) If neither of the conditions provided in paragraph (a) has been satisfied, the person
13039 defending or asserting the validity of a member’s conflict of interest transaction or a
13040 manager’s conflict of interest transaction ~~described in subsection (3)~~ has the burden of proving
13041 its fairness in a proceeding challenging the validity of the transaction.

13042 . . .

13043

13044 **Commentary to Section 605.04092:**

13045 Changes are clean up changes that conform this statute to the revised s. 607.0832 of the FBCA.

13046 This revised section also eliminates the confusion caused by what appears to be an incorrect cross
13047 reference in subsections (4)(a) and (4)(b).

13048

13049 605.0410 Records to be kept; rights of member, manager, and person dissociated to
13050 information.

13051 . . .

13052 (3) In a manager-managed limited liability company, the following rules apply:

13053 . . .

13054 (c) Within 10 days after receiving a demand pursuant to subparagraph ~~(32)~~(b)2.,
13055 the company shall, in a record, inform the member who made the demand of:

13056 1. The information that the company will provide in response to the
13057 demand and when and where the company will provide the information; and

13058 2. The company’s reasons for declining, if the company declines to
13059 provide any demanded information.

13060 . . .

13061

13062 **Commentary to Section 605.0410(3)(c):**

13063 This change cleans up a glitch in the cross reference contained in subsection (3)(c).

13064

13065 605.0702 Grounds for judicial dissolution.

13066 (1) A circuit court may dissolve a limited liability company:

13067 ...

13068 (b) In a proceeding by a manager or member to dissolve the limited liability company if
13069 it is established that:

13070 1. The conduct of all or substantially all of the company’s activities and affairs is
13071 unlawful;

13072 2. It is not reasonably practicable to carry on the company’s activities and affairs
13073 in conformity with the articles of organization and the operating agreement;

13074 3. The managers or members in control of the company have acted, are acting, or
13075 will ~~are reasonably expected to~~ act in a manner that is illegal, oppressive or fraudulent;

13076 4. The limited liability company’s assets are being misappropriated or wasted,
13077 causing injury to the limited liability company, or in a proceeding by a member, causing
13078 injury to one or more of its members; or

13079 5. The managers or the members of the limited liability company are deadlocked
13080 in the management of the limited liability company’s activities and affairs, the members
13081 are unable to break the deadlock, and irreparable injury to the limited liability company is
13082 threatened or being suffered.

13083 (2) If the managers or the members of the limited liability company are deadlocked in the
13084 management of the limited liability company’s activities and affairs, the members are unable to
13085 break the deadlock, and irreparable injury to the limited liability company is threatened or being
13086 suffered, if the operating agreement contains a deadlock sale provision that has been initiated
13087 before the time that the court determines that the grounds for judicial dissolution exist under
13088 subparagraph (1)(b)5., then such deadlock sale provision applies to the resolution of such
13089 deadlock instead of the court entering an order of judicial dissolution or an order directing the
13090 purchase of petitioner’s interest under s. 605.0706, so long as the provisions of such deadlock
13091 sale provision are thereafter initiated and effectuated in accordance with the terms of such
13092 deadlock sale provision or otherwise pursuant to an agreement of the members of the company.
13093 As used in this section, the term “deadlock sale provision” means a provision in an operating
13094 agreement which is or may be applicable in the event of a deadlock among the managers or the
13095 members of the limited liability company which the members of the company are unable to
13096 break and which provides for a deadlock breaking mechanism, including, but not limited to: a
13097 purchase and sale of interests or a governance change, among or between members; the sale of
13098 all or substantially all of the assets of the company; or a similar provision that, if initiated and
13099 effectuated, breaks the deadlock by causing the transfer of interests, a governance change, or the

13100 sale of all or substantially all of the company's assets. ~~A deadlock sale provision in an operating~~
13101 ~~agreement which is not initiated and effectuated before the court enters an order of judicial~~
13102 ~~dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest~~
13103 ~~under s. 605.0706 does not adversely affect the rights of members and managers to seek judicial~~
13104 ~~dissolution under subparagraph (1)(b)5. or the rights of the company or one or more members to~~
13105 ~~purchase the petitioner's interest under s. 605.0706. The filing of an action for judicial~~
13106 ~~dissolution on the grounds described in subparagraph (1)(b)5. or an election to purchase the~~
13107 ~~petitioner's interest under s. 605.0706 does not adversely affect the right of a member to initiate~~
13108 ~~an available deadlock sale provision under the operating agreement or to enforce a member-~~
13109 ~~initiated or an automatically initiated deadlock sale provision if the deadlock sale provision is~~
13110 ~~initiated and effectuated before the court enters an order of judicial dissolution under~~
13111 ~~subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s.~~
13112 ~~605.0706.~~

13113 (3) A proceeding by a member under subsection (1)(b)3. asserting that the members or
13114 managers in control of the limited liability company have acted, are acting, or will act in a manner
13115 that is oppressive may only be brought by a member who at the time that such proceeding is
13116 commenced under subsection (1)(b)(3) owns at least 10% of the outstanding membership interests
13117 of the limited liability company.

