

Article 14.

Dissolution.

Part 1. Voluntary Dissolution.

§ 55A-14-01. Dissolution by incorporators or directors prior to commencement of activities.

(a) A corporation that has not admitted members entitled to vote on dissolution, has not commenced activities, and has no assets may be dissolved by action of its board of directors or a majority of its incorporators, if there are no directors, by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The names and addresses of its officers, if any;
- (3) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;
- (4) The date of its incorporation;
- (5) That the corporation has not admitted members entitled to vote on dissolution, has not commenced activities, and has no assets;
- (6) That no debt of the corporation remains unpaid; and
- (7) That a majority of the incorporators or directors authorized the dissolution.

(b) Upon the filing of articles of dissolution under this section, the corporation becomes nonexistent and is cancelled as if such corporation had never been created. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 41, 43; 1993, c. 398, s. 1.)

§ 55A-14-02. Dissolution by directors, members, and third persons.

(a) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if a plan of dissolution meeting the requirements of G.S. 55A-14-03 is approved:

- (1) By the board;
- (2) By the members entitled to vote thereon, if any, by two-thirds of the votes cast or a majority of the votes entitled to be cast on the plan of dissolution, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30 for an amendment to the articles of incorporation or bylaws.

(b) If the corporation does not have members entitled to vote thereon, dissolution shall be approved by a vote of a majority of the directors then in office. The corporation shall provide at least five days' written notice of any directors' meeting at which such approval will be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board of directors may condition its approval of the proposed dissolution, and the members entitled to vote thereon may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board of directors seeks to have dissolution approved by the members entitled to vote thereon at a membership meeting, the corporation shall give notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the

purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

§ 55A-14-03. Plan of dissolution.

(a) The plan of dissolution approved pursuant to G.S. 55A-14-02 shall provide that all liabilities and obligations of the corporation be paid and discharged, or adequate provisions be made therefor, and that the remainder of the corporation's assets be distributed as follows:

- (1) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements;
- (2) Other assets, if any, of a charitable or religious corporation shall, subject to the articles of incorporation or bylaws, be transferred or conveyed to one or more of the following: the United States, a state, a charitable or religious corporation, or a person that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section;
- (3) Other assets, if any, of a corporation that is not a charitable or religious corporation shall, subject to the articles of incorporation and bylaws, be distributed as provided in the plan of dissolution.

(b) The plan of dissolution may set forth other provisions relating to the dissolution. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-04. Articles of dissolution.

(a) At any time after dissolution is authorized pursuant to G.S. 55A-14-02, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) The name of the corporation;
- (2) The names and addresses of its officers;
- (3) The names and addresses of its directors;
- (4) The plan of dissolution as required by G.S. 55A-14-03;
- (5) The date dissolution was authorized;
- (6) If approval by members was not required, a statement to that effect and a statement that the plan of dissolution was approved by a sufficient vote of the board of directors;
- (7) If approval by members was required, a statement that the plan of dissolution was approved as required by this Chapter; and
- (8) If approval of dissolution by some person or persons other than the members or the board of directors is required pursuant to G.S. 55A-14-02(a)(3), a statement that the approval was obtained.

(b) A corporation is dissolved upon the effective date of its articles of dissolution. (1955, c. 1230; 1973, c. 314, s. 7; 1993, c. 398, s. 1.)

§ 55A-14-05. Revocation of dissolution.

(a) A corporation may revoke its dissolution authorized under G.S. 55A-14-02 within 120 days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless an authorization under G.S. 55A-14-02 permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, a statement that the action was taken as required.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the filing of the articles of dissolution. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-06. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its remaining assets in accordance with its plan of dissolution; and
- (4) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Subject its directors or officers to standards of conduct different from those prescribed in Article 8 of this Chapter;
- (3) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (4) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (6) Terminate the authority of the registered agent of the corporation. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-07. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

- (1) Describe information that shall be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which shall not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) If the corporation does not receive the claim by the deadline from a claimant who received written notice under subsection (b) of this section; or
- (2) If a claimant whose claim was rejected by written notice from the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the date of receipt of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

§ 55A-14-08. Unknown and certain other claims against dissolved corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice shall:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if there is none in this State, its registered office) is or was last located;
- (2) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under G.S. 55A-14-07;
- (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) Nothing in this section shall bar:

- (1) Any claim alleging the liability of the corporation; or
- (2) Any proceeding or action to establish the liability of the corporation; or
- (3) The recovery on any judgment against the corporation

to the extent that the corporation is protected by insurance coverage with respect to such claim, proceeding, or judgment. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)

§ 55A-14-09. Enforcement of claims.

