

Chapter 55A
North Carolina Nonprofit Corporation Act.
ARTICLE 1.

General Provisions.

Part 1. Short Title and Reservation of Power.

§ 55A-1-01. Short title.

This Chapter shall be known and may be cited as the "North Carolina Nonprofit Corporation Act". (1993, c. 398, s. 1.)

§ 55A-1-02. Reservation of power to amend or repeal.

The General Assembly has power to amend or repeal all or part of this Chapter at any time and all domestic and foreign corporations subject to this Chapter are governed by the amendment or repeal. (1993, c. 398, s. 1.)

§§ 55A-1-03 through 55A-1-19. Reserved for future codification purposes.

Part 2. Filing Documents.

§ 55A-1-20. Filing requirements.

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign corporation must be executed:

- (1) By the presiding officer of its board of directors, by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary. (1955, c. 1230; 1967, c. 13, s. 2; c. 823, s. 21; 1985 (Reg. Sess., 1986), c. 801, s. 2; 1993, c. 398, s. 1; 1999-369, s. 2.1; 2001-358, s. 7(a); 2001-387, ss. 32, 155, 173, 175(a); 2001-413, s. 6.)

§ 55A-1-21. Forms.

(a) The Secretary of State may promulgate and furnish on request forms for:

- (1) An application for a certificate of existence;
- (2) A foreign corporation's application for a certificate of authority to conduct affairs in this State;
- (3) A foreign corporation's application for a certificate of withdrawal;
- (4) Designation of Principal Office Address; and
- (5) Corporation's Statement of Change of Principal Office.

If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may promulgate and furnish on request forms for other documents required or permitted to be filed by this Chapter but their use is not mandatory. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 539, s. 9.)

§ 55A-1-22. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document	Fee
(1) Articles of incorporation	\$60.00

1	(2)	Application for reserved name	\$10.00
2	(3)	Notice of transfer of reserved name	\$10.00
3	(4)	Application for registered name	\$10.00
4	(5)	Application for renewal of registered name	\$10.00
5	(6)	Corporation's statement of change of registered agent or	
6		registered office or both	\$ 5.00
7	(7)	Agent's statement of change of registered office for each	
8		affected corporation	\$ 5.00
9	(8)	Agent's statement of resignation	No fee
10	(9)	Designation of registered agent or registered office or both	\$ 5.00
11	(10)	Amendment of articles of incorporation	\$25.00
12	(11)	Restated articles of incorporation without amendment of articles	\$10.00
13	(12)	Restated articles of incorporation with amendment of articles	\$25.00
14	(13)	Articles of merger	\$25.00
15	(14)	Articles of dissolution	\$15.00
16	(15)	Articles of revocation of dissolution	\$10.00
17	(16)	Certificate of administrative dissolution	No fee
18	(17)	Application for reinstatement following administrative	
19		dissolution	\$100.00
20	(18)	Certificate of reinstatement	No fee
21	(19)	Certificate of judicial dissolution	No fee
22	(20)	Application for certificate of authority	\$125.00
23	(21)	Application for amended certificate of authority	\$25.00
24	(22)	Application for certificate of withdrawal	\$10.00
25	(23)	Certificate of revocation of authority to conduct affairs	No fee
26	(24)	Corporation's Statement of Change of Principal Office	\$ 5.00
27	(24a)	Designation of Principal Office Address	\$ 5.00
28	(25)	Articles of correction	\$10.00
29	(26)	Application for certificate of existence or authorization (paper)	\$15.00
30	(26a)	Application for certificate of existence or authorization	
31		(electronic)	\$10.00
32	(27)	Any other document required or permitted to be filed by this	
33		Chapter	\$10.00
34	(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January	
35		1, 2002.	

36
37 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is
38 served on the Secretary under this Chapter. The party to a proceeding causing service of
39 process is entitled to recover this fee as costs if the party prevails in the proceeding.

40 (c) The Secretary of State shall collect the following fees for copying, comparing, and
41 certifying a copy of any filed document relating to a domestic or foreign corporation:

42 (1) One dollar (\$1.00) a page for copying or comparing a copy to the original.

43 (2) Fifteen dollars (\$15.00) for a paper certificate.

44 (3) Ten dollars (\$10.00) for an electronic certificate.

45 (1957, c. 1179; 1967, c. 823, s. 24; 1969, c. 875, s. 10; 1975, 2nd Sess., c. 981, s. 2; 1983, c.
46 713, ss. 39-42; 1991, c. 574, s. 2; 1993, c. 398, s. 1; 1995, c. 539, s. 10; 1997-456, s. 55.3;
47 1997-475, s. 5.2; 1997-485, s. 11; 2001-358, s. 7(c); 2001-387, ss. 173, 175(a); 2001-413, s. 6;
48 2002-126, ss. 29A.27, 29A.28.)

49
50 §§ 55A-1-22.1 through 55A-1-27: Repealed by Session Laws 2001-358, s. 7(b), effective
51 January 1, 2002.

1
2 **§ 55A-1-28. Certificate of existence.**

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

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

- 6 (1) The domestic corporation's corporate name or the foreign corporation's name
7 used in this State;
8 (2) That the domestic corporation is duly incorporated under the law of this
9 State, the date of its incorporation, and the period of its duration if less than
10 perpetual; or that the foreign corporation is authorized to conduct affairs in
11 this State;
12 (3) That the articles of incorporation of a domestic corporation or the certificate
13 of authority of a foreign corporation has not been suspended for failure to
14 comply with the Revenue Act of this State and that the corporation has not
15 been administratively dissolved for failure to comply with the provisions of
16 this Chapter;
17 (4) Repealed by Session Laws c. 539, s. 14.
18 (5) That articles of dissolution have not been filed; and
19 (6) Other facts of record in the office of the Secretary of State that may be
20 requested by the applicant.

21 (c) Subject to any qualification stated in the certificate, a certificate of existence or
22 authorization issued by the Secretary of State may be relied upon as conclusive evidence that
23 the domestic or foreign corporation is in existence or is authorized to conduct affairs in this
24 State. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 539, s. 14.)
25

26 **§ 55A-1-29:** Repealed by Session Laws 2001-358, s. 7(b).
27

28 Part 3. Secretary of State.

29 **§ 55A-1-30. Powers.**

30 The Secretary of State has the power reasonably necessary to perform the duties required of
31 the Secretary of State by this Chapter. (1955, c. 1230; 1993, c. 398, s. 1.)
32

33 **§ 55A-1-31. Interrogatories by Secretary of State.**

34 The Secretary of State may propound to any domestic or foreign corporation which the
35 Secretary of State has reason to believe is subject to the provisions of this Chapter, and to any
36 officer or director thereof, any written interrogatories as may be reasonably necessary and
37 proper to enable the Secretary of State to ascertain whether the corporation is subject to the
38 provisions of this Chapter or has complied with all the provisions of this Chapter applicable to
39 it. The interrogatories shall be answered within 30 days after the mailing thereof, or within
40 such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be
41 full and complete and shall be made in writing and under oath. If the interrogatories are
42 directed to an individual, they shall be answered by the individual, and if directed to a
43 corporation, they shall be answered by the presiding officer of the board of directors, the
44 president, or by another officer of the corporation. The Secretary of State shall certify to the
45 Attorney General, for such action as the Attorney General may deem appropriate, all
46 interrogatories and answers thereto which disclose a violation of any of the provisions of this
47 Chapter, requiring or permitting action by the Attorney General. (1955, c. 1230; 1993, c. 398, s.
48 1.)
49

50 **§ 55A-1-32. Penalties imposed upon corporations, officers, and directors for failure to**
51 **answer interrogatories.**

1 (a) The knowing failure or refusal of a domestic or foreign corporation to answer
2 truthfully and fully, within the time prescribed in this Chapter, interrogatories propounded by
3 the Secretary of State in accordance with the provisions of this Chapter shall constitute grounds
4 for administrative dissolution under G.S. 55A-14-20 or for revocation under G.S. 55A-15-30,
5 as the case may be.

6 (b) Each officer and director of a domestic or foreign corporation who knowingly fails
7 or refuses, within the time prescribed by this Chapter, to answer truthfully and fully
8 interrogatories propounded to him by the Secretary of State in accordance with the provisions
9 of this Chapter shall be guilty of a Class 1 misdemeanor. (1955, c. 1230; 1993, c. 398, s. 1;
10 1994, Ex. Sess., c. 14, s. 37.)
11

12 **§ 55A-1-33. Information disclosed by interrogatories.**

13 Interrogatories propounded by the Secretary of State and the answers thereto shall not be
14 open to public inspection nor shall the Secretary of State disclose any facts or information
15 obtained therefrom except when the Secretary of State's official duty requires disclosure to be
16 made public or when the interrogatories or the answers thereto are required for evidence in any
17 criminal proceeding or in any other action or proceeding by this State. (1993, c. 398, s. 1.)
18

19 **§§ 55A-1-34 through 55A-1-39. Reserved for future codification purposes.**
20

21 Part 4. Definitions.

22 **§ 55A-1-40. Chapter definitions.**

23 In this Chapter unless otherwise specifically provided:

- 24 (1) "Articles of incorporation" include amended and restated articles of
25 incorporation and articles of merger.
- 26 (2) "Board" or "board of directors" means the group of natural persons vested by
27 the corporation with the management of its affairs whether or not the group
28 is designated as directors in the articles of incorporation or bylaws.
- 29 (2a) "Business corporation" or "domestic business corporation" means a
30 corporation as defined in G.S. 55-1-40.
- 31 (3) "Bylaws" means the rules (other than the articles) adopted pursuant to this
32 Chapter for the regulation or management of the affairs of the corporation
33 irrespective of the name or names by which the rules are designated.
- 34 (4) "Charitable or religious corporation" means any corporation that is exempt
35 under section 501(c)(3) of the Internal Revenue Code of 1986 or any
36 successor section, or that is organized exclusively for one or more of the
37 purposes specified in section 501(c)(3) of the Internal Revenue Code of
38 1986 or any successor section and that upon dissolution shall distribute its
39 assets to a charitable or religious corporation, the United States, a state or an
40 entity that is exempt under section 501(c)(3) of the Internal Revenue Code of
41 1986 or any successor section.
- 42 (4a) "Conspicuous" means so written that a reasonable person against whom the
43 writing is to operate should have noticed it. For example, printing in italics
44 or boldface or contrasting color, or typing in capitals or underlined, is
45 conspicuous.
- 46 (5) "Corporation" or "domestic corporation" means a nonprofit corporation
47 subject to the provisions of this Chapter, except a foreign corporation.
- 48 (6) "Delegates" means those persons elected or appointed to vote in a
49 representative assembly for the election of a director or directors or on other
50 matters.
- 51 (7) "Deliver" includes mail.

- 1 (8) "Distribution" means a direct or indirect transfer of money or other property
2 or incurrence of indebtedness by a corporation to or for the benefit of its
3 members, directors, or officers, or to or for the benefit of transferees in
4 liquidation under Article 14 of this Chapter (other than creditors).
- 5 (8a) "Domestic limited liability company" has the same meaning as in G.S.
6 57C-1-03.
- 7 (8b) "Domestic limited partnership" has the same meaning as in G.S. 59-102.
- 8 (9) "Effective date of notice" is defined in G.S. 55A-1-41.
- 9 (9a) "Electronic" has the same meaning as in G.S. 66-312.
- 10 (9b) "Electronic record" has the same meaning as in G.S. 66-312.
- 11 (9c) "Electronic signature" has the same meaning as in G.S. 66-312.
- 12 (10) "Entity" includes:
- 13 a. Any domestic or foreign:
- 14 1. Corporation; business corporation; professional corporation;
- 15 2. Limited liability company;
- 16 3. Profit and nonprofit unincorporated association, chapter or
17 other organizational unit; and
- 18 4. Business trust, estate, partnership, trust;
- 19 b. Two or more persons having a joint or common economic interest;
20 and
- 21 c. The United States, and any state and foreign government.
- 22 (10a) "Foreign business corporation" means a foreign corporation as defined in
23 G.S. 55-1-40.
- 24 (11) "Foreign corporation" means a corporation (with or without capital stock)
25 organized under a law other than the law of this State for purposes for which
26 a corporation might be organized under this Chapter.
- 27 (11a) "Foreign limited liability company" has the same meaning as in G.S.
28 57C-1-03.
- 29 (11b) "Foreign limited partnership" has the same meaning as in G.S. 59-102.
- 30 (12) "Governmental subdivision" includes authority, county, district, and
31 municipality.
- 32 (13) "Includes" denotes a partial definition.
- 33 (14) "Individual" denotes a natural person legally competent to act and also
34 includes the estate of an incompetent or deceased individual.
- 35 (15) "Means" denotes an exhaustive definition.
- 36 (16) "Member" means a person who is, by the articles of incorporation or bylaws
37 of the corporation, either (i) specifically designated as a member or (ii)
38 included in a category of persons specifically designated as members. A
39 person is not a member solely by reason of having voting rights or other
40 rights associated with membership.
- 41 (17) "Nonprofit corporation" means a corporation intended to have no income or
42 intended to have income none of which is distributable to its members,
43 directors, or officers, except as permitted by Article 13 of this Chapter, and
44 includes all associations without capital stock formed under Subchapter V of
45 Chapter 54 of the General Statutes or under any act or acts replaced thereby.
- 46 (18) "Notice" includes demand and is defined in G.S. 55A-1-41.
- 47 (19) "Person" includes individual and entity.
- 48 (20) "Principal office" means the office (in or out of this State) where the
49 principal offices of a domestic or foreign corporation are located, as most
50 recently designated by the domestic or foreign corporation in its articles of
51 incorporation, a Designation of Principal Office Address form, a

1 Corporation's Statement of Change of Principal Office Address form, or in
2 the case of a foreign corporation, its application for a certificate of authority.

3 (21) "Proceeding" includes civil suit and criminal, administrative, and
4 investigatory action.

5 (22) "Record date" means the date established under Article 7 of this Chapter on
6 which a corporation determines the identity of its members for the purposes
7 of this Chapter.

8 (23) "Secretary" means the corporate officer to whom the board of directors has
9 delegated responsibility under G.S. 55A-8-40(c) for custody of the minutes
10 of the meetings of the board of directors and of the members and for
11 authenticating records of the corporation.

12 (24) "State," when referring to a part of the United States, includes a state and
13 commonwealth (and their agencies and governmental subdivisions) and a
14 territory, and insular possession (and their agencies and governmental
15 subdivisions) of the United States.

16 (24a) "Unincorporated entity" means a domestic or foreign limited liability
17 company, a domestic or foreign limited partnership, a registered limited
18 liability partnership or foreign limited liability partnership as defined in G.S.
19 59-32, or any other partnership as defined in G.S. 59-36, whether or not
20 formed under the laws of this State.

21 (25) "United States" includes district, authority, bureau, commission, department,
22 and any other agency of the United States.