13118 (4) In the event of oppressive action that satisfies s. 605.1406(1)(b)3., if the members are
13119 subject to a operating agreement that contains an oppressive action sale provision, then such
13120 oppressive action sale provision shall address such member asserted oppressive action in lieu of
13121 the court entering an order of judicial dissolution or an order directing the purchase of petitioner's
13122 interest under s. 605.0706, so long as the provisions of such oppressive action sale provision are
13123 initiated and effectuated (i) within the time periods specified for the company to act under s.
13124 605.0706, and (ii) in accordance with the terms of such oppressive action sale provision. As used
13125 in this section, the term "oppressive action sale provision" means a provision in an operating
13126 agreement which is or may be applicable in the event of a member's assertion of the occurrence or
13127 existence of oppressive action which neither the members nor the managers (as applicable) of the
13128 company are able to address and which provides for a mechanism for addressing the occurrence
13129 or existence of such member asserted oppressive action including, but not limited to: a redemption
13130 or purchase and sale of interests; the sale of the company or of all or substantially all of the assets
13131 of the company; or a similar provision that, if initiated and effectuated, causes the transfer of
13132 interests to be redeemed or purchased and sold or the sale of the company or of all or substantially
13133 all of the company's assets.

13134 (5) A deadlock sale provision or an oppressive action sale provision in an operating
13135 agreement which is not initiated and effectuated before the court enters an order of judicial
13136 dissolution under subparagraphs (1)(b)3. or (1)(b)5., as the case may be, or an order directing the
13137 purchase of petitioner's interest under s. 605.0706, does not adversely affect the rights of
13138 members and managers to seek judicial dissolution under subparagraphs (1)(b)3. or (1)(b)5., as

13139 the case may be, or the rights of the company or one or more members to purchase the
13140 petitioner's interest under s. 605.0706. The filing of an action for judicial dissolution on the
13141 grounds described in subparagraphs (1)(b)3. or (1)(b)5., as the case may be, or an election to
13142 purchase the petitioner's interest under s. 605.0706, does not adversely affect the right of a
13143 member to initiate an available deadlock sale provision or an oppressive action sale provision
13144 under the operating agreement or to enforce a member-initiated or an automatically-initiated
13145 deadlock sale provision or oppressive action sale provision if the deadlock sale provision or the
13146 oppressive sale provision, as the case may be, is initiated and effectuated before the court enters
13147 an order of judicial dissolution under subparagraph (1)(b)3. or (1)(b)5., as the case may be, or an
13148 order directing the purchase of petitioner's interest under s. 605.0706.

13149

13150 **Commentary to Section 605.0702(1) and new (3), (4) and (5):**

13151 This change conforms the grounds for judicial dissolution in the same manner as was included in
13152 revised s. 607.1430(1)(B)(3), (4), (5) and (6) of the revised FBCA. When FRLICA was originally
13153 adopted, a decision was made to postpone adding “oppression” as a ground for judicial dissolution
13154 until a decision was made on the subject in the FBCA. Now that a decision has been made in that
13155 regard, “oppression” is being added to this section as an additional ground for judicial dissolution,
13156 subject to the requirement that only a member who owns more than 10% of the outstanding
13157 membership interests can assert this right. RULLCA includes “oppression” as a ground for judicial
13158 dissolution.

13159 New subsection (4) adds a provision that, in the event an operating agreement expressly provides
13160 a mechanism for addressing member asserted oppressive action, such provision will be followed.
13161 The last two sentences in subsection (2) have been moved to new subsection (5), and the substance
13162 of new subsection (5) has been expanded to address not only deadlock sale provisions, but also
13163 oppressive action sale provisions.

13164

13165

13166 605.0706 Election to purchase instead of dissolution.

13167 (1) In a proceeding initiated by a member of a limited liability company under s.
13168 605.0702(1)(b) ~~to dissolve the company~~, the company may elect, or, if it fails to elect, one or more
13169 other members may elect, to purchase the entire interest of the petitioner in the company at the fair
13170 value of the interest. An election pursuant to this section is irrevocable unless the court determines
13171 that it is equitable to set aside or modify the election.

13172 (2) An election to purchase pursuant to this section may be filed with the court within 90 days
13173 after the filing of the petition by the petitioning member under s. 605.0702(1)(b) ~~or (2)~~ or at such
13174 later time as the court may allow. If the election to purchase is filed, the company shall within 10
13175 days thereafter give written notice to all members, other than the petitioning member. The notice
13176 must describe the interest in the company owned by each petitioning member and must advise the
13177 recipients of their right to join in the election to purchase the petitioning member's interest in
13178 accordance with this section. Members who wish to participate must file notice of their intention
13179 to join in the purchase within 30 days after the effective date of the notice. A member who has
13180 filed an election or notice of the intent to participate in the election to purchase thereby becomes a
13181 party to the proceeding and shall participate in the purchase in proportion to the ownership interest
13182 as of the date the first election was filed unless the members otherwise agree or the court otherwise
13183 directs. After an election to purchase has been filed by the limited liability company or one or more
13184 members, the proceeding under s. 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and
13185 the petitioning member may not sell or otherwise dispose of the interest of the petitioner in the
13186 company unless the court determines that it would be equitable to the company and the members,
13187 other than the petitioner, to authorize such discontinuance, settlement, sale, or other disposition or
13188 the sale is pursuant to a deadlock sale provision described in s. 605.0702(1)(b).

