Florida Statute Chapter 617 Corporations Not For Profit

Sections of Interest:

617.0601 (7) Where the articles of incorporation expressly limit membership in the corporation to property owners within specific measurable geographic boundaries and where the corporation has been formed for the benefit of all of those property owners, no such property owner shall be denied membership, provided that such property owner once admitted to membership, shall comply with the terms and conditions of membership. Any bylaws, rules, or other regulations to the contrary are deemed void and any persons excluded from membership by such bylaws, rules, or other regulations are deemed members with full rights, including the right, by the majority, or as otherwise provided in the articles of incorporation, to call for a meeting of the membership

617.0701 (3) Except as provided in the articles of incorporation or bylaws, special meetings of the members may be called by:

(a) The president;

(b) The chair of the board of directors;

(c) The board of directors;

(d) Other officers or persons as are provided for in the articles of incorporation or the bylaws;

(e) The holders of at least 5 percent of the voting power of a corporation when one or more written demands for the meeting, which describe the purpose for which the meeting is to be held, are signed, dated, and delivered to a corporate officer; or

(f) A person who signs a demand for a special meeting pursuant to paragraph (e) if notice for a special meeting is not given within 30 days after receipt of the demand. The person signing the demand may set the time and place of the meeting and give notice under this subsection.

(4) Unless otherwise provided in the articles of incorporation, action required or permitted by this chapter to be taken at an annual or special meeting of members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted.

(a) To be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving members having the requisite number of votes and entitled to vote on such action, and delivered to the corporation to its principal office in this state, its principal place of business, the corporate secretary, or another officer or agent of the corporation having custody of the book in which proceedings of meetings of members are

recorded. Written consent to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within 90 days after the date of the earliest dated consent and is delivered in the manner required by this section.

(b) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the corporation at its principal office in this state or its principal place of business, or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

(c) Within 30 days after obtaining authorization by written consent, notice must be given to those members who are entitled to vote on the action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

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

(e) If the action to which the members consent is such as would have required the filing of articles or a certificate under any other section of this chapter if such action had been voted on by members at a meeting, the articles or certificate filed under such other section must state that written consent has been given in accordance with this section.

(f) Whenever action is taken pursuant to this section, the written consent of the members consenting to such action or the written reports of inspectors appointed to tabulate such consents must be filed with the minutes of member proceedings.

(5)(a) Notice of a meeting of members need not be given to any member who signs a waiver of notice, in person or by proxy, either before or after the meeting. Unless required by the bylaws, neither the affairs transacted nor the purpose of the meeting need be specified in the waiver.

(b) Attendance of a member at a meeting, either in person or by proxy, constitutes waiver of notice and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, unless the member attends a meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

617.0721 Voting by members.—

(1) Members are not entitled to vote except as conferred by the articles of incorporation or the bylaws.

(2) A member who is entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his

or her duly authorized attorney in fact. Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy. An appointment of a proxy is not valid after 11 months following the date of its execution unless otherwise provided in the proxy.

(a) If directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(b) A corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubting the validity of the signature on it or the signatory's authority to sign for the member.

(3) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, members and proxy holders who are not physically present at a meeting may, by means of remote communication:

(a) Participate in the meeting.

(b) Be deemed to be present in person and vote at the meeting if:

1. The corporation implements reasonable means to verify that each person deemed present and authorized to vote by means of remote communication is a member or proxy holder; and

2. The corporation implements reasonable measures to provide such members or proxy holders with a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate and to read or hear the proceedings of the meeting substantially concurrent with the proceedings.

If any member or proxy holder votes or takes other action by means of remote communication, a record of that member's participation in the meeting must be maintained by the corporation in accordance with s. 617.1601.

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s. 720.301(9), or any corporation regulated under chapter 718 or chapter 719.

617.0801 Duties of board of directors.—All corporate powers must be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

The articles of incorporation or the bylaws may prescribe additional qualifications for directors.

617.0808 Removal of directors.—

(1) Subject to subsection (2), a director may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws

617.0830 General standards for directors.—

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

(a) In good faith;

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

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

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

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

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

(c) A committee of the board of directors of which he or she is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.—

(1) An officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

(a) The officer or director breached or failed to perform his or her duties as an officer or director; and

(b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:

1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or

3. Recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term:

(a) "Recklessness" means the acting, or omission to act, in conscious disregard of a risk:

1. Known, or so obvious that it should have been known, to the officer or director; and

2. Known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

(b) "Director" means a person who serves as a director, trustee, or member of the governing board of an organization.

(c) "Officer" means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred.

617.0841 Duties of officers.—Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of any officer authorized by the bylaws or the board of directors to prescribe the duties of other officers.

617.1601 Corporate records.—

(1) A corporation shall keep as records minutes of all meetings of its members and board of directors, a record of all actions taken by the members 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 members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by class of voting members.

(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:

(a) Its articles of incorporation or restated articles of incorporation and all amendments to them currently in effect.

(b) Its bylaws or restated bylaws and all amendments to them currently in effect.

(c) The minutes of all members' meetings and records of all action taken by members without a meeting for the past 3 years.

(d) Written communications to all members generally or all members of a class within the past 3 years, including the financial statements furnished for the past 3 years under s. 617.1605.

(e) A list of the names and business street, or home if there is no business street, addresses of its current directors and officers.

(f) Its most recent annual report delivered to the Department of State under s. 617.1622.

History.—s. 106, ch. 90-179; s. 69, ch. 93-281; s. 49, ch. 2009-205.

617.1602 Inspection of records by members.—

(1) A member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office or at a reasonable location specified by the corporation, any of the records of the corporation described in s. 617.1601(5), if the member gives the corporation written notice of his or her demand at least 10 business days before the date on which he or she wishes to inspect and copy.

(2) A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice of his or her demand at least 10 business days before the date on which he or she wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection (1).

(b) Accounting records of the corporation.

(c) The record of members.

(d) Any other books and records.

(3) A member may inspect and copy the records described in subsection (2) only if:

(a) The member's demand is made in good faith and for a proper purpose;

(b) The member describes with reasonable particularity his or her purpose and the records he or she desires to inspect;

(c) The records are directly connected with the member's purpose.

(4) This section does not affect:

(a) The right of a member in litigation with the corporation to inspect and copy records to the same extent as any other litigant.

(b) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(5) A corporation may deny any demand for inspection made pursuant to subsection (2) if the demand was made for an improper purpose, or if the demanding member has within 2 years preceding his or her demand sold or offered for sale any list of members of the corporation or any other corporation, has aided or abetted any person in procuring any list of members for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

(6) For purposes of this section, the term "member" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

(7) For purposes of this section, a "proper purpose" means a purpose reasonably related to such person's interest as a member.

617.1605 Financial reports for members.—A corporation, upon a member's written demand, shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, and which include a balance sheet as of the end of the fiscal year and a statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on such basis.