23 (26) "Vote" includes authorization by written ballot and written consent,
24 including electronic ballot and electronic consent. (1955, c. 1230; 1959, c.
25 1161, s. 4; 1985 (Reg. Sess., 1986), c. 801, s. 1; 1993, c. 398, s. 1; 1995, c.
26 539, s. 15; 1999-369, s. 2.2; 2001-358, s. 5(b); 2001-387, ss. 33, 34, 35, 173,
27 175(a); 2001-413, s. 6; 2001-487, s. 62(e); 2008-37, s. 1.)

28
29 **§ 55A-1-41. Notice.**

30 (a) Notice under this Chapter shall be in writing unless oral notice is authorized in the
31 corporation's articles of incorporation or bylaws and written notice is not specifically required
32 by this Chapter.

33 (b) Notice may be communicated in person; by electronic means; or by mail or private
34 carrier. If these forms of personal notice are impracticable as to one or more persons, notice
35 may be communicated to such persons by publishing notice in a newspaper, or by radio,
36 television, or other form of public broadcast communication, in the county where the
37 corporation has its principal place of business in the State, or if it has no principal place of
38 business in the State, the county where it has its registered office.

39 (c) Written notice by a domestic or foreign corporation to its member is effective when
40 deposited in the United States mail with postage thereon prepaid and correctly addressed to the
41 member's address shown in the corporation's current record of members. To the extent the
42 corporation pursuant to G.S. 55A-1-70 and the member have agreed, notice by a domestic
43 corporation to its member in the form of an electronic record sent by electronic means is
44 effective when it is sent as provided in G.S. 66-325. A member may terminate any such
45 agreement at any time on a prospective basis effective upon written notice of termination to the
46 corporation or upon such later date as may be specified in the notice.

47 (d) Written notice to a domestic or foreign corporation (authorized to conduct affairs in
48 this State) may be addressed to its registered agent at its registered office or to the corporation
49 or its secretary at its principal office shown in its articles of incorporation, the Designation of
50 Principal Office Address form, or any Corporation's Statement of Change of Principal Office
51 Address form filed with the Secretary of State.

1 (e) Except as provided in subsection (c) of this section, written notice is effective at the
2 earliest of the following:

- 3 (1) When received;
- 4 (2) Five days after its deposit in the United States mail, as evidenced by the
5 postmark or otherwise, if mailed with at least first-class postage thereon
6 prepaid and correctly addressed;
- 7 (3) On the date shown on the return receipt, if sent by registered or certified
8 mail, return receipt requested, and the receipt is signed by or on behalf of the
9 addressee;
- 10 (4) If mailed with less than first-class postage, 30 days after its deposit in the
11 United States mail, as evidenced by the postmark or otherwise, if mailed
12 with postage thereon prepaid and correctly addressed;
- 13 (5) When delivered to the member's address shown in the corporation's current
14 list of members.

15 In the case of notice in the form of an electronic record sent by electronic means, the time
16 of receipt shall be determined as provided in G.S. 66-325.

17 (f) Written notice is correctly addressed to a member of a domestic or foreign
18 corporation if addressed to the member's address shown in the corporation's current list of
19 members. In the case of members who are residents of the same household and who have the
20 same address, the corporation's bylaws may provide that a single notice may be given to such
21 members jointly.

22 (g) Oral notice is effective when actually communicated to the person entitled to oral
23 notice.

24 (h) If this Chapter prescribes notice requirements for particular circumstances, those
25 requirements govern. If articles of incorporation or bylaws prescribe notice requirements not
26 inconsistent with this section or other provisions of this Chapter, those requirements govern.

27 (i) Written notice need not be provided in a separate document and may be included as
28 part of a newsletter, magazine, or other publication regularly sent to members if conspicuously
29 identified as a notice. (1993, c. 398, s. 1; 1995, c. 539, s. 16; 2008-37, s. 2.)
30

31 **§§ 55A-1-42 through 55A-1-49. Reserved for future codification purposes.**
32

33 Part 5. Private Foundations.

34 **§ 55A-1-50. Private Foundations.**

35 Except where otherwise determined by a court of competent jurisdiction, a corporation that
36 is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

- 37 (1) Shall distribute such amounts for each taxable year at such time and in such
38 manner as not to subject the corporation to tax under section 4942 of the
39 Code.
- 40 (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of
41 the Code.
- 42 (3) Shall not retain any excess business holdings as defined in section 4943(c) of
43 the Code.
- 44 (4) Shall not make any investments in such manner as to subject the corporation
45 to tax under section 4944 of the Code.
- 46 (5) Shall not make any taxable expenditures as defined in section 4945(d) of the
47 Code.

48 All references in this section to sections of the Code shall be to sections of the Internal
49 Revenue Code of 1986 as amended from time to time, or to corresponding provisions of
50 subsequent internal revenue laws of the United States. (1955, c. 1230; 1957, c. 783, s. 7; 1969,

1 c. 875, s. 4; 1971, c. 1136, s. 1; 1977, c. 236, s. 1, c. 663; 1979, c. 1027; 1985, c. 505; 1985
2 (Reg. Sess., 1986), c. 801, ss. 8-14; 1993, c. 398, s. 1.)

3
4 **§§ 55A-1-51 through 55A-1-59. Reserved for future codification purposes.**

5
6 Part 6. Judicial Relief.

7 **§ 55A-1-60. Judicial relief.**

8 (a) If for any reason it is impracticable for any corporation to call or conduct a meeting
9 of its members, delegates, or directors, or otherwise obtain their consent, in the manner
10 prescribed by its articles of incorporation, bylaws, or this Chapter, then upon petition of a
11 director, officer, delegate, member, or the Attorney General, the superior court may order that
12 such a meeting be held or that a written ballot or other method be used for obtaining the vote of
13 members, delegates, or directors, in such a manner as the court finds fair and equitable under
14 the circumstances.

15 (b) The court shall, in an order issued pursuant to this section, provide for a method of
16 notice reasonably designed to give actual notice to all such persons who would be entitled to
17 notice of a meeting held pursuant to the articles of incorporation, bylaws, and this Chapter, and
18 notice given in this manner shall be effective whether or not it results in actual notice to all
19 such persons or conforms to the notice requirements that would otherwise apply. Notice shall
20 be given in this manner to all persons determined by the court to be members or directors.

21 (c) The order issued pursuant to this section may, to the extent the court finds it
22 reasonably required under the circumstances, dispense with any requirement relating to the
23 holding of or voting at meetings or obtaining votes, including any requirement as to quorums or
24 as to the number or percentage of votes needed for approval, that would otherwise be imposed
25 by the articles of incorporation, bylaws, or this Chapter.

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

32 (e) Any meeting or other method of obtaining the vote of members, delegates, or
33 directors conducted pursuant to an order issued under this section, and that complies with all
34 the provisions of the order, is for all purposes a valid meeting or vote, as the case may be, and
35 shall have the same force and effect as if it complied with every requirement imposed by the
36 articles of incorporation, bylaws, and this Chapter. (1993, c. 398, s. 1.)

37
38 Part 7. Miscellaneous.

39 **§ 55A-1-70. Electronic transactions.**

40 For purposes of applying Article 40 of Chapter 66 of the General Statutes to transactions
41 under this Chapter, a corporation may agree to conduct a transaction by electronic means
42 through provision in its articles of incorporation or bylaws or by action of its board of directors.
43 (2008-37, s. 3.)

44
45 Article 2.
46 Organization.

47 **§ 55A-2-01. Incorporators.**

48 One or more persons may act as the incorporator or incorporators of a corporation by
49 delivering articles of incorporation to the Secretary of State for filing. (1955, c. 1230; 1969, c.
50 875, s. 1; 1971, c. 1231, s. 1; 1993, c. 398, s. 1.)

1 **§ 55A-2-02. Articles of incorporation.**

2 (a) The articles of incorporation shall set forth:

- 3 (1) A corporate name for the corporation that satisfies the requirements of G.S.
4 55D-20 and G.S. 55D-21;
- 5 (2) If the corporation is a charitable or religious corporation, a statement to that
6 effect if it was incorporated on or after the effective date of this Chapter;
- 7 (3) The street address, and the mailing address if different from the street
8 address, of the corporation's initial registered office, the county in which the
9 initial registered office is located, and the name of the corporation's initial
10 registered agent at that address;
- 11 (4) The name and address of each incorporator;
- 12 (5) Whether or not the corporation will have members;
- 13 (6) Provisions not inconsistent with law regarding the distribution of assets on
14 dissolution; and
- 15 (7) The street address, and the mailing address, if different from the street
16 address, of the principal office, and the county in which the principal office
17 is located.

18 (b) The articles of incorporation may set forth any provision that under this Chapter is
19 required or permitted to be set forth in the bylaws, and may also set forth:

- 20 (1) The purpose or purposes for which the corporation is organized, which may
21 be, either alone or in combination with other purposes, the transaction of any
22 lawful activity;
- 23 (2) The names and addresses of the individuals who are to serve as the initial
24 directors;
- 25 (3) Provisions not inconsistent with law regarding:
- 26 a. Managing and regulating the affairs of the corporation;
- 27 b. Defining, limiting, and regulating the powers of the corporation, its
28 board of directors, and members (or any class of members); and
- 29 c. The characteristics, qualifications, rights, limitations, and obligations
30 attaching to each or any class of members;
- 31 (4) A provision limiting or eliminating the personal liability of any director for
32 monetary damages arising out of an action whether by or in the right of the
33 corporation or otherwise for breach of any duty as a director. No such
34 provision shall be effective with respect to (i) acts or omissions that the
35 director at the time of the breach knew or believed were clearly in conflict
36 with the best interests of the corporation, (ii) any liability under G.S.
37 55A-8-32 or G.S. 55A-8-33, (iii) any transaction from which the director
38 derived an improper personal financial benefit, or (iv) acts or omissions
39 occurring prior to the date the provision became effective. As used herein,
40 the term "improper personal financial benefit" does not include a director's
41 reasonable compensation or other reasonable incidental benefit for or on
42 account of his service as a director, trustee, officer, employee, independent
43 contractor, attorney, or consultant of the corporation. A provision permitted
44 by this Chapter in the articles of incorporation, bylaws, or a contract or
45 resolution indemnifying or agreeing to indemnify a director against personal
46 liability shall be fully effective whether or not there is a provision in the
47 articles of incorporation limiting or eliminating personal liability.

48 (c) The articles of incorporation need not set forth any of the corporate powers
49 enumerated in this Chapter. (1955, c. 1230; 1957, c. 979, s. 11; 1959, c. 1161, s. 5; 1985 (Reg.
50 Sess., 1986), c. 801, ss. 3, 4; 1993, c. 398, s. 1; 1995, c. 539, s. 17; 2001-358, s. 20; 2001-387,
51 ss. 173, 175(a); 2001-413, s. 6.)

1
2 **§ 55A-2-03. Incorporation.**

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

5 (b) The Secretary of State's filing of the articles of incorporation is conclusive proof
6 that the incorporators satisfied all conditions precedent to incorporation except in a proceeding
7 by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.
8 (1955, c. 1230; 1967, c. 13, s. 4; 1993, c. 398, s. 1.)
9

10 **§ 55A-2-04. Reserved for future codification purposes.**

11
12 **§ 55A-2-05. Organization of corporation.**

13 (a) After incorporation:

14 (1) If initial directors are named in the articles of incorporation, the initial
15 directors shall hold an organizational meeting at the call of a majority of the
16 directors to complete the organization of the corporation by appointing
17 officers, adopting bylaws, and conducting any other business brought before
18 the meeting.

19 (2) If initial directors are not named in the articles of incorporation, the
20 incorporator or incorporators shall hold an organizational meeting at the call
21 of a majority of the incorporators (i) to elect directors and complete the
22 organization of the corporation, or (ii) to elect a board of directors who shall
23 complete the organization of the corporation.

24 (b) Action required or permitted by this Chapter to be taken by incorporators at an
25 organizational meeting may be taken without a meeting if the action taken is evidenced by one
26 or more written consents describing the action taken and signed by each incorporator. If the
27 incorporators act at a meeting, the notice and procedural provisions of G.S. 55A-8-22,
28 55A-8-23, and 55A-8-24 shall apply.

29 (c) An organizational meeting may be held in or out of this State. (1955, c. 1230; 1969,
30 c. 875, s. 2; 1985 (Reg. Sess., 1986), c. 801, s. 6; 1993, c. 398, s. 1.)
31

32 **§ 55A-2-06. Bylaws.**

33 (a) The incorporators or board of directors of a corporation shall adopt initial bylaws
34 for the corporation.

35 (b) The bylaws may contain any provision for regulating and managing the affairs of
36 the corporation that is not inconsistent with law or the articles of incorporation. (1955, c. 1230;
37 1993, c. 398, s. 1.)
38

39 **§ 55A-2-07. Emergency bylaws.**

40 (a) Unless the articles of incorporation provide otherwise, the board of directors of a
41 corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined
42 in subsection (d) of this section. The emergency bylaws, which are subject to amendment or
43 repeal by the members, may make all provisions necessary for managing the corporation during
44 the emergency, including:

- 45 (1) Procedures for calling a meeting of the board of directors;
46 (2) Quorum requirements for the meeting; and
47 (3) Designation of additional or substitute directors.

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

1 (c) Corporate action taken in good faith in accordance with the emergency bylaws binds
2 the corporation, and the fact that the action was taken pursuant to emergency bylaws shall not
3 be used to impose liability on a corporate director, officer, employee, or agent.

4 (d) An emergency exists for purposes of this section if a quorum of the corporation's
5 directors cannot readily be assembled because of some catastrophic event. (1993, c. 398, s. 1.)
6

7 Article 3.

8 Purposes and Powers.

9 **§ 55A-3-01. Purposes.**

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

12 (b) A corporation engaging in an activity that is subject to regulation under another
13 statute of this State may incorporate under this Chapter only if permitted by, and subject to all
14 limitations of, the other statute. (1955, c. 1230; 1993, c. 398, s. 1.)
15

16 **§ 55A-3-02. General powers.**

17 (a) Unless its articles of incorporation or this Chapter provides otherwise, every
18 corporation has perpetual duration and succession in its corporate name and has the same
19 powers as an individual to do all things necessary or convenient to carry out its affairs,
20 including without limitation, power:

- 21 (1) To sue and be sued, complain and defend in its corporate name;
- 22 (2) To have a corporate seal, which may be altered at will, and to use it, or a
23 facsimile of it, by impressing or affixing it or in any other manner
24 reproducing it;
- 25 (3) To make and amend bylaws not inconsistent with its articles of incorporation
26 or with the laws of this State, for regulating and managing the affairs of the
27 corporation;
- 28 (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve,
29 use, and otherwise deal with, real or personal property, or any legal or
30 equitable interest in property, wherever located;
- 31 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of
32 all or any part of its property;
- 33 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote,
34 use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and
35 with shares or other interests in, or obligations of, any other entity;
- 36 (7) To make contracts and guarantees, incur liabilities, borrow money, issue its
37 notes, bonds, and other obligations, and secure any of its obligations by
38 mortgage or pledge of any of its property, franchises, or income;
- 39 (8) To lend money, invest and reinvest its funds, and receive and hold real and
40 personal property as security for repayment, except as limited by G.S.
41 55A-8-32;
- 42 (9) To be a promoter, partner, member, associate or manager of any partnership,
43 joint venture, trust, or other entity;
- 44 (10) To conduct its affairs, locate offices, and exercise the powers granted by this
45 Chapter within or without this State;
- 46 (11) To elect or appoint directors, officers, employees, and agents of the
47 corporation, define their duties, and fix their compensation;
- 48 (12) To pay pensions and establish pension plans, pension trusts, and other
49 benefit and incentive plans for any or all of its current or former directors,
50 officers, employees, and agents;

- 1 (13) To make donations for the public welfare or for charitable, religious,
2 cultural, scientific, or educational purposes, and to make payments or
3 donations not inconsistent with law for other purposes that further the
4 corporate interest;
- 5 (14) To impose dues, assessments, admission and transfer fees upon its members;
- 6 (15) To establish conditions for admission of members, admit members and issue
7 memberships;
- 8 (16) To carry on a business;
- 9 (17) To procure insurance for its benefit on the life or physical or mental ability
10 of any director, officer or employee and, in the case of a charitable or
11 religious corporation, any sponsor, contributor, pledgor, student or former
12 student whose death or disability might cause financial loss to the
13 corporation, and for these purposes the corporation is deemed to have an
14 insurable interest in each such person; and to procure insurance for its
15 benefit on the life or physical or mental ability of any other person in whom
16 it has an insurable interest;
- 17 (18) To engage in any lawful activity that will aid governmental policy;
- 18 (19) To do all things necessary or convenient, not inconsistent with law, to
19 further the activities and affairs of the corporation.

