

Florida Statutes: Close Corporations

§ 607.0722 Proxies....

(5) An appointment of a proxy is revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under s. 607.0731.

(6) An appointment made irrevocable under subsection (5) becomes revocable when the interest with which it is coupled is extinguished.

§607.0730 Voting trusts.--

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office. After filing a copy of the list and agreement in the corporation's principal office, such copy shall be open to inspection by any shareholder of the corporation (subject to the requirements of s. 607.1602(3)) or any beneficiary of the trust under the agreement during business hours.

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

§607.0731 Shareholders' agreements.--

(1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A shareholders' agreement created under this section is not subject to the provisions of s. 607.0730.

(2) A shareholders' agreement created under this section is specifically enforceable.

(3) A transferee of shares in a corporation the shareholders of which have entered into an agreement authorized by subsection (1) shall be bound by such agreement if the transferee takes shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares.

§607.0732 Shareholder agreements.--

(1) An agreement among the shareholders of a corporation with 100 or fewer shareholders at the time of the agreement, that complies with this section, is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter, if it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in s. 607.06401;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by the shareholders and directors, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation;

(f) Transfers to any shareholder or other person any authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders; or

(g) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency.

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship between the shareholders, the directors, or the corporation, and is not contrary to public policy. For purposes of this paragraph, agreements contrary to public policy include, but are not limited to, agreements that reduce the duties of care and loyalty to the corporation as required by ss. 607.0830 and 607.0832, exculpate directors from liability that may be imposed under s. 607.0831, adversely affect shareholders' rights to bring derivative actions under s. 607.07401, or abrogate dissenters' rights under ss. 607.1301-607.1320.

(2) An agreement authorized by this section shall be:

(a)1. Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time the agreement; or

2. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and such written agreement is made known to the corporation.

(b) Subject to termination or amendment only by all persons who are shareholders at the time of the termination or amendment, unless the agreement provides otherwise with respect to termination and with respect to amendments that do not change the designation, rights, preferences, or limitations of any of the shares of a class or series.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by s. 607.0626(2). If at the time of the agreement the

corporation has shares outstanding which are represented by certificates, the corporation shall recall such certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of the purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly quoted in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

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

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

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

§ 607.1430 Grounds for judicial dissolution.--A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

(1)(a) In a proceeding by the Department of Legal Affairs if it is established that:

- 1.** The corporation obtained its articles of incorporation through fraud; or
- 2.** The corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) The enumeration in paragraph (a) of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state;

- (2) In a proceeding by a shareholder if it is established that:
- (a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or
 - (b) The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;
- (3) In a proceeding by a shareholder or group of shareholders in a corporation having 35 or fewer shareholders if it is established that:
- (a) The corporate assets are being misapplied or wasted, causing material injury to the corporation; or
 - (b) The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;
- (4) In a proceeding by a creditor if it is established that:
- (a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (5) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

§ 607.1434 Alternative remedies to judicial dissolution.--In an action for dissolution pursuant to s. 607.1430, the court may, upon a showing of sufficient merit to warrant such remedy:

- (1) Appoint a receiver or custodian pendente lite as provided in s. 607.1432;
- (2) Appoint a provisional director as provided in s. 607.1435;
- (3) Order a purchase of the complaining shareholder's shares pursuant to s. 607.1436; or
- (4) Upon proof of good cause, make any order or grant any equitable relief other than dissolution or liquidation as in its discretion it may deem appropriate.

DGCL Subchapter XIV

§ 341. Law applicable to close corporation.

(a) This subchapter applies to all close corporations, as defined in § 342 of this title. Unless a corporation elects to become a close corporation under this subchapter in the manner prescribed in this subchapter, it shall be subject in all respects to this chapter, except this subchapter.

(b) This chapter shall be applicable to all close corporations, as defined in § 342 of this title, except insofar as this subchapter otherwise provides.

§ 342. Close corporation defined; contents of certificate of incorporation.

(a) A close corporation is a corporation organized under this chapter whose certificate of incorporation contains the provisions required by § 102 of this title and, in addition,

provides that:

(1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be represented by certificates and shall be held of record by not more than a specified number of persons, not exceeding 30; and

(2) All of the issued stock of all classes shall be subject to 1 or more of the restrictions on transfer permitted by § 202 of this title; and

(3) The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933 [15 U.S.C. § 77a et seq.] as it may be amended from time to time.

(b) The certificate of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class or both.

(c) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by 1 stockholder.

§ 344. Election of existing corporation to become a close corporation.