13189 (3) If, within 60 days after the filing of the first election, the parties reach an agreement as to
13190 the fair value and terms of the purchase of the petitioner's interest, the court shall enter an order
13191 directing the purchase of the petitioner's interest upon the terms and conditions agreed to by the
13192 parties, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision
13193 before the order.

13194 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the court,
13195 upon application of a party, may shall stay the proceedings to dissolve under s. 605.0702(1)(b) and
13196 shall, whether or not the proceeding is stayed, determine the fair value of the petitioner's interest
13197 as of the day before the date on which the petition was filed or as of such other date as the court
13198 deems appropriate under the circumstances.

13199 (5) Upon determining the fair value of the petitioner's interest in the company, unless the
13200 petitioner's interest has been acquired pursuant to a deadlock sale provision before the order, the
13201 court shall enter an order directing the purchase upon such terms and conditions as the court deems

13202 appropriate, which may include: payment of the purchase price in installments, when necessary in
 13203 the interests of equity; a provision for security to ensure payment of the purchase price and
 13204 additional costs, fees, and expenses as may have been awarded; and, if the interest is to be
 13205 purchased by members, the allocation of the interest among those members. In allocating the
 13206 petitioner’s interest among holders of different classes or series of interests in the company, the
 13207 court shall attempt to preserve any ~~the~~ existing distribution of voting rights among holders of
 13208 different classes or series insofar as practicable and may direct that holders of any a specific class
 13209 or classes or series shall not participate in the purchase. Interest may be allowed at the rate and
 13210 from the date determined by the court to be equitable; however, if the court finds that the refusal
 13211 of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good
 13212 faith, payment of interest is not allowed. If the court finds that the petitioning member had probable
 13213 grounds for relief under s. 605.0702(1)(b)~~3. or 4.~~, it may award expenses to the petitioning
 13214 member, including reasonable fees and expenses of counsel and of experts employed by petitioner.

13215 (6) ~~The Upon~~ entry of an order under subsection (3) or subsection (5); shall be subject to the
 13216 provisions of subsection (8), and the order shall not be entered unless and until the award is
 13217 determined by the court to be permitted under the provisions of subsection (8). In determining
 13218 compliance with s. 605.0405, the court may rely on an affidavit from the limited liability company
 13219 as to compliance with that section as of the measurement date. Upon entry of an order under
 13220 subsection (3) or subsection (5), the court shall dismiss the petition to dissolve the limited liability
 13221 company under s. 605.1006(1)(b), and the petitioning member shall no longer have rights or status
 13222 as a member of the limited liability company except the right to receive the amounts awarded by
 13223 the order of the court, which shall be enforceable in the same manner as any other judgment.

13224 (7) The purchase ordered pursuant to subsection (5) shall ~~must~~ be made within 10 days after
 13225 the date the order becomes final. ~~unless, before that time, the limited liability company files with~~
 13226 ~~the court a notice of its intention to dissolve pursuant to s. 605.0701(2), in which case articles of~~
 13227 ~~dissolution for the company must be filed within 50 days thereafter. Upon filing of such articles~~
 13228 ~~of dissolution, the limited liability company shall be wound up in accordance with ss. 605.0709–~~
 13229 ~~605.0713, and the order entered pursuant to subsection (5) shall no longer be of force or effect~~
 13230 ~~except that the court may award the petitioning member reasonable fees and expenses of counsel~~
 13231 ~~and experts in accordance with subsection (5), and the petitioner may continue to pursue any claims~~
 13232 ~~previously asserted on behalf of the limited liability company.~~

13233 (8) Any award ~~A payment by the limited liability company~~ pursuant to an order under
 13234 subsection (3) or subsection (5), other than an award of fees and expenses pursuant to subsection
 13235 (5), is subject to s. 605.0405. Unless otherwise provided in the court's order, the effect of a
 13236 distribution under s. 605.0405 shall be measured as of the date of the court's order under subsection
 13237 (3) or subsection (5).

13238

13239 **Commentary to Section 605.0706:**

13240 The revisions to this section conform this section to the changes made in revised s. 607.1436 of
13241 the FBCA.

13242

13243 605.0715 Reinstatement

13244 ...

13245 (5) The name of the dissolved limited liability company is not available for assumption or use
13246 by another business entity until 1 year after the effective date of dissolution unless the dissolved
13247 limited liability company provides the department with a record executed as required pursuant to
13248 s. 605.0203 permitting the immediate assumption or use of the name by another ~~limited liability~~
13249 ~~company~~ business entity.