20 (b) It shall not be necessary to set forth in the articles of incorporation any of the
21 powers enumerated in this section. (1955, c. 1230; 1957, c. 783, s. 7; 1969, c. 875, s. 4; 1971, c.
22 1136, s. 1; 1977, c. 236, s. 1, c. 663; 1979, c. 1027; 1985, c. 505; 1985 (Reg. Sess., 1986), c.
23 801, ss. 8-14; 1993, c. 398, s. 1.)

24
25 **§ 55A-3-03. Emergency powers.**

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

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

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

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

40 (c) Corporate action taken in good faith during an emergency under this section, to
41 further the ordinary affairs of the corporation, binds the corporation and the fact that the action
42 is taken pursuant to this section shall not be used to impose liability on a corporate director,
43 officer, employee, or agent.

44 (d) An emergency exists for purposes of this section if a quorum of the corporation's
45 directors cannot readily be assembled because of some catastrophic event. (1993, c. 398, s. 1.)

46
47 **§ 55A-3-04. Ultra vires.**

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

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

- 1 (1) In a proceeding by a member or a director against the corporation to enjoin
2 the act;
- 3 (2) In a proceeding by the corporation, directly, derivatively, or through a
4 receiver, trustee, or other legal representative, against an incumbent or
5 former director, officer, employee, or agent of the corporation; or
- 6 (3) In a proceeding by the Attorney General under G.S. 55A-14-30.

7 (c) In a proceeding by a member or a director under subdivision (b)(1) of this section to
8 enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and
9 if all affected persons are parties to the proceeding, and may award damages for loss (other
10 than anticipated profits) suffered by the corporation or another party because of enjoining the
11 unauthorized act. (1955, c. 1230; 1993, c. 398, s. 1.)
12

13 **§ 55A-3-05. Exercise of corporate franchises not granted.**

14 The Attorney General may upon the Attorney General's own information or upon complaint
15 of a private party bring an action in the name of the State to restrain any person from exercising
16 corporate franchises not granted. (1985 (Reg. Sess., 1986), c. 801, s. 5; 1993, c. 398, s. 1.)
17

18 **§ 55A-3-06. Special powers; public parks and drives and certain recreational**
19 **corporations.**

20 Any corporation heretofore or hereafter formed for the purpose of creating and maintaining
21 public parks and drives shall have full power and authority to lay out, manage, and control
22 parks and drives within the State, under any rules and regulations as the corporation may
23 prescribe and shall have power to purchase and hold property and take gifts or donations for
24 such purpose. It may hold property and exercise such powers and trust for any town, city,
25 township, or county, in connection with which the parks and drives shall be maintained. Any
26 city, town, township, or county, holding such property, may vest and transfer the same to any
27 such corporation for the purpose of controlling and maintaining the same as public parks and
28 drives under any regulations and subject to any conditions as may be determined upon by the
29 city, town, township, or county. All such lands as the corporation may acquire shall be held in
30 trust as public parks and drives, and shall be held open to the public under any rules, laws, and
31 regulations as the corporation may adopt through its board of directors, and it shall have power
32 and authority to make and adopt all laws and regulations as it may determine upon for the
33 reasonable management of such parks and drives. The terms "public parks and drives" as used
34 in this section shall be construed so as to include playgrounds, recreational centers, and other
35 recreational activities and facilities which may be provided and established under the
36 sponsorship of any county, city, town, township, or school district in North Carolina and
37 constructed or established with the assistance of the government of the United States or any
38 agency thereof. (1955, c. 1230; 1973, c. 695, s. 9; 1993, c. 398, s. 1.)
39

40 **§ 55A-3-07. Certain corporations subject to Public Records Act and Open Meetings Law.**

41 Any of the following corporations organized under this Chapter is subject to the Public
42 Records Act (Chapter 132 of the General Statutes) and the Open Meetings Law (Article 33C of
43 Chapter 143 of the General Statutes):

- 44 (1) A corporation organized under the terms of any consent decree and final
45 judgment in any civil action calling on a state officer to create the
46 corporation, for the purposes of receipt and distribution of funds allocated to
47 the State of North Carolina to provide economic impact assistance on
48 account of one industry.
- 49 (2) A corporation organized upon the request of the State for the sole purpose of
50 financing projects for public use. (1999-2, s. 7; 2001-84, s. 4.)
51

1 Article 4.

2 Names.

3 §§ 55A-4-01 through 55A-4-05: Repealed by Session Laws 2001-358, s. 23, effective January
4 1, 2002.

5
6 Article 5.

7 Office and Agent.

8 § 55A-5-01. **Registered office and registered agent.**

9 Each corporation must maintain a registered office and registered agent as required by
10 Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of
11 State under that Article. (1955, c. 1230; 1957, c. 979, s. 20; 1993, c. 398, s. 1; 1995, c. 400, s.
12 1; 2000-140, s. 101(d); 2001-358, s. 48(a); 2001-387, s. 173; 2001-413, s. 6.)

13
14 § 55A-5-02: Repealed by Session Laws 2001-358, s. 48.

15
16 § 55A-5-02.1: Transferred to § 55A-16-23 by Session Laws 2001-358, s. 48(d).

17
18 §§ 55A-5-03 through 55A-5-04: Repealed by Session Laws 2001-358, s. 48(c), effective
19 January 1, 2002.

20
21 Article 6.

22 Members and Memberships.

23 Part 1. Admission of Members.

24 § 55A-6-01. **Members.**

25 (a) A corporation may have one or more classes of members or may have no members.

26 (b) No person shall be admitted as a member without the person's consent. (1955, c.
27 1230; 1993, c. 398, s. 1.)

28
29 §§ 55A-6-02 through 55A-6-19. **Reserved for future codification purposes.**

30
31 Part 2. Members' Rights and Obligations.

32 § 55A-6-20. **Designations, qualifications, rights, and obligations of members.**

33 If a corporation has members, the designations, qualifications, rights, and obligations of
34 members shall be set forth in or authorized by the articles of incorporation or bylaws, and may
35 include any provisions not inconsistent with law or the articles of incorporation with respect to:

- 36 (1) Conditions of admission and membership;
- 37 (2) Voting rights and the manner of exercising voting rights;
- 38 (3) The relative rights and obligations of members among themselves, to the
39 corporation, and with respect to the property of the corporation;
- 40 (4) The manner of terminating membership in the corporation;
- 41 (5) The rights and obligations of the members and the corporation upon such
42 termination;
- 43 (6) The transferability or nontransferability of memberships; and
- 44 (7) Any other matters.

45 Except as otherwise provided in or authorized by the articles of incorporation or bylaws, all
46 members shall have the same designations, qualifications, rights, and obligations. (1955, c.
47 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1.)

48
49 § 55A-6-21. **Prohibition of stock.**

50 A corporation shall neither authorize nor issue shares of stock. (1955, c. 1230; 1985 (Reg.
51 Sess., 1986), c. 801, s. 32; 1993, c. 398, s. 1.)

1
2 **§ 55A-6-22. Member's liability to third parties.**

3 A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or
4 obligations of the corporation. (1993, c. 398, s. 1.)
5

6 **§ 55A-6-23. Member's liability for dues, assessments, and fees.**

7 A member may become liable to the corporation for dues, assessments, or fees; provided,
8 however, that a provision in the articles of incorporation or bylaws or a resolution adopted by
9 the board of directors authorizing or imposing dues, assessments, or fees does not, of itself,
10 create liability. (1993, c. 398, s. 1.)
11

12 **§ 55A-6-24. Creditor's action against member.**

13 (a) A creditor of a corporation shall not bring a proceeding to enforce any liability of a
14 member to the corporation unless final judgment has been rendered in favor of the creditor
15 against the corporation and execution has been returned unsatisfied in whole or in part or unless
16 a proceeding against the corporation would be futile.

17 (b) All creditors of the corporation, with or without reducing their claims to judgment,
18 may intervene in any creditor's proceeding brought under subsection (a) of this section to
19 collect and apply the proceeds of obligations owed to the corporation. Any or all members who
20 are indebted to the corporation may be joined in such proceeding. (1993, c. 398, s. 1.)
21

22 **§§ 55A-6-25 through 55A-6-29. Reserved for future codification purposes.**
23

24 Part 3. Resignation and Termination.

25 **§ 55A-6-30. Resignation.**

26 (a) Any member may resign at any time.

27 (b) The resignation of a member does not relieve the member from any obligations
28 incurred or commitments made to the corporation prior to resignation. (1993, c. 398, s. 1.)
29

30 **§ 55A-6-31. Termination, expulsion, and suspension.**

31 (a) No member of a corporation may be expelled or suspended, and no membership
32 may be terminated or suspended, except in a manner that is fair and reasonable and is carried
33 out in good faith.

34 (b) Any proceeding challenging an expulsion, suspension, or termination shall be
35 commenced within one year after the member receives notice of the expulsion, suspension, or
36 termination.

37 (c) A member who has been expelled or suspended may be liable to the corporation for
38 dues, assessments, or fees as a result of obligations incurred or commitments made by the
39 member prior to expulsion or suspension. (1955, c. 1230; 1993, c. 398, s. 1.)
40

41 **§§ 55A-6-32 through 55A-6-39. Reserved for future codification purposes.**
42

43 Part 4. Delegates.

44 **§ 55A-6-40. Delegates.**

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

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

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

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

- 1 (3) Carrying on corporate activities during and between meetings of delegates.
2 (1993, c. 398, s. 1.)
3

4 Article 7.

5 Members' Meetings and Voting; Derivative Proceedings.

6 Part 1. Meetings and Action Without Meetings.

7 **§ 55A-7-01. Annual and regular meetings.**

8 (a) A corporation having members with the right to vote for directors shall hold a
9 meeting of such members annually.

10 (b) A corporation with members may hold regular membership meetings at the times
11 stated in or fixed in accordance with the bylaws.

12 (c) Annual and regular membership meetings may be held in or out of this State at the
13 place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in
14 accordance with the bylaws, annual and regular meetings shall be held at the corporation's
15 principal office.

16 (d) At annual and regular meetings, the members shall consider and act upon such
17 matters as may be raised consistent with the notice requirements of G.S. 55A-7-05 and G.S.
18 55A-7-22(d).

19 (e) The failure to hold an annual or regular meeting at a time stated in or fixed in
20 accordance with the corporation's bylaws does not affect the validity of any corporate action.
21 (1955, c. 1230; 1993, c. 398, s. 1.)
22

23 **§ 55A-7-02. Special meeting.**

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

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

27 (2) Within 30 days after the holders of at least ten percent (10%) of all the votes
28 entitled to be cast on any issue proposed to be considered at the proposed
29 special meeting sign, date, and deliver to the corporation's secretary one or
30 more written demands for the meeting describing the purpose or purposes
31 for which it is to be held.

32 (b) If not otherwise fixed under G.S. 55A-7-03 or G.S. 55A-7-07, the record date for
33 determining members entitled to demand a special meeting is the date the first member signs
34 the demand.

35 (c) Special meetings of members may be held in or out of this State at the place stated
36 in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the
37 bylaws, special meetings shall be held at the corporation's principal office.

38 (d) Only those matters that are within the purpose or purposes described in the meeting
39 notice required by G.S. 55A-7-05 may be acted upon at a special meeting of members. (1955,
40 c. 1230; 1993, c. 398, s. 1.)
41

42 **§ 55A-7-03. Court-ordered meeting.**

43 (a) The superior court of the county where a corporation's principal office, or, if there is
44 none in this State, its registered office, is located may, after notice is given to the corporation
45 and upon such further notice and opportunity to be heard, if any, as the court may deem
46 appropriate under the circumstances, summarily order a meeting to be held:

47 (1) On application of any member if an annual meeting was not held within 15
48 months after the corporation's last annual meeting; or

49 (2) On application of a member who signed a demand for a special meeting
50 valid under G.S. 55A-7-02, if the corporation has not held the meeting as
51 required by that section.

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

7 (c) If the court orders a meeting, it may also order the corporation to pay all or part of
8 the member's costs (including reasonable attorneys' fees) incurred to obtain the order. (1993, c.
9 398, s. 1.)

10
11 **§ 55A-7-04. Action by written consent.**

12 (a) Action required or permitted by this Chapter to be taken at a meeting of members
13 may be taken without a meeting if the action is taken by all members entitled to vote on the
14 action. The action shall be evidenced by one or more written consents describing the action
15 taken, signed before or after such action by all members entitled to vote thereon, and delivered
16 to the corporation for inclusion in the minutes or filing with the corporate records. To the extent
17 the corporation has agreed pursuant to G.S. 55A-1-70, a member's consent to action taken
18 without a meeting may be in electronic form and delivered by electronic means.

19 (b) If not otherwise determined under G.S. 55A-7-03 or G.S. 55A-7-07, the record date
20 for determining members entitled to take action without a meeting is the date the first member
21 signs the consent under subsection (a) of this section.

22 (c) A consent signed under this section has the effect of a meeting vote and may be
23 described as such in any document. (1977, c. 193, s. 2; 1993, c. 398, s. 1; 2008-37, s. 4.)

24
25 **§ 55A-7-05. Notice of meeting.**

26 (a) A corporation shall give notice of meetings of members by any means that is fair
27 and reasonable and consistent with its bylaws.