Any corporation organized under this chapter may become a close corporation under this subchapter by executing, acknowledging and filing, in accordance with § 103 of this title, a certificate of amendment of its certificate of incorporation which shall contain a statement that it elects to become a close corporation, the provisions required by § 342 of this title to appear in the certificate of incorporation of a close corporation, and a heading stating the name of the corporation and that it is a close corporation. Such amendment shall be adopted in accordance with the requirements of § 241 or 242 of this title, except that it must be approved by a vote of the holders of record of at least two thirds of the shares of each class of stock of the corporation which are outstanding.

§ 350. Agreements restricting discretion of directors.

A written agreement among the stockholders of a close corporation holding a majority of the outstanding stock entitled to vote, whether solely among themselves or with a party not a stockholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the stockholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement.

§ 351. Management by stockholders.

The certificate of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

(1) No meeting of stockholders need be called to elect directors;
(2) Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for purposes of applying provisions of this chapter; and
(3) The stockholders of the corporation shall be subject to all liabilities of directors.
Such a provision may be inserted in the certificate of incorporation by amendment if all incorporators and subscribers or all holders of record of all of the outstanding stock, whether or not having voting power, authorize such a provision. An amendment to the certificate of incorporation to delete such a provision shall be adopted by a vote of the holders of a majority of all outstanding stock of the corporation, whether or not otherwise entitled to vote. If the certificate of incorporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every stock certificate issued by such corporation.

§ 352. Appointment of custodian for close corporation.

(a) In addition to § 226 of this title respecting the appointment of a custodian for any corporation, the Court of Chancery, upon application of any stockholder, may appoint 1 or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of any close corporation when:

- (1) Pursuant to § 351 of this title the business and affairs of the corporation are managed by the stockholders and they are so divided that the business of the corporation is suffering or is threatened with irreparable injury and any remedy with respect to such deadlock provided in the certificate of incorporation or bylaws or in any written agreement of the stockholders has failed; or
(2) The petitioning stockholder has the right to the dissolution of the corporation under a provision of the certificate of incorporation permitted by § 355 of this title.

(b) In lieu of appointing a custodian for a close corporation under this section or § 226 of this title the Court of Chancery may appoint a provisional director, whose powers and status shall be as provided in § 353 of this title if the Court determines that it would be in the best interest of the corporation. Such appointment shall not preclude any subsequent order of the Court appointing a custodian for such corporation.

§ 353. Appointment of a provisional director in certain cases.

(a) Notwithstanding any contrary provision of the certificate of incorporation or the bylaws or agreement of the stockholders, the Court of Chancery may appoint a provisional director for a close corporation if the directors are so divided respecting the management of the corporation's business and affairs that the votes required for action by the board of directors cannot be obtained with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

(b) An application for relief under this section must be filed (1) by at least one half of the number of directors then in office, (2) by the holders of at least one third of all stock then entitled to elect directors, or, (3) if there be more than 1 class of stock then entitled to elect 1 or more directors, by the holders of two thirds of the stock of any such class; but the certificate of incorporation of a close corporation may provide that a lesser proportion of the directors or of the stockholders or of a class of stockholders may apply

for relief under this section.

(c) A provisional director shall be an impartial person who is neither a stockholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the Court of Chancery. A provisional director is not a receiver of the corporation and does not have the title and powers of a custodian or receiver appointed under §§ 226 and 291 of this title. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until such time as such person shall be removed by order of the Court of Chancery or by the holders of a majority of all shares then entitled to vote to elect directors or by the holders of two thirds of the shares of that class of voting shares which filed the application for appointment of a provisional director. A provisional director's compensation shall be determined by agreement between such person and the corporation subject to approval of the Court of Chancery, which may fix such person's compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

(d) Even though the requirements of subsection (b) of this section relating to the number of directors or stockholders who may petition for appointment of a provisional director are not satisfied, the Court of Chancery may nevertheless appoint a provisional director if permitted by subsection (b) of § 352 of this title.

§ 354. Operating corporation as partnership.

No written agreement among stockholders of a close corporation, nor any provision of the certificate of incorporation or of the bylaws of the corporation, which agreement or provision relates to any phase of the affairs of such corporation, including but not limited to the management of its business or declaration and payment of dividends or other division of profits or the election of directors or officers or the employment of stockholders by the corporation or the arbitration of disputes, shall be invalid on the ground that it is an attempt by the parties to the agreement or by the stockholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the stockholders or between the stockholders and the corporation in a manner that would be appropriate only among partners.

§ 355. Stockholders' option to dissolve corporation.

(a) The certificate of incorporation of any close corporation may include a provision granting to any stockholder, or to the holders of any specified number or percentage of shares of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the stockholders exercising such option shall give written notice thereof to all other stockholders. After the expiration of 30 days following the sending of such notice, the dissolution of the corporation shall proceed as if the required number of stockholders having voting power had consented in writing to dissolution of the corporation as provided by § 228 of this title....