13250 (6) If the name of the dissolved limited liability company has been lawfully assumed in this
13251 state by another business entity, the department shall require the dissolved limited liability
13252 company to amend its articles of incorporation to change its name before accepting its application
13253 for reinstatement.

13254

13255 **Commentary to Sections 605.0715(5) and 605.0715(6):**

13256 The changes to s. 605.0715(5) and (6) conform this section to revised s. 607.1422 of the FBCA.

13257

13258 605.0716 Judicial review of denial of reinstatement

13259 (1) If the department denies a limited liability company’s application for reinstatement after
13260 administrative dissolution, the department shall serve the company with a notice in a record that
13261 explains the reason or reasons for the denial.

13262 (2) Within 30 days after service of a notice of denial of reinstatement, a limited liability
13263 company may appeal the denial by petitioning the circuit court in and for Leon County ~~the~~
13264 ~~applicable county, as defined in s. 605.0711(15)~~, to set aside the dissolution. The petition must be
13265 served on the department and contain a copy of the department’s notice of administrative
13266 dissolution, the company’s application for reinstatement, and the department’s notice of denial.

13267 (3) The circuit court may order the department to reinstate a dissolved limited liability
13268 company or take other action the court considers appropriate.

13269 (4) The circuit court’s final decision may be appealed as in other civil proceedings.

13270

13271 **Commentary to Section 605.0716:**

13272 This section makes changes to conform this section to revised. s. 607.1423 of the FBCA.

13273

13274 605.0803 Proper plaintiff.

13275 A derivative action to enforce a right of a limited liability company may be ~~maintained~~
13276 commenced only by a person who is a member at the time the action is commenced and:

13277 (1) Was a member when the conduct giving rise to the action occurred; or

13278 (2) Whose status as a member devolved on the person by operation of law or pursuant to
13279 the terms of the operating agreement from a person who was a member when ~~at the time of the~~
13280 conduct giving rise to the action occurred.

13281

13282 **Commentary to Section 605.0803:**

13283 The changes to this section are derived from the language used in s. 607.0401(Standing) of the
13284 revised FBCA.

13285

13286 605.0903 Effect of a certificate of authority

13287 ...

13288 (2) The filing by the department of an application for a certificate of authority means that
13289 ~~authorizes~~ the foreign limited liability company that files the application to transact business in
13290 this state has obtained a certificate of authority to transact business in this state and is authorized
13291 to transact business in this state, subject, however, to the right of the department to suspend or
13292 revoke the certificate of authority as provided in this chapter.

13293

13294 **Commentary to Section 605.0903:**

13295 The language in subsection (2) is revised to more clearly identify the effect of an acceptance of a
13296 filing by the Department of State. It follows revised s. 607.1505(2) of the FBCA.

13297

13298 605.0904 Effect of failure to have a certificate of authority.

13299 . . .

13300 (3) A court may stay a proceeding commenced by a foreign limited liability company or its
13301 successor or assignee until it determines whether the foreign limited liability company or its
13302 successor requires a certificate of authority. If it so determines, the court may further stay the
13303 proceeding until the foreign limited liability company or its successor has obtained ~~obtains the a~~
13304 certificate of authority to transact business in this state.

13305 (4) The failure of a foreign limited liability company to have a certificate of authority to
13306 transact business in this state does not impair the validity of any of its a ~~contracts, deeds,~~
13307 mortgages, security interests, or act of the foreign limited liability company or prevent the foreign
13308 limited liability company from defending an action or proceeding in this state.

13309 . . .

13310

13311 **Commentary to Section 605.0904(3) and s. 605.0904(4):**

13312 Changes conform these subsections to the corollary provisions of revised s. 607.1502 of the
13313 FBCA.

13314

13315 605.0906 Noncomplying name of foreign limited liability company.

13316 (1) A foreign limited liability company whose name is unavailable under or whose name
13317 does not otherwise comply with s. 605.0112 ~~may~~ shall use an alternate name that complies with
13318 s. 605.0112 to transact business in this state. An alternate name adopted for use in this state shall
13319 be cross-referenced to the actual name of the foreign limited liability company in the records of
13320 the department. If the actual name of the foreign limited liability company subsequently becomes
13321 available in this state or the foreign limited liability company chooses to change its alternate
13322 name, a copy of the record approving the change by its members, managers, or other persons
13323 having the authority to do so, and executed as required pursuant to s. 605.0203, shall be
13324 delivered to the department for filing.

13325 . . .

13326 (4) If a foreign limited liability company authorized to transact business in this state changes
13327 its name to one that does not comply with s. 605.0112, it may not thereafter transact business in
13328 this state until it complies with subsection (1) and obtains an amended certificate of authority
13329 under s. 605.0907.

13330

13331 **Commentary to Section 605.0906:**

13332 The modification in subsection (1) makes this section consistent with revised s. 607.1506(1) of
13333 the FBCA.

13334 The modification to subsection (4) includes a reference to the section dealing with an amended
13335 certificate of authority. It is consistent with subsection (4) of revised s. 607.1506 of the FBCA.