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

32 (c) Notice is fair and reasonable if:

33 (1) The corporation gives notice to all members entitled to vote at the meeting
34 of the place, date, and time of each annual, regular, and special meeting of
35 members no fewer than 10, or, if notice is mailed by other than first class,
36 registered or certified mail, no fewer than 30, nor more than 60 days before
37 the meeting date;

38 (2) Notice of an annual or regular meeting includes a description of any matter
39 or matters that shall be approved by the members under G.S. 55A-8-31,
40 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or 55A-14-02;
41 and

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

44 (d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of
45 members is adjourned to a different date, time, or place, notice need not be given of the new
46 date, time, or place, if the new date, time, or place is announced at the meeting before
47 adjournment. If a new record date for the adjourned meeting is or must be fixed under G.S.
48 55A-7-07, however, notice of the adjourned meeting shall be given under this section to the
49 members of record entitled to vote at the meeting as of the new record date.

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

- 1 (1) Requested in writing to do so by a person or persons entitled to call a special
2 meeting pursuant to G.S. 55A-7-02; and
3 (2) The request is received by the secretary or president of the corporation at
4 least 10 days before the corporation gives notice of the meeting. (1955, c.
5 1230; 1993, c. 398, s. 1.)
6

7 **§ 55A-7-06. Waiver of notice.**

8 (a) A member may waive any notice required by this Chapter, the articles of
9 incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall
10 be in writing, be signed by the member entitled to the notice, and be delivered to the
11 corporation for inclusion in the minutes or filing with the corporate records.

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

- 13 (1) Waives objection to lack of notice or defective notice of the meeting, unless
14 the member at the beginning of the meeting objects to holding the meeting
15 or conducting business at the meeting; and
16 (2) Waives objection to consideration of a particular matter at the meeting that is
17 not within the purpose or purposes described in the meeting notice, unless
18 the member objects to considering the matter before it is voted upon. (1955,
19 c. 1230; 1993, c. 398, s. 1.)
20

21 **§ 55A-7-07. Record date.**

22 (a) The bylaws of a corporation may fix or provide the manner of fixing a date as the
23 record date for determining the members entitled to notice of a members' meeting. If the
24 bylaws do not fix or provide for fixing a record date, the board of directors may fix a future
25 date as the record date. If no record date is fixed, members at the close of business on the
26 business day preceding the day on which notice is given are entitled to notice of the meeting.

27 (b) The bylaws of a corporation may fix or provide the manner of fixing a date as the
28 record date for determining the members entitled to vote at a members' meeting. If the bylaws
29 do not fix or provide for fixing a record date, the board of directors may fix a future date as the
30 record date. If no record date is fixed, members on the date of the meeting who are otherwise
31 eligible to vote are entitled to vote at the meeting.

32 (c) The bylaws may fix or provide the manner for determining a date as the record date
33 for the purpose of determining the members entitled to any rights in respect of any other lawful
34 action. If the bylaws do not fix or provide for fixing a record date, the board may fix in
35 advance the record date. If no record date is fixed, members at the close of business on the day
36 on which the board adopts the resolution relating to such action, or the 60th day prior to the
37 date of such action, whichever is later, are entitled to such rights.

38 (d) A record date fixed under this section shall not be more than 70 days before the
39 meeting or action for which a determination of members is required.

40 (e) A determination of members entitled to notice of or to vote at a membership
41 meeting is effective for any adjournment of the meeting unless the board fixes a new date for
42 determining the right to notice or the right to vote, which it shall do if the meeting is adjourned
43 to a date more than 120 days after the date fixed for the original meeting.

44 (f) If a court orders a meeting adjourned to a date more than 120 days after the date
45 fixed for the original meeting, it may provide that the original record date for notice or voting
46 continues in effect or it may fix a new record date for notice or voting. (1993, c. 398, s. 1.)
47

48 **§ 55A-7-08. Action by written ballot.**

49 (a) Unless prohibited or limited by the articles of incorporation or bylaws and without
50 regard to the requirements of G.S. 55A-7-04, any action that may be taken at any annual,
51 regular, or special meeting of members may be taken without a meeting if the corporation

1 delivers a written ballot to every member entitled to vote on the matter. Any requirement that
2 any vote of the members be made by written ballot may be satisfied by a ballot submitted by
3 electronic transmission, including electronic mail, provided that such electronic transmission
4 shall either set forth or be submitted with information from which it can be determined that the
5 electronic transmission was authorized by the member or the member's proxy.

6 (b) A written ballot shall:

7 (1) Set forth each proposed action; and

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

9 (c) Approval by written ballot pursuant to this section shall be valid only when the
10 number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting
11 authorizing the action, and the number of approvals equals or exceeds the number of votes that
12 would be required to approve the matter at a meeting at which the same total number of votes
13 were cast.

14 (d) All solicitations for votes by written ballot shall indicate the time by which a ballot
15 shall be received by the corporation in order to be counted.

16 (e) Except as otherwise provided in the articles of incorporation or bylaws, a written
17 ballot shall not be revoked. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398,
18 s. 1; 2008-37, s. 5.)
19

20 **§§ 55A-7-09 through 55A-7-19. Reserved for future codification purposes.**

21
22 Part 2. Voting.

23 **§ 55A-7-20. Members' list for meeting.**

24 (a) After fixing a record date for a notice of a meeting, a corporation shall prepare an
25 alphabetical list of the names of all its members who are entitled to notice of the meeting. The
26 list shall show the address and number of votes each member is entitled to cast at the meeting.
27 The corporation shall prepare on a current basis through the time of the membership meeting a
28 list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the
29 meeting. This list shall be prepared on the same basis as and be part of the list of members.

30 (b) Beginning two business days after notice is given of the meeting for which the list
31 was prepared and continuing through the meeting, the list of members shall be available at the
32 corporation's principal office or at a reasonable place identified in the meeting notice in the city
33 where the meeting will be held for inspection by any member for the purpose of
34 communication with other members concerning the meeting. A member, personally or by or
35 with his representatives, is entitled on written demand to inspect and, subject to the limitations
36 of G.S. 55A-16-02(c) and G.S. 55A-16-05 and at his expense, to copy the list at a reasonable
37 time during the period it is available for inspection.

38 (c) The corporation shall make the list of members available at the meeting, and any
39 member, personally or by or with his representatives, is entitled to inspect the list at any time
40 during the meeting or any adjournment.

41 (d) If the corporation refuses to allow a member or his representative to inspect or copy
42 the list of members as permitted in subsections (b) and (c) of this section, the superior court of
43 the county where a corporation's principal office (or, if there is none in this State, its registered
44 office) is located, on application of the member, after notice is given to the corporation and
45 upon such further evidence, notice and opportunity to be heard, if any, as the court may deem
46 appropriate under the circumstances, may summarily order the inspection or copying at the
47 corporation's expense. The court may postpone the meeting for which the list was prepared
48 until the inspection or copying is complete and may order the corporation to pay the member's
49 costs, including reasonable attorneys' fees, incurred to obtain the order.

50 (e) Refusal or failure to prepare or make available the members' list does not affect the
51 validity of action taken at the meeting. (1993, c. 398, s. 1.)

1
2 **§ 55A-7-21. Voting entitlement generally.**

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

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

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

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

10 (c) An amendment to the articles of incorporation or bylaws on which members are
11 entitled to vote, the purpose of which is to increase or decrease the number of votes any
12 member is entitled to cast on any member action, shall be approved by the members entitled to
13 vote on that action by a vote that would be sufficient to take the action before the amendment.
14 (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1995, c. 400, s. 2.)
15

16 **§ 55A-7-22. Quorum requirements.**

17 (a) Unless this Chapter, the articles of incorporation, or bylaws provide for a higher or
18 lower quorum, ten percent (10%) of the votes entitled to be cast on a matter shall be
19 represented at a meeting of members to constitute a quorum on that matter. Once a member is
20 represented for any purpose at a meeting, the member is deemed present for quorum purposes
21 for the remainder of the meeting and for any adjournment of that meeting unless a new record
22 date is or must be set for that adjourned meeting.

23 (b) A bylaw amendment to decrease the quorum for any member action may be
24 approved by the members entitled to vote on that action or, unless prohibited by the bylaws, by
25 the board of directors.

26 (c) A bylaw amendment to increase the quorum required for any member action shall
27 be approved by the members entitled to vote on that action.

28 (d) Unless one-third or more of the votes entitled to be cast in the election of directors
29 are represented in person or by proxy, the only matters that may be voted upon at an annual or
30 regular meeting of members are those matters that are described in the meeting notice. (1955, c.
31 1230; 1993, c. 398, s. 1.)
32

33 **§ 55A-7-23. Voting requirements.**

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

37 (b) An amendment to the articles of incorporation or bylaws on which members are
38 entitled to vote, the purpose of which is to increase or decrease the vote required for any
39 member action, shall be approved by the members entitled to vote on that action by a vote that
40 would be sufficient to take the action before the amendment. (1955, c. 1230; 1993, c. 398, s. 1;
41 1995, c. 400, s. 3.)
42

43 **§ 55A-7-24. Proxies.**

44 (a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a
45 member may vote in person or by proxy. A member may appoint one or more proxies to vote
46 or otherwise act for the member by signing an appointment form, either personally or by the
47 member's attorney-in-fact. Without limiting G.S. 55A-1-70, an appointment in the form of an
48 electronic record that bears the member's electronic signature and that may be directly
49 reproduced in paper form by an automated process shall be deemed a valid appointment form
50 within the meaning of this section. In addition, if and to the extent permitted by the nonprofit
51 corporation, a member may appoint one or more proxies by any kind of telephonic

1 transmission, even if not accompanied by written communication, under circumstances or
2 together with information from which the nonprofit corporation can reasonably assume that the
3 appointment was made or authorized by the member.

4 (b) An appointment of a proxy is effective when received by the secretary or other
5 officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a
6 different period is expressly provided in the appointment form.

7 (c) An appointment of a proxy is revocable by the member unless the appointment form
8 conspicuously states that it is irrevocable and the appointment is coupled with an interest. An
9 appointment made irrevocable under this subsection shall be revocable when the interest with
10 which it is coupled is extinguished. A transferee for value of an interest subject to an
11 irrevocable appointment may revoke the appointment if he did not have actual knowledge of its
12 irrevocability.

13 (d) The death or incapacity of the member appointing a proxy does not affect the right
14 of the corporation to accept the proxy's authority unless notice of the death or incapacity is
15 received by the secretary or other officer or agent authorized to tabulate votes before the proxy
16 exercises authority under the appointment.

17 (e) A revocable appointment of a proxy is revoked by the person appointing the proxy:

18 (1) Attending any meeting and voting in person; or

19 (2) Signing and delivering to the secretary or other officer or agent authorized to
20 tabulate proxy votes either a writing stating that the appointment of the
21 proxy is revoked or a subsequent appointment form.

22 (f) Subject to G.S. 55A-7-27 and to any express limitation on the proxy's authority
23 appearing on the face of the appointment form, a corporation is entitled to accept the proxy's
24 vote or other action as that of the member making the appointment. (1955, c. 1230; 1985 (Reg.
25 Sess., 1986), c. 801, s. 35; 1993, c. 398, s. 1; 1999-139, s. 1; 2008-37, s. 6.)
26

27 **§ 55A-7-25. Voting for directors; cumulative voting.**

28 (a) Unless otherwise provided in the articles of incorporation, the bylaws, or an
29 agreement valid under G.S. 55A-7-30, directors are elected by a plurality of the votes cast by
30 the members entitled to vote in the election at a meeting at which a quorum is present. If the
31 articles of incorporation, bylaws, or an agreement valid under G.S. 55A-7-30 provides for
32 cumulative voting by members, members may so vote, by multiplying the number of votes the
33 members are entitled to cast by the number of directors for whom they are entitled to vote, and
34 casting the product for a single candidate or distributing the product among two or more
35 candidates.

36 (b) Members otherwise entitled to vote cumulatively shall not vote cumulatively at a
37 particular meeting unless:

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

40 (2) A member or proxy who has the right to cumulate his votes announces in
41 open meeting, before voting for directors starts, his intention to vote
42 cumulatively; and if such announcement is made, the chair shall declare that
43 all persons entitled to vote have the right to vote cumulatively, shall
44 announce the number of votes entitled to be cast, and shall grant a recess of
45 not less than one hour nor more than four hours, as the chair shall determine,
46 or of such other period of time as is unanimously then agreed upon.

47 (c) A director elected by cumulative voting may be removed by the members without
48 cause if the requirements of G.S. 55A-8-08 are met unless the votes cast against removal would
49 be sufficient to elect such director if voted cumulatively at an election at which the same total
50 number of votes were cast and the entire number of directors elected at the time of the director's

1 most recent election were then being elected. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s.
2 35; 1993, c. 398, s. 1.)

3
4 **§ 55A-7-26. Other methods of electing directors.**

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

- 7 (1) On the basis of chapter or other organizational unit;
- 8 (2) By region or other geographic unit;
- 9 (3) By preferential voting; or
- 10 (4) By any other reasonable method. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985,
11 (Reg. Sess., 1986), c. 801, ss. 19, 21; 1993, c. 398, s. 1.)

12
13 **§ 55A-7-27. Corporation's acceptance of votes.**

14 (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to
15 the name of a member, the corporation if acting in good faith is entitled to accept the vote,
16 consent, waiver, or proxy appointment and give it effect as the act of the member.

17 (b) If the name signed on a vote, consent, waiver, or proxy appointment does not
18 correspond to the record name of a member, the corporation if acting in good faith is
19 nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it
20 effect as the act of the member if:

- 21 (1) The member is an entity and the name signed purports to be that of an
22 officer or agent of the entity;
- 23 (2) The name signed purports to be that of an attorney-in-fact of the member
24 and, if the corporation requests it, evidence acceptable to the corporation of
25 the signatory's authority to sign for the member is presented with respect to
26 the vote, consent, waiver, or proxy appointment;
- 27 (3) Two or more persons hold the membership as cotenants or fiduciaries and
28 the name signed purports to be the name of at least one of the coholders and
29 the person signing appears to be acting on behalf of all the coholders; or
- 30 (4) In the case of a corporation other than a charitable or religious corporation:
 - 31 a. The name signed purports to be that of an administrator, executor,
32 guardian, or conservator representing the member and, if the
33 corporation requests it, evidence of fiduciary status acceptable to the
34 corporation is presented with respect to the vote, consent, waiver, or
35 proxy appointment;
 - 36 b. The name signed purports to be that of a receiver or trustee in
37 bankruptcy of the member, and, if the corporation requests it,
38 evidence of this status acceptable to the corporation is presented with
39 respect to the vote, consent, waiver, or proxy appointment.

40 (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if
41 the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has
42 reasonable basis for doubt about the validity of the signature on it or about the signatory's
43 authority to sign for the member.

44 (d) The corporation and its officer or agent who accepts or rejects a vote, consent,
45 waiver, or proxy appointment in good faith and in accordance with the standards of this section
46 are not liable in damages to the member for the consequences of the acceptance or rejection.

47 (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or
48 proxy appointment under this section is valid unless a court of competent jurisdiction
49 determines otherwise. (1993, c. 398, s. 1; 1995, c. 509, s. 27.)