(a) A claim under G.S. 55A-14-07 or G.S. 55A-14-08 may be enforced:

- (1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or
- (2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section shall not exceed the total amount of assets distributed to the distributee.

(b) Nothing in G.S. 55A-14-07 or G.S. 55A-14-08 shall extend any applicable period of limitation. (1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)

§§ 55A-14-10 through 55A-14-19. Reserved for future codification purposes.

Part 2. Administrative Dissolution.

§ 55A-14-20. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under G.S. 55A-14-21 to dissolve administratively a corporation if:

- (1) The corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;
- (2) Repealed by Session Laws 1995, c. 539, s. 24.
- (3) The corporation is without a registered agent or registered office in this State for 60 days or more;
- (4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) The corporation's period of duration stated in its articles of incorporation expires;
- (6) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter; or
- (7) The corporation does not designate the address of its principal office with the Secretary of State or does not notify the Secretary of State within 60 days that the principal office has changed. (1993, c. 398, s. 1; 1995, c. 539, ss. 24, 25.)

§ 55A-14-21. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under G.S. 55A-14-20 for dissolving a corporation, the Secretary of State shall mail the corporation written notice of the Secretary of State's determination.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the corporation.

(c) The provisions of G.S. 55A-14-06, 55A-14-07, and 55A-14-08 apply to a corporation administratively dissolved.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent. (1993, c. 398, s. 1.)

§ 55A-14-22. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(a1) If, at the time the corporation applies for reinstatement, the name of the corporation is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the corporation must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section, that the information is correct, and that the name of the corporation complies with G.S. 55D-21 and any other applicable section, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the Secretary of State's determination and the effective date of reinstatement, file the original of the certificate, and mail a copy to the corporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the certificate of dissolution. (1993, c. 398, s. 1; 1996, 2nd Ex. Sess., c. 17, s. 15.1(d); 1997-485, s. 2; 2001-390, s. 9; 2001-413, ss. 7.2, 7.3.)

§ 55A-14-23. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under G.S. 55D-33 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Superior Court of Wake County within 30 days after service of the notice of denial is perfected. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the dissolution. The petition shall have attached to it copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court shall be determined by a

judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The corporation shall have the burden of establishing that it is entitled to reinstatement.

(c) Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings. (1993, c. 398, s. 1; 2001-358, ss. 5A(c), 48(e); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§ 55A-14-24. Inapplicability of Administrative Procedure Act.

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55A-14-20 through G.S. 55A-14-23. (1993, c. 398, s. 1.)

§§ 55A-14-25 through 55A-14-29. Reserved for future codification purposes.

Part 3. Judicial Dissolution.

§ 55A-14-30. Grounds for judicial dissolution.

(a) The superior court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

- a. The corporation obtained its articles of incorporation through fraud; or
- b. The corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a member or director, if it is established that:

- a. The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;
- b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
- c. The members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;
- d. The corporate assets are being misapplied or wasted; or
- e. The corporation is no longer able to carry out its purposes.

(3) In a proceeding by a creditor if it is established that:

- a. The creditor's claim has been reduced to judgment and execution on the judgment has been returned unsatisfied; or
- b. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

- (1) There are reasonable alternatives to dissolution;
- (2) Dissolution is in the public interest, if the corporation is a charitable or religious corporation; and

- (3) Dissolution is reasonably necessary for the protection of the rights or interests of the members, if any. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1.)

§ 55A-14-31. Procedure for judicial dissolution.

(a) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office, or, if there is none in this State, its registered office, is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1.)

§ 55A-14-32. Receivership.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this State) as a receiver. The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Such powers may include without limitation the power:

- (1) To dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;
- (2) To sue and defend in his own name as receiver of the corporation in all courts of this State; and
- (3) To exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets. (1955, c. 1230; 1993, c. 398, s. 1.)

§ 55A-14-33. Decree of dissolution.

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 55A-14-30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the notification of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08. The corporation's name becomes available for use by another entity as provided in G.S. 55D-21. (1955, c. 1230; 1967, c.

823, s. 23; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1; 2001-358, s. 24; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

§§ 55A-14-34 through 55A-14-39. Reserved for future codification purposes.

Part 4. Miscellaneous.

§ 55A-14-40. Disposition of amounts due to unavailable members and creditors.

Upon liquidation of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found shall be disposed of in accordance with Chapter 116B of the General Statutes. (1955, c. 1230; 1981, c. 682, s. 13; 1993, c. 398, s. 1.)