13336

13337 605.0907 Amendment to certificate of authority.

13338 (1) A foreign limited liability company authorized to transact business in this state shall
13339 deliver for filing an amendment to its certificate of authority to reflect the change of any of the
13340 following:

13341 (a) Its name on the records of the department.

13342 (b) Its jurisdiction of formation.

13343 (c) The name and street address in this state of the company's registered agent in this
13344 state, unless the change was timely made in accordance with s. 605.0114 or s. 605.0116.

13345 ~~(d) Any person identified in accordance with s. 605.0902(1)(e), or a change in the title or~~
13346 ~~capacity or address of that person.~~

13347 (2) The amendment must be filed within ~~30~~ 90 days after the occurrence of a change described
13348 in subsection (1), must be signed by an authorized representative of the foreign limited liability
13349 company, and must state the following:

13350 ...

13351 (4) The requirements of s. 605.0902~~(2)~~ for obtaining an original certificate of authority apply
13352 to obtaining an amended certificate under this section unless the Secretary of State or other official
13353 having custody of the foreign limited liability company's publicly filed records in its jurisdiction
13354 of formation did not require an amendment to effectuate the change on its records.

13355

13356 **Commentary to Section 605.0907:**

13357 The change in subsection (d) of s. 605.0907(1) removes the requirement that an amended
13358 certificate of authority include the identity of the members or managers. This is consistent with
13359 revised s. 607.1504(1)(c) of the FBCA.

13360 The change in subsection (2) rationalizes this provision with the 90 day provision in revised. s
13361 607.1504(2) of the FBCA.

13362 The current reference to subsection (4) in to subsection (2) of s. 605.0907 has been removed,
13363 consistent with the approach set forth in subsection (3) of s. 607.1504 of the FBCA. The reference
13364 is to the entire statutory provision (s. 605.0902) and not just to subsection (4).

13365

13366 605.0908 Revocation of certificate of authority.

13367 (1) A certificate of authority of a foreign limited liability company to transact business in
13368 this state may be revoked by the department if:

13369 . . .

13370 (d) The foreign limited liability company does not deliver for filing a statement of a
13371 change under s. 605.0114 within 30 days after a change in the name or address of the agent has
13372 occurred ~~in the name or address of the agent~~, unless, within 30 days after the change occurred,
13373 either:

13374 1. The registered agent files a statement of change under s. 605.0116; or

13375 2. The change was made in accordance with s. 605.0114(4) or s. 605.0907(1)(d);

13376 . . .

13377

13378 **Commentary to Section 605.0908(1)(d):**

13379 Changes conform this subsection to revised s. 607.1530(1) of the FBCA.

13380

13381 605.09091 Judicial review of denial of reinstatement.

13382 (1) If the department denies a foreign limited liability company’s application for
13383 reinstatement after revocation of its certificate of authority, the department shall serve the foreign
13384 limited liability company under s. 605.0117(7) with a written notice that explains the reason or
13385 reasons for the denial.

13386 (2) Within 30 days after service of a notice of denial of reinstatement, a foreign limited
13387 liability company may appeal the denial by petitioning the circuit court in and for Leon County
13388 to set aside the revocation. The petition must be served on the department and contain a copy of
13389 the department’s notice of revocation, the foreign limited liability company’s application for
13390 reinstatement, and the department’s notice of denial.

13391 (3) The circuit court may order the department to reinstate the certificate of authority of the
13392 foreign limited liability company or take other action the court considers appropriate.

13393 (4) The circuit court’s final decision may be appealed as in other civil proceedings.

13394

13395 **Commentary to Section 605.09091:**

13396 This section has been added to FRLUCA as new s. 605.09091. It is based on revised s. 607.1532
13397 of the FBCA.

13398

13399 605.0910 Withdrawal and cancellation of certificate of authority.

13400 (1) To cancel its certificate of authority to transact business in this state, a foreign limited
13401 liability company must deliver to the department for filing a notice of withdrawal of certificate of
13402 authority. The certificate of authority is canceled when the notice becomes effective pursuant to s.
13403 605.0207. The notice of withdrawal of certificate of authority must be signed by an authorized
13404 representative and state the following:

13405 (a) The name of the foreign limited liability company as it appears on the records of the
13406 department.

13407 (b) The name of the foreign limited liability company’s jurisdiction of formation.

13408 (c) The date the foreign limited liability company was authorized to transact business
13409 in this state.

13410 (d) ~~That t~~The foreign limited liability company is withdrawing its certificate of authority
13411 in this state.

13412 (e) That it revokes the authority of its registered agent to accept service on its behalf and
13413 appoints the Secretary of State as its agent for service of process based on a cause of action arising
13414 during the time it was authorized to transact business in this state;

13415 (f) A mailing address to which the department may mail a copy of any process served
13416 on the Secretary of State under paragraph (e); and

13417 (g) A commitment to notify the department in the future of any change in its mailing
13418 address.