50
51 **§ 55A-7-28. Reserved for future codification purposes.**

1
2 **§ 55A-7-29. Reserved for future codification purposes.**
3

4 Part 3. Voting Agreements.

5 **§ 55A-7-30. Voting agreements.**

6 (a) Two or more members may provide for the manner in which their voting rights will
7 be exercised by signing an agreement for that purpose. The agreement may be valid for a
8 period of up to 10 years. All or some of the parties to the agreement may extend it for more
9 than 10 years from the date the first party signs the extension agreement, but the extension
10 agreement binds only those parties signing it. For charitable or religious corporations, such
11 agreements shall have a reasonable purpose not inconsistent with the corporation's charitable or
12 religious purposes.

13 (b) Subject to subsection (a) of this section, a voting agreement created under this
14 section may be specifically enforceable.

15 (c) The provisions of a voting agreement created under this section will bind a
16 transferee of a membership covered by the agreement only if the transferee acquires the
17 membership with knowledge of the provisions. (1993, c. 398, s. 1.)
18

19 **§§ 55A-7-31 through 55A-7-39. Reserved for future codification purposes.**
20

21 Part 4. Derivative Proceedings.

22 **§ 55A-7-40. Derivative proceedings.**

23 (a) An action may be brought in a superior court of this State, which shall have
24 exclusive original jurisdiction over actions brought hereunder, in the right of any domestic or
25 foreign corporation by any member or director, provided that, in the case of an action by a
26 member, the plaintiff or plaintiffs shall allege, and it shall appear, that each plaintiff-member
27 was a member at the time of the transaction of which he complains.

28 (b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff
29 to obtain the action the plaintiff desires from the directors or comparable authority and the
30 reasons for the plaintiff's failure to obtain the action or for not making the effort. Whether or
31 not a demand for action was made, if the corporation commences an investigation of the
32 charges made in the demand or complaint, the court may stay any proceedings until the
33 investigation is completed.

34 (c) Upon motion of the corporation, the court may appoint a committee composed of
35 two or more disinterested directors or other disinterested persons, acceptable to the corporation,
36 to determine whether it is in the best interest of the corporation to pursue a particular legal right
37 or remedy. The committee shall report its findings to the court. After considering the report
38 and any other relevant evidence, the court shall determine whether the proceeding should be
39 continued.

40 (d) Such action shall not be discontinued, dismissed, compromised, or settled without
41 the approval of the court. The court, in its discretion, may direct that notice, by publication or
42 otherwise, shall be given to any directors, members, creditors, and other persons whose
43 interests it determines will be substantially affected by the discontinuance, dismissal,
44 compromise, or settlement. If notice is so directed to be given, the court may determine which
45 one or more of the parties to the action shall bear the expense of giving the same, in such
46 amount as the court shall determine and find to be reasonable in the circumstances, and the
47 amount of the expense shall be awarded as costs of the action.

48 (e) If the action on behalf of the corporation is successful, in whole or in part, whether
49 by means of a compromise and settlement or by a judgment, the court may award the plaintiff
50 the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and

1 shall direct the plaintiff to account to the corporation for the remainder of any proceeds of the
2 action.

3 (f) In any such action, the court, upon final judgment and a finding that the action was
4 brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant
5 or defendants the reasonable expenses, including attorneys' fees, incurred by them in the
6 defense of the action.

7 (g) In proceedings hereunder, no member shall be entitled to obtain or have access to
8 any communication within the scope of the corporation's attorney-client privilege which could
9 not be obtained by or would not be accessible to a party in an action other than on behalf of the
10 corporation. (1985 (Reg. Sess., 1986), c. 801, s. 34; 1993, c. 398, s. 1.)

11 Article 8.

12 Directors and Officers.

13 Part 1. Board of Directors.

14 **§ 55A-8-01. Requirement for and duties of board.**

15 (a) Except as provided in subsection (c) of this section, each corporation shall have a
16 board of directors.

17 (b) All corporate powers shall be exercised by or under the authority of, and the affairs
18 of the corporation managed under the direction of, its board of directors, except as otherwise
19 provided in the articles of incorporation.

20 (c) A corporation may dispense with or limit the authority of a board of directors by
21 describing in its articles of incorporation who will perform some or all of the duties of a board
22 of directors; but no such limitation upon the authority which the board of directors would
23 otherwise have shall be effective against other persons without actual knowledge of such
24 limitation.

25 (d) To the extent the articles of incorporation vests authority of the board of directors in
26 an individual or group other than the board of directors, the individual or group in the exercise
27 of such authority shall be deemed to be acting as the board of directors for all purposes of this
28 Chapter. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 18; 1993, c. 398, s. 1.)

29 **§ 55A-8-02. Qualifications of directors.**

30 The articles of incorporation or bylaws may prescribe qualifications for directors. A
31 director need not be a resident of this State or a member of the corporation unless the articles of
32 incorporation or bylaws so prescribe. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 18;
33 1993, c. 398, s. 1.)

34 **§ 55A-8-03. Number of directors.**

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

37 (b) The number of directors may be increased or decreased from time to time by
38 amendment to or in the manner prescribed in the articles of incorporation or bylaws.

39 (c) The articles of incorporation or bylaws may establish a variable range for the size of
40 the board of directors by fixing a minimum and maximum number of directors. If a variable
41 range is established, the number of directors may be fixed or changed from time to time, within
42 the minimum and maximum, by the members entitled to vote for directors or (unless the
43 articles of incorporation or an agreement valid under G.S. 55A-7-30 shall otherwise provide)
44 the board of directors. If the corporation has members entitled to vote for directors, only such
45 members may change the range for the size of the board or change from a fixed to a
46 variable-range size board or vice versa. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess.,
47 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)

1 **§ 55A-8-04. Election, designation, and appointment of directors.**

2 (a) If the corporation has members entitled to vote for directors, all the directors (except
3 the initial directors) shall be elected at the first annual meeting of such members, and at each
4 annual meeting thereafter, unless the articles of incorporation or bylaws provide some other
5 time or method of election, or provide that some of the directors are appointed by some other
6 person or are designated. If the articles of incorporation authorize dividing the members into
7 classes, the articles of incorporation may also authorize the election of all or a specified number
8 of directors by the members of one or more authorized classes.

9 (b) If the corporation does not have members entitled to vote for directors, all the
10 directors (except the initial directors) shall be elected, appointed, or designated as provided in
11 the articles of incorporation or bylaws. If no method of designation or appointment is set forth
12 in the articles of incorporation or bylaws, the directors (other than the initial directors) shall be
13 elected by the board of directors.

14 (c) If any member entitled to vote for directors so demands, election of directors by the
15 members shall be by ballot, unless the articles of incorporation or bylaws otherwise provide.
16 (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s.
17 1.)

18
19 **§ 55A-8-05. Terms of directors generally.**

20 (a) The articles of incorporation or bylaws may specify the terms of directors. In the
21 absence of a contrary provision in the articles of incorporation or bylaws, the term of each
22 director shall be one year, and directors may serve successive terms.

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

25 (c) Except as provided in the articles of incorporation or bylaws:

26 (1) The term of a director filling a vacancy in the office of a director elected by
27 members expires at the next election of directors by members; and

28 (2) The term of a director filling any other vacancy expires at the end of the
29 unexpired term that such director is filling.

30 (d) Despite the expiration of a director's term, the director continues to serve until the
31 director's successor is elected, designated, or appointed and qualifies, or until there is a
32 decrease in the number of directors. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess.,
33 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1; 1995, c. 509, s. 28.)

34
35 **§ 55A-8-06. Staggered terms for directors.**

36 The articles of incorporation or bylaws may provide for staggering the terms of directors by
37 dividing the total number of directors into groups. The terms of office of the several groups
38 need not be uniform. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss.
39 19-21; 1993, c. 398, s. 1.)

40
41 **§ 55A-8-07. Resignation of directors.**

42 (a) A director may resign at any time by communicating his resignation to the board of
43 directors, its presiding officer, or to the corporation.

44 (b) A resignation is effective when it is communicated unless the notice specifies a later
45 effective date or subsequent event upon which it will become effective. (1993, c. 398, s. 1.)

46
47 **§ 55A-8-08. Removal of directors elected by members or directors.**

48 (a) The members may remove one or more directors elected by them with or without
49 cause unless the articles of incorporation provide that directors may be removed only for cause.

1 (b) If a director is elected by a class, chapter or other organizational unit, or by region
2 or other geographic grouping, the director may be removed only by that class, chapter, unit, or
3 grouping.

4 (c) Except as provided in subsection (i) of this section, a director may be removed
5 under subsection (a) or (b) of this section, only if the number of votes cast to remove the
6 director would be sufficient to elect the director at a meeting to elect directors.

7 (d) If cumulative voting is authorized, a director shall not be removed:

8 (1) If the number of votes; or

9 (2) If the director was elected by a class, chapter, unit, or grouping of members,
10 the number of votes of that class, chapter, unit, or grouping;
11 sufficient to elect the director under cumulative voting, if an election were then being held, is
12 voted against the director's removal.

13 (e) A director elected by members may be removed by the members only at a meeting
14 called for the purpose of removing the director and the meeting notice shall state that the
15 purpose, or one of the purposes, of the meeting is removal of the director.

16 (f) In computing whether a director is protected from removal under subsections (b)
17 through (d) of this section, it should be assumed that the votes against removal are cast in an
18 election for the number of directors of the class to which the director to be removed belonged
19 on the date of that director's election.

20 (g) An entire board of directors may be removed under subsections (a) through (e) of
21 this section.

22 (h) A majority of the directors then in office or such greater number as is set forth in the
23 articles of incorporation or bylaws may, subject to any limitation in the articles of incorporation
24 or bylaws, remove any director elected by the board of directors; provided, however, that a
25 director elected by the board to fill the vacancy of a director elected by the members may be
26 removed by the members, but not the board.

27 (i) Notwithstanding any other provision of this section, if, at the beginning of a
28 director's term on the board of directors, the articles of incorporation or bylaws provide that the
29 director may be removed by the board for missing a specified number of board meetings, the
30 board may remove the director for failing to attend the specified number of meetings. The
31 director may be removed only if a majority of the directors then in office vote for the removal.

32 (j) Notwithstanding any other provision of this section, the articles of incorporation or
33 bylaws may provide that directors elected after the effective date of such provision shall be
34 removed automatically for missing a specified number of board meetings.

35 (k) The articles of incorporation may:

36 (1) Limit the application of this section in the case of a charitable or religious
37 corporation; and

38 (2) Set forth the vote and procedures by which the board of directors or any
39 person may remove with or without cause a director elected by the members
40 or the board. (1955, c. 1230; 1973, c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986),
41 c. 801, ss. 19-21; 1993, c. 398, s. 1.)
42

43 **§ 55A-8-09. Removal of designated or appointed directors.**

44 (a) A designated director may be removed by an amendment to the articles of
45 incorporation or bylaws deleting or changing the provision containing the designation.

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

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

49 (2) The person removing the director shall do so by giving written notice of the
50 removal to the director and to the corporation; and

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

3 (c) Notwithstanding any other provision of this section, the articles of incorporation or
4 bylaws may provide that directors appointed after the effective date of such provision shall be
5 removed automatically for missing a specified number of board meetings. (1955, c. 1230; 1973,
6 c. 192, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 801, ss. 19-21; 1993, c. 398, s. 1.)
7

8 **§ 55A-8-10. Removal of directors by judicial proceeding.**

9 (a) The superior court of the county where a corporation's principal office (or, if there is
10 none in this State, its registered office) is located may remove any director of the corporation
11 from office in a proceeding commenced either by the corporation or by its members holding at
12 least ten percent (10%) of the votes entitled to be cast of any class of members, if the court
13 finds that:

14 (1) The director engaged in fraudulent or dishonest conduct, or gross abuse of
15 authority or discretion, with respect to the corporation, or a final judgment
16 has been entered finding that the director has violated a duty set forth in G.S.
17 55A-8-30 through G.S. 55A-8-33, and

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

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

21 (c) If members commence a proceeding under subsection (a) of this section, the
22 corporation shall be made a party defendant. (1993, c. 398, s. 1.)
23

24 **§ 55A-8-11. Vacancy on board.**

25 (a) Unless the articles of incorporation or bylaws provide otherwise, and except as
26 provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors,
27 including, without limitation, a vacancy resulting from an increase in the number of directors or
28 from the failure by the members to elect the full authorized number of directors, the vacancy
29 may be filled:

30 (1) By the members entitled to vote for directors, if any, or if the vacant office
31 was held by a director elected by a class, chapter or other organizational
32 unit, or by region or other geographic grouping, by the members of that
33 class, chapter, unit, or grouping;

34 (2) By the board of directors; or

35 (3) If the directors remaining in the office constitute fewer than a quorum of the
36 board, by the affirmative vote of a majority of all the directors, or by the sole
37 director, remaining in office.

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

41 (c) If a vacant office was held by a designated director, the vacancy shall be filled only
42 as provided in the articles of incorporation or bylaws.

43 (d) A vacancy that will occur at a specific later date (by reason of a resignation
44 effective at a later date under G.S. 55A-8-07(b) or otherwise) may be filled before the vacancy
45 occurs but the new director shall not take office until the vacancy occurs. (1955, c. 1230; 1993,
46 c. 398, s. 1.)
47

48 **§ 55A-8-12. Compensation of directors.**

49 Unless the articles of incorporation provide otherwise, a board of directors may fix the
50 compensation of directors. (1985 (Reg. Sess., 1986), c. 801, s. 26; 1993, c. 398, s. 1.)
51

1 §§ 55A-8-13 through 55A-8-19. Reserved for future codification purposes.

2
3 Part 2. Meetings and Action of the Board.

4 § 55A-8-20. Regular and special meetings.

5 (a) The board of directors may hold regular or special meetings in or out of this State.

6 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of
7 directors may permit any or all directors to participate in a regular or special meeting by, or
8 conduct the meeting through the use of, any means of communication by which all directors
9 participating may simultaneously hear each other during the meeting. A director participating
10 in a meeting by this means is deemed to be present in person at the meeting. (1955, c. 1230;
11 1973, c. 314, s. 3; 1985 (Reg. Sess., 1986), c. 801, ss. 24, 25; 1993, c. 398, s. 1.)
12

13 § 55A-8-21. Action without meeting.

14 (a) Unless the articles of incorporation or bylaws provide otherwise, action required or
15 permitted by this Chapter to be taken at a board of directors' meeting may be taken without a
16 meeting if the action is taken by all members of the board. The action shall be evidenced by
17 one or more written consents signed by each director before or after such action, describing the
18 action taken, and included in the minutes or filed with the corporate records reflecting the
19 action taken. To the extent the corporation has agreed pursuant to G.S. 55A-1-70, a director's
20 consent to action taken without meeting may be in electronic form and delivered by electronic
21 means.

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

24 (c) A consent signed under this section has the effect of a meeting vote and may be
25 described as such in any document. (1973, c. 314, s. 3; 1993, c. 398, s. 1; 2008-37, s. 7.)
26

27 § 55A-8-22. Notice of meetings.

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

31 (b) Special meetings of the board of directors shall be held upon such notice as is
32 provided in the articles of incorporation or bylaws, or in the absence of any such provision,
33 upon notice sent by any usual means of communication not less than five days before the
34 meeting. The notice need not describe the purpose of the special meeting unless required by:
35 (i) this Chapter, (ii) the articles of incorporation, or (iii) the bylaws.

36 (c) Unless the articles of incorporation or bylaws provide otherwise, the presiding
37 officer of the board, the president or twenty percent (20%) of the directors then in office may
38 call and give notice of a meeting of the board. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801,
39 ss. 24, 25; 1993, c. 398, s. 1.)
40

41 § 55A-8-23. Waiver of notice.

42 (a) A director may waive any notice required by this Chapter, the articles of
43 incorporation, or bylaws before or after the date and time stated in the notice. Except as
44 provided by subsection (b) of this section, the waiver shall be in writing, signed by the director
45 entitled to the notice, and filed with the minutes or corporate records.

46 (b) A director's attendance at or participation in a meeting waives any required notice to
47 him of the meeting unless the director at the beginning of the meeting (or promptly upon his
48 arrival) objects to holding the meeting or transacting business at the meeting and does not
49 thereafter vote for or assent to action taken at the meeting. (1955, c. 1230; 1985 (Reg. Sess.,
50 1986), c. 801, ss. 24, 25; 1993, c. 398, s. 1; 1995, c. 509, s. 29.)
51

1 **§ 55A-8-24. Quorum and voting.**

2 (a) Except as otherwise provided in: (i) this Chapter, (ii) the articles of incorporation, or
3 (iii) the bylaws, a quorum of a board of directors consists of a majority of the directors in office
4 immediately before a meeting begins. In no event may the articles of incorporation or bylaws
5 authorize a quorum of fewer than one-third of the number of directors in office.

6 (b) If a quorum is present when a vote is taken, the affirmative vote of a majority of
7 directors present is the act of the board unless: (i) this Chapter, (ii) the articles of incorporation,
8 or (iii) the bylaws require the vote of a greater number of directors.

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

- 12 (1) He objects at the beginning of the meeting (or promptly upon his arrival) to
13 holding it or transacting business at the meeting;
- 14 (2) His dissent or abstention from the action taken is entered in the minutes of
15 the meeting; or
- 16 (3) He files written notice of his dissent or abstention with the presiding officer
17 of the meeting before its adjournment or with the corporation immediately
18 after adjournment of the meeting. The right of dissent or abstention is not
19 available to a director who votes in favor of the action taken. (1955, c. 1230;
20 1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)
21

22 **§ 55A-8-25. Committees of the board.**

23 (a) Unless the articles of incorporation or bylaws provide otherwise, a board of
24 directors may create one or more committees of the board and appoint members of the board to
25 serve on them. Each committee shall have two or more members, who serve at the pleasure of
26 the board.

27 (b) The creation of a committee and appointment of members to it shall be approved by
28 the greater of:

- 29 (1) A majority of all the directors in office when the action is taken; or
30 (2) The number of directors required by the articles of incorporation or bylaws
31 to take action under G. S. 55A-8-24.

32 (c) G.S. 55A-8-20 through G.S. 55A-8-24, which govern meetings, action without
33 meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply
34 to committees of the board and their members as well.

35 (d) To the extent specified by the board of directors or in the articles of incorporation or
36 bylaws, each committee of the board may exercise the board's authority under G.S. 55A-8-01.

37 (e) A committee of the board shall not, however:

- 38 (1) Authorize distributions;
- 39 (2) Recommend to members or approve dissolution, merger or the sale, pledge,
40 or transfer of all or substantially all of the corporation's assets;
- 41 (3) Elect, appoint or remove directors, or fill vacancies on the board of directors
42 or on any of its committees; or
- 43 (4) Adopt, amend, or repeal the articles of incorporation or bylaws.

44 (f) The creation of, delegation of authority to, or action by a committee does not alone
45 constitute compliance by a director with the standards of conduct described in G.S. 55A-8-30.
46 (1955, c. 1230; 1969, c. 875, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 22, 23; 1993, c. 398, s. 1.)
47

48 **§§ 55A-8-26 through 55A-8-29. Reserved for future codification purposes.**

49
50 Part 3. Standards of Conduct.

51 **§ 55A-8-30. General standards for directors.**

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

- 3 (1) In good faith;
- 4 (2) With the care an ordinarily prudent person in a like position would exercise
5 under similar circumstances; and
- 6 (3) In a manner the director reasonably believes to be in the best interests of the
7 corporation.

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

- 11 (1) One or more officers or employees of the corporation whom the director
12 reasonably believes to be reliable and competent in the matters presented;
- 13 (2) Legal counsel, public accountants, or other persons as to matters the director
14 reasonably believes are within their professional or expert competence; or
- 15 (3) A committee of the board of which he is not a member if the director
16 reasonably believes the committee merits confidence.

17 (c) A director is not entitled to the benefit of subsection (b) of this section if he has
18 actual knowledge concerning the matter in question that makes reliance otherwise permitted by
19 subsection (b) of this section unwarranted.

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

22 (e) A director's personal liability for monetary damages for breach of a duty as a
23 director may be limited or eliminated only to the extent provided in G.S. 55A-8-60 or permitted
24 in G.S. 55A-2-02(b)(4), and a director may be entitled to indemnification against liability and
25 expenses pursuant to Part 5 of Article 8 of this Chapter.

26 (f) A director shall not be deemed to be a trustee with respect to the corporation or with
27 respect to any property held or administered by the corporation, including without limit,
28 property that may be subject to restrictions imposed by the donor or transferor of such property.
29 (1985 (Reg. Sess., 1986), c. 801, s. 29; 1993, c. 398, s. 1.)
30

31 **§ 55A-8-31. Director conflict of interest.**

32 (a) A conflict of interest transaction is a transaction with the corporation in which a
33 director of the corporation has a direct or indirect interest. A conflict of interest transaction is
34 not voidable by the corporation solely because of the director's interest in the transaction if any
35 one of the following is true:

- 36 (1) The material facts of the transaction and the director's interest were disclosed
37 or known to the board of directors or a committee of the board and the board
38 or committee authorized, approved, or ratified the transaction;
- 39 (2) The material facts of the transaction and the director's interest were disclosed
40 or known to the members entitled to vote and they authorized, approved, or
41 ratified the transaction; or
- 42 (3) The transaction was fair to the corporation.

43 (b) For purposes of this section, a director of the corporation has an indirect interest in a
44 transaction if:

- 45 (1) Another entity in which he has a material financial interest or in which he is
46 a general partner is a party to the transaction; or
- 47 (2) Another entity of which he is a director, officer, or trustee is a party to the
48 transaction and the transaction is or should be considered by the board of
49 directors of the corporation.

50 (c) For purposes of subdivision (a)(1) of this section, a conflict of interest transaction is
51 authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors

1 on the board of directors (or on the committee) who have no direct or indirect interest in the
2 transaction, but a transaction shall not be authorized, approved, or ratified under this section by
3 a single director. If a majority of the directors who have no direct or indirect interest in the
4 transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the
5 purpose of taking action under this section. The presence of, or a vote cast by, a director with a
6 direct or indirect interest in the transaction does not affect the validity of any action taken under
7 subdivision (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified
8 as provided in that subdivision.

9 (d) For purposes of subdivision (a)(2) of this section, a conflict of interest transaction is
10 authorized, approved, or ratified by the members if it receives a majority of the votes entitled to
11 be counted under this subsection. Votes cast by or voted under the control of a director who
12 has a direct or indirect interest in the transaction, and votes cast by or voted under the control of
13 an entity described in subdivision (b)(1) of this section, shall not be counted in a vote of
14 members to determine whether to authorize, approve, or ratify a conflict of interest transaction
15 under subdivision (a)(2) of this section. The vote of these members, however, is counted in
16 determining whether the transaction is approved under other sections of this Chapter. A
17 majority of the votes, whether or not present, that are entitled to be cast in a vote on the
18 transaction under this subsection constitutes a quorum for the purpose of taking action under
19 this section.

20 (e) The articles of incorporation, bylaws, or a resolution of the board may impose
21 additional requirements on conflict of interest transactions. (1985 (Reg. Sess., 1986), c. 801, s.
22 26; 1993, c. 398, s. 1.)
23

24 **§ 55A-8-32. Loans to or guaranties for directors and officers.**

25 No loan, guaranty, or other form of security shall be made or provided by a corporation to
26 or for the benefit of its directors or officers, except that loans, guaranties, or other forms of
27 security may be made to full-time employees of the corporation who are also directors or
28 officers by action of its board of directors in accordance with G.S. 55A-8-31(a)(1). (1955, c.
29 1230; 1985 (Reg. Sess., 1986), c. 801, s. 17; 1993, c. 398, s. 1.)
30

31 **§ 55A-8-33. Liability for unlawful loans or distributions.**

32 (a) The liabilities imposed by this section are in addition to any other liabilities imposed
33 by law upon directors of a corporation.

34 (b) A director who votes for or assents to the making of a loan or guaranty or other
35 form of security is personally liable to the corporation for the repayment or return of the money
36 or value loaned, with interest thereon at the legal rate until paid, or for any liability of the
37 corporation upon the guaranty, if it is established that he did not perform his duties in
38 compliance with G.S. 55A-8-30 or that the loan or guaranty was made in violation of G.S.
39 55A-8-32.

40 (c) A director who votes for or assents to a distribution made in violation of Article 13
41 of this Chapter, Article 14 of this Chapter, or the articles of incorporation is personally liable to
42 the corporation for the amount of the distribution that exceeds what could have been distributed
43 without violating Article 13 of this Chapter, Article 14 of this Chapter, or the articles of
44 incorporation if it is established that he did not perform his duties in compliance with G.S.
45 55A-8-30. In any proceeding commenced under this section, a director has all of the defenses
46 ordinarily available to a director.

47 (d) A director held liable under subsection (b) or (c) of this section is entitled to:

- 48 (1) Contribution from every other director who could be held liable under
49 subsection (b) or (c) of this section for the unlawful loan or distribution; and
- 50 (2) Reimbursement from each person for the amount he accepted knowing the
51 unlawful loan or distribution was made in violation of G.S. 55A-8-32,

1 Article 13 of this Chapter, or Article 14 of this Chapter, or the articles of
2 incorporation.

3 (e) No action shall be brought against the directors for liability under this section after
4 three years from the time when the cause of action was discovered or ought to have been
5 discovered. (1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)

6
7 **§§ 55A-8-34 through 55A-8-39. Reserved for future codification purposes.**

8
9 Part 4. Officers.

10 **§ 55A-8-40. Officers.**

11 (a) A corporation has the officers described in its bylaws or appointed by the board of
12 directors in accordance with the bylaws.

13 (b) A duly appointed officer may appoint one or more officers or assistant officers if
14 authorized by the bylaws or the board of directors.

15 (c) The secretary or any assistant secretary or any one or more other officers designated
16 by the bylaws or the board of directors shall have the responsibility and authority to maintain
17 and authenticate the records of the corporation.

18 (d) The same individual may simultaneously hold more than one office in a corporation,
19 but no individual may act in more than one capacity where action of two or more officers is
20 required.

21 (e) Whenever a specific office is referred to in this Chapter, it shall be deemed to
22 include any person who, individually or collectively with one or more other persons, holds or
23 occupies such office. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 28; 1993, c. 398, s. 1.)

24
25 **§ 55A-8-41. Duties of officers.**

26 Each officer has the authority and duties set forth in the bylaws or, to the extent consistent
27 with the bylaws, the authority and duties prescribed by the board of directors or by direction of
28 an officer authorized by the board of directors to prescribe the authority and duties of other
29 officers. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 28; 1993, c. 398, s. 1.)

30
31 **§ 55A-8-42. Standards of conduct for officers.**

32 (a) An officer with discretionary authority shall discharge his duties under that
33 authority:

- 34 (1) In good faith;
35 (2) With the care an ordinarily prudent person in a like position would exercise
36 under similar circumstances; and
37 (3) In a manner the officer reasonably believes to be in the best interests of the
38 corporation.

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

- 42 (1) One or more officers or employees of the corporation whom the officer
43 reasonably believes to be reliable and competent in the matters presented; or
44 (2) Legal counsel, public accountants, or other persons as to matters the officer
45 reasonably believes are within the person's professional or expert
46 competence.

47 (c) An officer is not entitled to the benefit of subsection (b) of this section if the officer
48 has actual knowledge concerning the matter in question that makes reliance otherwise
49 permitted by subsection (b) of this section unwarranted.

50 (d) An officer is not liable for any action taken as an officer, or any failure to take any
51 action, if the officer performed the duties of his office in compliance with this section.

1 (e) An officer may be entitled to immunity under Part 6 of Article 8 of this Chapter or
2 to indemnification against liability and expenses pursuant to Part 5 of Article 8 of this Chapter.
3 (1985 (Reg. Sess., 1986), c. 801, s. 29; 1993, c. 398, s. 1.)
4

5 **§ 55A-8-43. Resignation and removal of officers.**

6 (a) An officer may resign at any time by communicating his resignation to the
7 corporation. A resignation is effective when it is communicated unless it specifies in writing a
8 later effective date. If a resignation is made effective at a later date and the corporation accepts
9 the future effective date, its board of directors may fill the pending vacancy before the effective
10 date if the board of directors provides that the successor does not take office until the effective
11 date.

12 (b) A board of directors may remove any officer at any time with or without cause.
13 (1955, c. 1230; 1993, c. 398, s. 1.)
14

15 **§ 55A-8-44. Contract rights of officers.**

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

17 (b) An officer's removal does not affect the officer's contract rights, if any, with the
18 corporation. An officer's resignation does not affect the corporation's contract rights, if any,
19 with the officer. (1955, c. 1230; 1993, c. 398, s. 1.)
20

21 **§§ 55A-8-45 through 55A-8-49. Reserved for future codification purposes.**
22

23 Part 5. Indemnification.

24 **§ 55A-8-50. Policy statement and definitions.**

25 (a) It is the public policy of this State to enable corporations organized under this
26 Chapter to attract and maintain responsible, qualified directors, officers, employees, and agents,
27 and, to that end, to permit corporations organized under this Chapter to allocate the risk of
28 personal liability of directors, officers, employees, and agents through indemnification and
29 insurance as authorized in this Part.

30 (b) Definitions in this Part:

31 (1) "Corporation" includes any domestic or foreign corporation absorbed in a
32 merger which, if its separate existence had continued, would have had the
33 obligation or power to indemnify its directors, officers, employees, or
34 agents, so that a person who would have been entitled to receive or request
35 indemnification from such corporation if its separate existence had
36 continued shall stand in the same position under this Part with respect to the
37 surviving corporation.

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

48 (3) "Expenses" means expenses of every kind incurred in defending a
49 proceeding, including counsel fees.