13419 (2) After the withdrawal of the foreign limited liability company is effective, service of
13420 process on the Secretary of State under this section is service on the foreign limited liability
13421 company. Upon receipt of the process, the department shall mail a copy of the process to the
13422 foreign limited liability company at the mailing address set forth under subsection (1)(f).

13423

13424 **Commentary to Section 605.0910:**

13425 Revisions to this section are based on changes to s. 607.1520 of the FBCA.

13426

13427 605.0911 Withdrawal deemed on conversion to domestic filing entity.

13428 A registered foreign limited liability company authorized to transact business in this state
13429 that converts to a domestic limited liability company or to another domestic entity that is organized,
13430 incorporated, registered or otherwise formed through the delivery of a record to the department for
13431 filing is deemed to have withdrawn its certificate of authority on the effective date of the
13432 conversion.

13433

13434

13435 **Commentary to Section 605.0911:**

13436 Revisions to this section are based on changes to s. 607.1521 of the FBCA.

13437

13438 605.0912 Withdrawal on dissolution, merger, or conversion to nonfiling entity.

13439 (1) A registered foreign limited liability company that has dissolved and completed winding
13440 up, has merged into a foreign entity that is not authorized to transact business ~~registered~~ in this
13441 state, or has converted to a domestic or foreign entity that is not organized, incorporated,
13442 registered or otherwise formed through the public filing of a record, shall deliver a notice of
13443 withdrawal of certificate of authority to the department for filing in accordance with s. 605.0910.

13444 (2) After a withdrawal under this section of a foreign limited liability company ~~entity~~ that
13445 has converted to another type of entity is effective, service of process in any action or proceeding
13446 based on a cause of action arising during the time the foreign limited liability company was
13447 authorized to transact ~~registered to do~~ business in this state may be made pursuant to s. 605.0117.

13448

13449 **Commentary to Section 605.0912:**

13450 Minor clean-up changes make this provision consistent with the revised version of s. 607.1522 of
13451 the FBCA.

13452

13453 605.1061 Appraisal rights; definitions

13454 The following definitions apply to this section and to ss. 605.1006 and 605.1062-605.1072:

13455 ...

13456 (5) “Fair value” means the value of the member’s membership interest determined:

13457 (a) Immediately before the effectiveness ~~effectuation~~ of the appraisal event to
13458 which the member objects;

13459 ...

13460

13461 **Commentary to Section 605.1061(5)(a):**

13462 This change conforms this definition to the corollary definition in s. 607.1301(5)(a).

13463

13464 605.1063 Notice of appraisal rights.

13465 . . .

13466 (3) If the appraisal event is to be approved by written consent of the members pursuant to s.
13467 605.04073 ~~other than by a members' meeting:~~

13468 (a) Written notice that appraisal rights are, are not, or may be available must be sent
13469 to each member from whom a consent is solicited at the time consent of such member is first
13470 solicited, and if the limited liability company has concluded that appraisal rights are or may be
13471 available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany such written notice;
13472 or

13473 (b) Written notice that appraisal rights are, are not, or may be available must be
13474 delivered, at least 10 days before the appraisal event becomes effective, to all nonconsenting
13475 and nonvoting members, and, if the limited liability company has concluded that appraisal
13476 rights are or may be available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany
13477 such written notice.

13478 . . .

13479

13480 **Commentary to Section 605.1063(3):**

13481 This change conforms this section to revised s. 607.1320(3).

13482

13483 605.1072 Other remedies limited.

13484 (1) A member entitled to appraisal rights under this chapter may not challenge a
13485 legality of a proposed or completed appraisal event for which appraisal rights are available unless
13486 such completed may not be contested, and the appraisal event may not be enjoined, set aside, or
13487 rescinded, in a legal or equitable proceeding by a member after the members have approved the
13488 appraisal event.;

13489 ~~(2) Subsection (1) does not apply to an appraisal event that:~~

13490 (a) Was not authorized and approved in accordance with the applicable provisions
13491 of this chapter, the organic rules of the limited liability company, or the resolutions of the
13492 members authorizing the appraisal event; or

13493 (b) Was procured as a result of fraud, a material misrepresentation, or an omission
13494 of a material fact that is necessary to make statements made, in light of the circumstances
13495 in which they were made, not misleading.

13496 (2) Nothing in this section will operate to override or supersede any of the provisions of s.
13497 605.04092.

13498

13499 **Commentary to Section 605.1072:**

13500 This change conforms this section to revised s. 607.1340.

13501

13502 607.504 Election of social purpose corporation status.

13503 (1) An existing corporation may become a social purpose corporation under this part by
13504 amending its articles of incorporation to include a statement that the corporation is a social purpose
13505 corporation under this part. The amendment must be adopted by the minimum status vote.

13506 (2) A plan of merger, domestication, conversion, or share exchange must be adopted by
13507 the minimum status vote if an entity that is not a social purpose corporation is a party to the merger,
13508 domestication, or conversion or if the exchanging entity in a share exchange and the surviving,
13509 new, or resulting entity is, or will be, a social purpose corporation.