- 1 (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine
2 (including an excise tax assessed with respect to an employee benefit plan),
3 or reasonable expenses actually incurred with respect to a proceeding.
4 (5) "Officer," "employee," or "agent" includes, unless the context requires
5 otherwise, the estate or personal representative of a person who acted in that
6 capacity.
7 (6) "Official capacity" means: (i) when used with respect to a director, the
8 office of director in a corporation; and (ii) when used with respect to an
9 individual other than a director, as contemplated in G.S. 55A-8-56, the office
10 in a corporation held by the officer or the employment or agency relationship
11 undertaken by the employee or agent on behalf of the corporation. "Official
12 capacity" does not include service for any other foreign or domestic business
13 or nonprofit corporation or any partnership, joint venture, trust, employee
14 benefit plan, or other enterprise.
15 (7) "Party" includes an individual who was, is, or is threatened to be made a
16 named defendant or respondent in a proceeding.
17 (8) "Proceeding" means any threatened, pending, or completed action, suit, or
18 proceeding whether civil, criminal, administrative, or investigative and
19 whether formal or informal. (1993, c. 398, s. 1.)
20

21 **§ 55A-8-51. Authority to indemnify.**

22 (a) Except as provided in subsection (d) of this section, a corporation may indemnify an
23 individual made a party to a proceeding because the individual is or was a director against
24 liability incurred in the proceeding if the individual:

- 25 (1) Conducted himself in good faith;
26 (2) Reasonably believed (i) in the case of conduct in his official capacity with
27 the corporation, that his conduct was in its best interests; and (ii) in all other
28 cases, that his conduct was at least not opposed to its best interests; and
29 (3) In the case of any criminal proceeding, had no reasonable cause to believe
30 his conduct was unlawful.

31 (b) A director's conduct with respect to an employee benefit plan for a purpose the
32 director reasonably believed to be in the interests of the participants in and beneficiaries of the
33 plan is conduct that satisfies the requirement of clause (ii) of subdivision (a)(2) of this section.

34 (c) The termination of a proceeding by judgment, order, settlement, conviction, or upon
35 a plea of no contest or its equivalent is not, of itself, determinative that the director did not meet
36 the standard of conduct described in this section.

37 (d) A corporation shall not indemnify a director under this section:

- 38 (1) In connection with a proceeding by or in the right of the corporation in
39 which the director was adjudged liable to the corporation; or
40 (2) In connection with any other proceeding charging improper personal benefit
41 to the director, whether or not involving action in his official capacity, in
42 which the director was adjudged liable on the basis that personal benefit was
43 improperly received by the director.

44 (e) Indemnification permitted under this section in connection with a proceeding by or
45 in the right of the corporation that is concluded without a final adjudication on the issue of
46 liability is limited to reasonable expenses incurred in connection with the proceeding.

47 (f) The authorization, approval, or favorable recommendation by the board of directors
48 of a corporation of indemnification, as permitted by this section, shall not be deemed an act or
49 corporate transaction in which a director has a conflict of interest, and no such indemnification
50 shall be void or voidable on such ground. (1977, c. 236, s. 2; 1985 (Reg. Sess., 1986), c. 801,
51 ss. 15, 16; 1993, c. 398, s. 1.)

1
2 **§ 55A-8-52. Mandatory indemnification.**

3 Unless limited by its articles of incorporation, a corporation shall indemnify a director who
4 was wholly successful, on the merits or otherwise, in the defense of any proceedings to which
5 the director was a party because he is or was a director of the corporation against reasonable
6 expenses actually incurred by the director in connection with the proceeding. (1977, c. 236, s.
7 2; 1993, c. 398, s. 1.)
8

9 **§ 55A-8-53. Advance for expenses.**

10 Expenses incurred by a director in defending a proceeding may be paid by the corporation
11 in advance of the final disposition of such proceeding as authorized by the board of directors in
12 the specific case or as authorized or required under any provision in the articles of
13 incorporation or bylaws or by any applicable resolution or contract upon receipt of an
14 undertaking by or on behalf of the director to repay such amount unless it shall ultimately be
15 determined that the director is entitled to be indemnified by the corporation against such
16 expenses. (1977, c. 236, s. 2; 1985 (Reg. Sess., 1986), c. 801, ss. 15, 16; 1993, c. 398, s. 1.)
17

18 **§ 55A-8-54. Court-ordered indemnification.**

19 Unless a corporation's articles of incorporation provide otherwise, a director of the
20 corporation who is a party to a proceeding may apply for indemnification to the court
21 conducting the proceeding or to another court of competent jurisdiction. On receipt of an
22 application, the court, after giving any notice the court considers necessary, may order
23 indemnification if it determines:

- 24 (1) The director is entitled to mandatory indemnification under G.S. 55A-8-52,
25 in which case the court shall also order the corporation to pay the director's
26 reasonable expenses incurred to obtain court-ordered indemnification; or
27 (2) The director is fairly and reasonably entitled to indemnification, in whole or
28 in part, in view of all the relevant circumstances, whether or not the director
29 met the standard of conduct set forth in G.S. 55A-8-51 or was adjudged
30 liable as described in G.S. 55A-8-51(d), but if the director was adjudged so
31 liable, such indemnification is limited to reasonable expenses incurred.
32 (1977, c. 236, s. 2; 1993, c. 398, s. 1.)
33

34 **§ 55A-8-55. Determination and authorization of indemnification.**

35 (a) A corporation shall not indemnify a director under G.S. 55A-8-51 unless authorized
36 in the specific case after a determination has been made that indemnification of the director is
37 permissible in the circumstances because the director has met the standard of conduct set forth
38 in G.S. 55A-8-51.

39 (b) The determination shall be made:

- 40 (1) By the board of directors by majority vote of a quorum consisting of
41 directors not at the time parties to the proceeding;
42 (2) If a quorum cannot be obtained under subdivision (1) of this subsection, by a
43 majority vote of a committee duly designated by the board of directors (in
44 which designation directors who are parties may participate), consisting
45 solely of two or more directors not at the time parties to the proceeding;
46 (3) By special legal counsel (i) selected by the board of directors or its
47 committee in the manner prescribed in subdivision (1) or (2) of this
48 subsection; or (ii) if a quorum of the board cannot be obtained under
49 subdivision (1) of this subsection and a committee cannot be designated
50 under subdivision (2) of this subsection, selected by majority vote of the full
51 board (in which selection directors who are parties may participate); or

1 (4) By the members, but directors who are at the time parties to the proceeding
2 shall not vote on the determination.

3 (c) Authorization of indemnification and evaluation as to reasonableness of expenses
4 shall be made in the same manner as the determination that indemnification is permissible,
5 except that if the determination is made by special legal counsel, authorization of
6 indemnification and evaluation as to reasonableness of expenses shall be made by those entitled
7 under subdivision (b)(3) of this section to select counsel. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)
8

9 **§ 55A-8-56. Indemnification of officers, employees, and agents.**

10 Unless a corporation's articles of incorporation provide otherwise:

- 11 (1) An officer of the corporation is entitled to mandatory indemnification under
12 G.S. 55A-8-52, and is entitled to apply for court-ordered indemnification
13 under G.S. 55A-8-54, in each case to the same extent as a director;
14 (2) The corporation may indemnify and advance expenses under this Part to an
15 officer, employee, or agent of the corporation to the same extent as to a
16 director; and
17 (3) A corporation may also indemnify and advance expenses to an officer,
18 employee, or agent to the extent, consistent with public policy, that may be
19 provided by its articles of incorporation, bylaws, general or specific action of
20 its board of directors, or contract. (1977, c. 236, s. 2; 1993, c. 398, s. 1.)
21

22 **§ 55A-8-57. Additional indemnification and insurance.**

23 (a) In addition to and separate and apart from the indemnification provided for in G.S.
24 55A-8-51, 55A-8-52, 55A-8-54, 55A-8-55, and 55A-8-56, a corporation may in its articles of
25 incorporation or bylaws or by contract or resolution indemnify or agree to indemnify any one
26 or more of its directors, officers, employees, or agents against liability and expenses in any
27 proceeding (including without limitation a proceeding brought by or on behalf of the
28 corporation itself) arising out of their status as such or their activities in any of the foregoing
29 capacities; provided, however, that a corporation shall not indemnify or agree to indemnify a
30 person against liability or expenses the person may incur on account of his activities which
31 were at the time taken, known, or believed by the person to be clearly in conflict with the best
32 interests of the corporation or if the person received an improper personal benefit. A
33 corporation may likewise and to the same extent indemnify or agree to indemnify any person
34 who, at the request of the corporation, is or was serving as a director, officer, partner, trustee,
35 employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust,
36 or other enterprise or as a trustee or administrator under an employee benefit plan. Any
37 provision in any articles of incorporation, bylaw, contract, or resolution permitted under this
38 section may include provisions for recovery from the corporation of reasonable costs, expenses,
39 and attorneys' fees in connection with the enforcement of rights to indemnification granted
40 therein and may further include provisions establishing reasonable procedures for determining
41 and enforcing the rights granted therein.

42 (b) A corporation may purchase and maintain insurance on behalf of an individual who
43 is or was a director, officer, employee, or agent of the corporation, or who, while a director,
44 officer, employee, or agent of the corporation, is or was serving at the request of the
45 corporation as a director, officer, partner, trustee, employee, or agent of another foreign or
46 domestic corporation, partnership, joint venture, trust, employee benefit plan, or other
47 enterprise, against liability asserted against or incurred by him in that capacity or arising from
48 his status as a director, officer, employee, or agent, whether or not the corporation would have
49 power to indemnify him against the same liability under any provision of this Chapter. (1977, c.
50 236, s. 2; 1985 (Reg. Sess., 1986), c. 801, ss. 15, 16; 1993, c. 398, s. 1.)
51

1 **§ 55A-8-58. Application of Part.**

2 (a) If articles of incorporation limit indemnification or advance for expenses,
3 indemnification and advance for expenses are valid only to the extent consistent with the
4 articles of incorporation.

5 (b) This Part does not limit a corporation's power to pay or reimburse expenses incurred
6 by a director in connection with appearing as a witness in a proceeding at a time when the
7 director has not been made a named defendant or respondent to the proceeding. (1993, c. 398,
8 s. 1.)
9

10 **§ 55A-8-59. Reserved for future codification purposes.**

11
12 Part 6. Immunity.

13 **§ 55A-8-60. Immunity.**

14 (a) In addition to the immunity that is authorized in G.S. 55A-2-02(b)(4), a person
15 serving as a director or officer of a nonprofit corporation shall be immune individually from
16 civil liability for monetary damages, except to the extent covered by insurance, for any act or
17 failure to act arising out of this service, except where the person:

- 18 (1) Is compensated for his services beyond reimbursement for expenses;
- 19 (2) Was not acting within the scope of his official duties;
- 20 (3) Was not acting in good faith;
- 21 (4) Committed gross negligence or willful or wanton misconduct that resulted in
22 the damage or injury;
- 23 (5) Derived an improper personal financial benefit from the transaction;
- 24 (6) Incurred the liability from the operation of a motor vehicle; or
- 25 (7) Is a defendant in an action brought under G.S. 55A-8-33.

26 The immunity in this subsection may be limited or eliminated by a provision in the articles of
27 incorporation, but only with respect to acts or omissions occurring on or after the effective date
28 of such provision.

29 (b) The immunity in subsection (a) of this section is personal to the directors and
30 officers, and does not immunize the corporation against liability for the acts or omissions of the
31 directors or officers.

32 (c) Without diminishing the applicability of any other provisions of this Chapter,
33 "nonprofit corporation" as referred to in this section shall include any credit union chartered
34 under the laws of this State, the laws of any other state, or under the laws of the United States.
35 (1987, c. 799, s. 3; 1989, c. 472; 1993, c. 398, s. 1.)
36

37 Article 10.

38 Amendment of Articles of Incorporation and Bylaws.

39 Part 1. Amendment of Articles of Incorporation.

40 **§ 55A-10-01. Authority to amend.**

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

45 (b) A member of the corporation does not have a vested property right resulting from
46 any provision in the articles of incorporation, including provisions relating to management,
47 control, distribution entitlement, or purpose or duration of the corporation. (1955, c. 1230;
48 1993, c. 398, s. 1.)
49

50 **§ 55A-10-02. Amendment by board of directors.**

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

- 4 (1) To delete the names and addresses of the initial directors;
- 5 (2) To delete the name and address of the initial registered agent or registered
6 office, if a statement of change is on file with the Secretary of State;
- 7 (3) To change the corporate name by substituting the word "corporation",
8 "incorporated", "company", "limited", or the abbreviation "corp.", "inc.",
9 "co.", or "Ltd.", for a similar word or abbreviation in the name, or by adding,
10 deleting or changing a geographical attribution to the name; or
- 11 (4) To make any other change expressly permitted by this Chapter to be made
12 by director action.

13 (b) If a corporation has no members entitled to vote thereon, its incorporators, until
14 directors have been chosen, and thereafter its board of directors, may adopt one or more
15 amendments to the corporation's articles of incorporation subject to any approval required
16 pursuant to G.S. 55A-10-30. The corporation shall provide at least five days' written notice of
17 any meeting at which an amendment is to be voted upon. The notice shall state that the
18 purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the
19 articles of incorporation and contain or be accompanied by a copy or summary of the
20 amendment or state the general nature of the amendment. The amendment shall be approved
21 by a majority of the directors in office at the time the amendment is adopted. (1955, c. 1230;
22 1981, c. 372; 1985 (Reg. Sess., 1986), c. 801, ss. 36, 37; 1993, c. 398, s. 1.)
23

24 **§ 55A-10-03. Amendment by directors and members.**

25 (a) If the corporation has members entitled to vote thereon, then, unless this Chapter,
26 the articles of incorporation, bylaws, the members (acting pursuant to subsection (b) of this
27 section), or the board of directors (acting pursuant to subsection (c) of this section) require a
28 greater vote or voting by class, an amendment to a corporation's articles of incorporation to be
29 adopted shall be approved:

- 30 (1) By the board or in lieu thereof in writing by the number or proportion of
31 members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to
32 consider such amendment;
- 33 (2) By the members entitled to vote thereon by two-thirds of the votes cast or a
34 majority of the votes entitled to be cast on the amendment, whichever is less;
35 and
- 36 (3) In writing by any person or persons whose approval is required by a
37 provision of the articles of incorporation authorized by G.S. 55A-10-30.

38 (b) The members entitled to vote thereon may condition the amendment's adoption on
39 receipt of a higher percentage of affirmative votes or on any other basis.

40 (c) If the board initiates an amendment to the articles of incorporation or board
41 approval is required by subsection (a) of this section to adopt an amendment to the articles of
42 incorporation, the board may condition the amendment's adoption on receipt of a higher
43 percentage of affirmative votes or any other basis.

44 (d) If the board or the members seek to have the amendment approved by the members
45 entitled to vote thereon at a membership meeting, the corporation shall give notice of the
46 membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall
47 state that the purpose, or one of the purposes, of the meeting is to consider the proposed
48 amendment and contain or be accompanied by a copy or summary of the amendment.