13510 (3) If an entity elects to become a social purpose corporation by amendment of the
13511 articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the
13512 entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340~~33~~.

13513

13514 **Commentary to Section 607.504:**

13515 Makes clarifying changes to s. 607.504 to add “domestications” as transactions in which a social
13516 purpose corporation may participate. Also clarifies the “appraisal rights” provisions in Chapter
13517 607 that are applicable to mergers, domestications, conversions or share exchanges of social
13518 purpose corporations.

13519

13520 607.604 Election of benefit corporation status.

13521 (1) An existing corporation may become a benefit corporation under this part by
13522 amending its articles of incorporation to include a statement that the corporation is a benefit
13523 corporation under this part. The amendment must be adopted by the minimum status vote.

13524 (2) A plan of merger, domestication, conversion, or share exchange must be adopted by
13525 the minimum status vote if an entity that is not a benefit corporation is a party to a merger,
13526 domestication, or conversion or if the exchanging entity in a share exchange and the surviving,
13527 new, or resulting entity is, or will be, a benefit corporation.

13528 (3) If an entity elects to become a benefit corporation by amendment of the articles of
13529 incorporation or by a merger, domestication, conversion, or share exchange, the shareholders of
13530 the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.~~1340~~33.

13531

13532 **Commentary to Section 607.604:**

13533 Makes clarifying changes to s. 607.604 to add “domestications” as transactions in which a benefit
13534 corporation may participate. Also clarifies the “appraisal rights” provisions in Chapter 607 that are
13535 applicable to mergers, domestications, conversions or share exchanges of benefit corporations.

13536

- 13537 617.0501 Registered office and registered agent.
- 13538 (1) Each corporation shall have and continuously maintain in this state:
- 13539 (a) A registered office which may be the same as its principal office; and
- 13540 (b) A registered agent, who may be either:
- 13541 1. An individual who resides in this state whose business office is identical with
- 13542 such registered office; or
- 13543 2. Another domestic entity that is an authorized entity whose business address is
- 13544 identical to the address of the registered office, or a foreign entity authorized to transact
- 13545 business in this state that is an authorized entity and whose business address is identical to
- 13546 the address of ~~A corporation for profit or not for profit, authorized to transact business or~~
- 13547 ~~conduct its affairs in this state, having a business office identical with~~ the registered office.
- 13548 ...
- 13549 (5) A corporation may not prosecute or maintain any action in a court in this state until the
- 13550 corporation complies with this section or s. 617.1508, as applicable, ~~and~~ pays to the Department
- 13551 of State any amounts required under this chapter, and to the extent ordered by a court of competent
- 13552 jurisdiction, pays to the Department of State a penalty of \$5 for each day it has failed to so comply
- 13553 or \$500, whichever is less.
- 13554 (6) For purposes of this section, an authorized entity shall mean:
- 13555 (a) A corporation for profit;
- 13556 (b) A limited liability company;
- 13557 (c) A limited liability partnership; or
- 13558 (d) A limited partnership, including a limited liability limited partnership.
- 13559

13560 **Commentary to Section 617.0501:**

13561 Changes add the concept of authorized entity to Chapter 617 as a subtype of entities that are
13562 permitted to act as registered agents in this state. This change substantively conforms this section
13563 to revised s. 607.0501 of the FBCA.

13564

13565 617.0502 Reserved name.

13566 (1) A person may reserve the exclusive use of the name of a corporation, including an
13567 alternate name for a foreign corporation whose name is not available, by delivering an application
13568 to the department for filing. The application must set forth the name and address of the applicant
13569 and the name proposed to be reserved. If the department finds that the name of the corporation
13570 applied for is available, it shall reserve the name for the applicant's exclusive use for a
13571 nonrenewable 120-day period.

13572 (2) The owner of a reserved name of a corporation may transfer the reservation to another
13573 person by delivering to the department a signed notice of the transfer that states the name and
13574 address of the transferee.

13575 (3) The department may revoke any reservation if, after a hearing, it finds that the application
13576 therefor or any transfer thereof was not made in good faith.

13577

13578 **Commentary to Section 617.0502:**

13579 This section conforms to new s. 607.0402 and allows for the reservation of the name of a not-for-
13580 profit corporation.

13581

13582 617.1507 Registered office and registered agent of foreign corporation.

13583 (1) Each foreign corporation authorized to conduct its affairs in this state must continuously
13584 maintain in this state:

13585 (a) A registered office that may be the same as any of the places it conducts its affairs;
13586 and

13587 (b) A registered agent, who may be:

13588 1. An individual who resides in this state and whose business office is identical
13589 with the registered office;

13590 2. Another domestic entity that is an authorized entity whose business address is
13591 identical to the address of the registered office, or a foreign entity authorized to transact
13592 business in this state that is an authorized entity and whose business address is identical to
13593 the address of ~~A domestic corporation for profit or not for profit the business office of~~
13594 ~~which is identical with~~ the registered office; or

13595 3. ~~A foreign corporation for profit or not for profit authorized to transact business~~
13596 ~~or conduct its affairs in this state the business office of which is identical with the registered~~
13597 ~~office.~~

13598 (2) A registered agent appointed pursuant to this section or a successor registered agent
13599 appointed pursuant to s. 617.1508 on whom process may be served shall each file a statement in
13600 writing with the Department of State, in such form and manner as shall be prescribed by the
13601 department, accepting the appointment as a registered agent simultaneously with his or her being
13602 designated. Such statement of acceptance shall state that the registered agent is familiar with, and
13603 accepts, the obligations of that position.

13604 (3) For purposes of this section, an authorized entity shall mean:

13605 (a) A corporation for profit;

13606 (b) A limited liability company;

13607 (c) A limited liability partnership; or

13608 (d) A limited partnership, including a limited liability limited partnership.

13609

13610 **Commentary to Section 617.1507:**

13611 Changes add the concept of authorized entity to Chapter 617 as a subtype of entities that are
13612 permitted to act as registered agents in this state. This change substantively conforms this
13613 section to revised s. 607.1507 of the FBCA.

13614

13615 620.1108 Name.

13616 (1) The name of a limited partnership may contain the name of any partner.

13617 (2) The name of a limited partnership that is not a limited liability limited partnership must
13618 contain the phrase “limited partnership” or “limited” or the abbreviation “L.P.” or “Ltd.” or the
13619 designation “LP,” and may not contain the phrase “limited liability limited partnership” or the
13620 abbreviation “L.L.L.P.” or the designation “LLLP,” as will clearly indicate that it is a limited
13621 partnership instead of a natural person, corporation, limited liability company, or other business
13622 entity.

13623 (3) The name of a limited liability limited partnership must contain the phrase “limited
13624 liability limited partnership” or the abbreviation “L.L.L.P.” or designation “LLLP,” as will
13625 clearly indicate that it is a limited liability limited partnership instead of a natural person or other
13626 business entity, except that a limited liability limited partnership organized prior to January 1,
13627 2006 the effective date of this act that was is using an abbreviation or designation permitted
13628 under prior law shall be entitled to continue using such abbreviation or designation until its
13629 dissolution.

13630 (4) The name of a limited partnership must be distinguishable in the records of the
13631 Department of State from the names of all other entities or filings that are on file with the
13632 Department of State, except fictitious name registrations pursuant to s. 865.09, general
13633 partnership registrations pursuant to s. 620.8105, and limited liability partnership statements
13634 pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state;
13635 however, a limited partnership or a limited liability limited partnership may register under a
13636 name that is not otherwise distinguishable on the records of the Department of State with the
13637 written consent of the other entity if the consent is filed with the Department of State at the time
13638 of registration of such name and if such name is not identical to the name of the other entity. A
13639 name that is different from the name of another entity or filing due to any of the following is not
13640 considered distinguishable:

13641 (a) A suffix.

13642 (b) A definite or indefinite article.

13643 (c) The word “and” and the symbol “&.”

13644 (d) The singular, plural, or possessive form of a word.

13645 (e) ~~A recognized abbreviation of a root word.~~

13646 (f) ~~—~~A punctuation mark or a symbol.

13647 (5) Subject to s. 620.1905, this section applies to any foreign limited partnership transacting
13648 business in this state, having a certificate of authority to transact business in this state, or applying
13649 for a certificate of authority.

13650 (6) A limited partnership or a limited liability limited partnership in existence before
13651 _____ , 20 [the effective date of these amendments] that has a name that does not clearly
13652 indicate that it is a limited partnership or a limited liability limited partnership instead of a natural
13653 person, corporation, limited liability company, or other business entity may continue using its
13654 name until it dissolves or amends its name in the records of the department.

13655

13656 **Commentary to Section 620.1108:**

13657 The changes made in subsections (2), (3) and (4) are changes made to conform this section to the
13658 changes made in the proposed version of s. 607.0401 of the FBCA. The addition of subsection (6)
13659 is a grandfathering provision for names that are being used when the proposed changes become
13660 effective and that are not in conformity with this provision as modified.

13661

13662 620.11085 Reserved name.

13663 (1) A person may reserve the exclusive use of the name of a limited partnership,
13664 including an alternate name for a foreign limited partnership whose name is not available, by
13665 delivering an application to the department for filing. The application must set forth the name and
13666 address of the applicant and the name proposed to be reserved. If the department finds that the
13667 name of the limited partnership applied for is available, it shall reserve the name for the applicant's
13668 exclusive use for a nonrenewable 120-day period.

13669 (2) The owner of a reserved name of a limited partnership may transfer the reservation to
13670 another person by delivering to the department a signed notice of the transfer that states the name
13671 and address of the transferee.

13672 (3) The department may revoke any reservation if, after a hearing, it finds that the application
13673 therefor or any transfer thereof was not made in good faith.

13674

13675 **Commentary to Section 620.11085:**

13676 This section conforms to new s. 607.0402 and allows for the reservation of the name of a limited
13677 partnership.

13678