49 (e) If the board or the members seek to have the amendment approved by the members
50 entitled to vote thereon by written consent or written ballot, the material soliciting the approval

1 shall contain or be accompanied by a copy or summary of the amendment. (1955, c. 1230;
2 1981, c. 372; 1985 (Reg. Sess., 1986), c. 801, ss. 36, 37; 1993, c. 398, s. 1; 1995, c. 400, s. 4.)

3
4 **§ 55A-10-04. Class voting by members on amendments.**

5 (a) The members of a class in a charitable or religious corporation are entitled to vote as
6 a class on a proposed amendment to the articles of incorporation if the amendment would affect
7 the rights of that class as to voting in a manner that is different from the manner in which the
8 amendment would affect another class.

9 (b) The members of a class in a corporation other than a charitable or religious
10 corporation are entitled to vote as a class on a proposed amendment to the articles of
11 incorporation if the amendment would:

- 12 (1) Affect the rights, privileges, preferences, restrictions, or conditions of that
13 class as to voting, dissolution, redemption, or transfer of memberships in a
14 manner that is different from the manner in which the amendment would
15 affect another class;
- 16 (2) Affect the rights, privileges, preferences, restrictions, or conditions of that
17 class as to voting, dissolution, redemption, or transfer of memberships by
18 changing the rights, privileges, preferences, restrictions, or conditions of
19 another class;
- 20 (3) Increase or decrease the number of memberships authorized for that class;
- 21 (4) Increase the number of memberships authorized for another class;
- 22 (5) Effect an exchange, reclassification, or termination of the memberships of
23 that class; or
- 24 (6) Authorize a new class of memberships.

25 (c) If a class is to be divided into two or more classes as a result of an amendment to the
26 articles of incorporation, the amendment shall be approved by the members of each class that
27 would be created by the amendment.

28 (d) If a class vote is required to approve an amendment to the articles of incorporation
29 of a corporation, the amendment shall be approved by the members of the class by two-thirds
30 of the votes cast by the class or a majority of the votes entitled to be cast by the class on the
31 amendment, whichever is less.

32 (e) A class of members is entitled to the voting rights granted by this section although
33 the articles of incorporation and bylaws provide that the class shall not vote on the proposed
34 amendment. (1993, c. 398, s. 1.)

35
36 **§ 55A-10-05. Articles of amendment.**

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

- 39 (1) The name of the corporation;
- 40 (2) The text of each amendment adopted;
- 41 (3) The date of each amendment's adoption;
- 42 (4) If approval of members was not required, a statement to that effect and a
43 brief explanation of why member action was not required, and a statement
44 that the amendment was approved by a sufficient vote of the board of
45 directors or incorporators;
- 46 (5) If approval by members was required, a statement that member approval was
47 obtained as required by this Chapter;
- 48 (6) If approval of the amendment by some person or persons other than the
49 members, the board, or the incorporators is required pursuant to G.S.
50 55A-10-30, a statement that the approval was obtained. (1955, c. 1230;
51 1993, c. 398, s. 1.)

1
2 **§ 55A-10-06. Restated articles of incorporation.**

3 (a) A corporation's board of directors may restate its articles of incorporation at any
4 time with or without approval by members or any other person.

5 (b) The restated articles of incorporation may include one or more amendments to the
6 articles of incorporation. If the restated articles of incorporation include an amendment
7 requiring approval by the members or any other person, it shall be adopted as provided in G.S.
8 55A-10-03.

9 (c) If the board of directors submits restated articles of incorporation for member
10 action, the corporation shall notify in writing each member entitled to vote on the proposed
11 amendment of the membership meeting in accordance with G.S. 55A-7-05. The notice shall (i)
12 state that the purpose, or one of the purposes, of the meeting is to consider the proposed
13 restated articles of incorporation, (ii) contain or be accompanied by a copy of the proposed
14 restated articles of incorporation, and (iii) identify any amendment or other change they would
15 make in the articles of incorporation.

16 (d) If the restated articles of incorporation include an amendment requiring approval
17 pursuant to G.S. 55A-10-30, the board of directors shall submit the restated articles of
18 incorporation for such approval.

19 (e) A corporation restating its articles of incorporation shall deliver to the Secretary of
20 State for filing articles of restatement which shall:

- 21 (1) Set forth the name of the corporation;
- 22 (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- 23 (3) State whether the restated articles of incorporation contain an amendment to
24 the articles of incorporation requiring member approval and, if they do not,
25 that the board of directors adopted the restated articles of incorporation;
- 26 (4) If the restated articles of incorporation contain an amendment to the articles
27 of incorporation requiring member approval, state that member approval was
28 obtained as required by this Chapter; and
- 29 (5) If the restated articles of incorporation contain an amendment to the articles
30 of incorporation requiring approval by a person whose approval is required
31 pursuant to G.S. 55A-10-30, state that such approval was obtained.

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

34 (g) The Secretary of State may certify restated articles of incorporation, as the articles
35 of incorporation currently in effect, without including the other information required by
36 subsection (e) of this section. (1965, c. 762; 1993, c. 398, s. 1.)
37

38 **§ 55A-10-07. Effect of amendment.**

39 An amendment to articles of incorporation does not affect a cause of action existing against
40 or in favor of the corporation, a proceeding to which the corporation is a party, any requirement
41 or limitation imposed upon the corporation or any property held by it by virtue of any
42 restriction or condition upon which such property is held by the corporation or the existing
43 rights of persons other than members of the corporation. An amendment changing a
44 corporation's name does not abate a proceeding brought by or against the corporation in its
45 former name. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 38; 1993, c. 398, s. 1.)
46

47 **§§ 55A-10-08 through 55A-10-19. Reserved for future codification purposes.**

48
49 Part 2. Bylaws.

50 **§ 55A-10-20. Amendment by directors.**

1 If a corporation has no members entitled to vote thereon, its incorporators, until directors
2 have been chosen, and thereafter its board of directors, may adopt one or more amendments to
3 the corporation's bylaws subject to any approval required pursuant to G.S. 55A-10-30. The
4 corporation shall provide at least five days' written notice of any meeting of directors at which
5 an amendment is to be voted upon. The notice shall state that the purpose, or one of the
6 purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be
7 accompanied by a copy or summary of the amendment or state the general nature of the
8 amendment. The amendment shall be approved by a majority of the directors in office at the
9 time the amendment is adopted. (1955, c. 1230; 1993, c. 398, s. 1.)

10
11 **§ 55A-10-21. Amendment by directors and members.**

12 (a) If the corporation has members entitled to vote thereon, then, unless this Chapter,
13 the articles of incorporation, bylaws, the members (acting pursuant to subsection (b) of this
14 section), or the board of directors (acting pursuant to subsection (c) of this section) require a
15 greater vote or voting by class, an amendment to a corporation's bylaws to be adopted shall be
16 approved:

- 17 (1) By the board or in lieu thereof in writing by the number or proportion of
18 members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to
19 consider such amendment;
20 (2) By the members entitled to vote thereon by two-thirds of the votes cast or a
21 majority of the votes entitled to be cast on the amendment, whichever is less;
22 and
23 (3) In writing by any person or persons whose approval is required by a
24 provision of the articles of incorporation authorized by G.S. 55A-10-30.

25 (b) The members entitled to vote thereon may condition the amendment's adoption on
26 its receipt of a higher percentage of affirmative votes or on any other basis.

27 (c) If the board initiates an amendment to the bylaws or board approval is required by
28 subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the
29 amendment's adoption on receipt of a higher percentage of affirmative votes or on any other
30 basis.

31 (d) If the board or the members seek to have the amendment approved by the members
32 entitled to vote thereon at a membership meeting, the corporation shall give notice of the
33 membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall
34 state that the purpose, or one of the purposes, of the meeting is to consider the proposed
35 amendment and contain or be accompanied by a copy or summary of the amendment.

36 (e) If the board or the members seek to have the amendment approved by the members
37 entitled to vote thereon by written consent or written ballot, the material soliciting the approval
38 shall contain or be accompanied by a copy or summary of the amendment. (1955, c. 1230;
39 1993, c. 398, s. 1; 2002-27, s. 1.)

40
41 **§ 55A-10-22. Class voting by members on amendments.**

42 (a) The members of a class in a charitable or religious corporation are entitled to vote as
43 a class on a proposed amendment to the bylaws if the amendment would affect the rights of that
44 class as to voting in a manner that is different from the manner in which such amendment
45 would affect another class.

46 (b) The members of a class in a corporation other than a charitable or religious
47 corporation are entitled to vote as a class on a proposed amendment to the bylaws if the
48 amendment would:

- 49 (1) Affect the rights, privileges, preferences, restrictions, or conditions of that
50 class as to voting, dissolution, redemption, or transfer of memberships in a

1 manner that is different from the manner in which such amendment would
2 affect another class;

3 (2) Affect the rights, privileges, preferences, restrictions, or conditions of that
4 class as to voting, dissolution, redemption, or transfer of memberships by
5 changing the rights, privileges, preferences, restrictions, or conditions of
6 another class;

7 (3) Increase or decrease the number of memberships authorized for that class;

8 (4) Increase the number of memberships authorized for another class;

9 (5) Effect an exchange, reclassification, or termination of all or part of the
10 memberships of that class; or

11 (6) Authorize a new class of memberships.

12 (c) If a class is to be divided into two or more classes as a result of an amendment to the
13 bylaws, the amendment shall be approved by the members of each class that would be created
14 by the amendment.

15 (d) If a class vote is required to approve an amendment to the bylaws, the amendment
16 shall be approved by the members of the class by two-thirds of the votes cast by the class or a
17 majority of the votes entitled to be cast by the class on the amendment, whichever is less.

18 (e) A class of members is entitled to the voting rights granted by this section although
19 the articles of incorporation and bylaws provide that the class shall not vote on the proposed
20 amendment. (1993, c. 398, s. 1.)

21
22 **§§ 55A-10-23 through 55A-10-29. Reserved for future codification purposes.**

23
24
25 Part 3. Articles of Incorporation and Bylaws.

26 **§ 55A-10-30. Approval by third persons.**

27 The articles of incorporation or bylaws may require an amendment to the articles of
28 incorporation or bylaws to be approved in writing by a specified person or persons other than
29 the board of directors. Such a provision in the articles of incorporation or bylaws may only be
30 amended with the approval in writing of such person or persons. (1993, c. 398, s. 1; 1995, c.
31 509, s. 30.)

32
33 Article 11.

34 Merger.

35 **§ 55A-11-01. Approval of plan of merger.**

36 (a) Subject to the limitations set forth in G.S. 55A-11-02, one or more nonprofit
37 corporations may merge into another nonprofit corporation, if the plan of merger is approved as
38 provided in G.S. 55A-11-03.

39 (b) The plan of merger shall set forth:

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

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

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

46 (c) The plan of merger may set forth:

47 (1) Any amendments to the articles of incorporation or bylaws of the surviving
48 corporation to be effected by the merger; and

49 (2) Other provisions relating to the merger.

50 (d) The provisions of the plan of merger, other than the provisions referred to in
51 subdivisions (b)(1) and (c)(1) of this section, may be made dependent on facts objectively

1 ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the
2 facts will operate upon the affected provisions. The facts may include any of the following:

- 3 (1) Statistical or market indices, market prices of any security or group of
4 securities, interest rates, currency exchange rates, or similar economic or
5 financial data.
- 6 (2) A determination or action by the corporation or by any other person, group,
7 or body.
- 8 (3) The terms of, or actions taken under, an agreement to which the corporation
9 is a party, or any other agreement or document. (1955, c. 1230; 1993, c. 398,
10 s. 1; 1995, c. 400, s. 5; 2005-268, s. 38.)

11
12 **§ 55A-11-02. Limitations on mergers by charitable or religious corporations.**

13 (a) Without the prior approval of the superior court in a proceeding in which the
14 Attorney General has been given written notice, a charitable or religious corporation may
15 merge only with:

- 16 (1) A charitable or religious corporation;
- 17 (2) A foreign corporation that would qualify under this Chapter as a charitable
18 or religious corporation;
- 19 (3) A wholly owned foreign or domestic corporation (business or nonprofit)
20 which is not a charitable or religious corporation, or an unincorporated
21 entity, provided the charitable or religious corporation is the survivor in the
22 merger and continues to be a charitable or religious corporation after the
23 merger; or
- 24 (4) A business or nonprofit corporation (foreign or domestic) other than a
25 charitable or religious corporation, or an unincorporated entity, provided
26 that: (i) on or prior to the effective date of the merger, assets with a value
27 equal to the greater of the fair market value of the net tangible and intangible
28 assets (including goodwill) of the charitable or religious corporation or the
29 fair market value of the charitable or religious corporation if it were to be
30 operated as a business concern are transferred or conveyed to one or more
31 persons who would have received its assets under G.S. 55A-14-03(a)(1) and
32 (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by
33 it upon condition requiring return, transfer or conveyance, which condition
34 occurs by reason of the merger, in accordance with such condition; and (iii)
35 the merger is approved by a majority of directors of the charitable or
36 religious corporation who are not and will not become members, as
37 "member" is defined in G.S. 55A-1-40(16) or G.S. 57C-1-03, partners,
38 limited partners, or shareholders in or directors, managers, officers,
39 employees, agents, or consultants of the survivor in the merger.

40 (b) At least 30 days before consummation of any merger of a charitable or religious
41 corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the
42 proposed plan of merger, shall be delivered to the Attorney General. This notice shall include
43 all the information the Attorney General determines is required for a complete review of the
44 proposed transaction. The Attorney General may require an additional 30-day period to review
45 the proposed transaction by providing written notice to the charitable or religious corporation
46 prior to the expiration of the initial notice period. During this 30-day period, the transaction
47 may not be finalized.

48 (c) Without the prior written consent of the Attorney General, or approval of the
49 superior court in a proceeding in which the Attorney General has been given notice, no member
50 of a charitable or religious corporation may receive or retain any property as a result of a
51 merger other than an interest as a member, as "member" is defined in G.S. 55A-1-40(16), in the

1 survivor of the merger. The Attorney General may consent to the transaction, or the court shall
2 approve the transaction, if it is fair and not contrary to the public interest. (1993, c. 398, s. 1; c.
3 553, s. 83(a); 1995, c. 400, s. 6; 1999-204, s. 1; 1999-369, s. 2.4.)
4

5 **§ 55A-11-03. Action on plan.**

6 (a) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors
7 or members (acting pursuant to subsection (c) of this section) require a greater vote or voting
8 by class, a plan of merger to be adopted shall be approved for each constituent corporation:

9 (1) By the board;

10 (2) By the members entitled to vote thereon, if any, by two-thirds of the votes
11 cast or a majority of the votes entitled to be cast on the plan of merger,
12 whichever is less; and

13 (3) In writing by any person or persons whose approval is required by a
14 provision of the articles of incorporation authorized by G.S. 55A-10-30 for
15 an amendment to the articles of incorporation or bylaws.

16 (b) If the corporation does not have members entitled to vote thereon, the merger shall
17 be approved by a majority of the directors then in office. The corporation shall provide at least
18 five days' written notice of any directors' meeting at which the approval will be considered. The
19 notice shall state that the purpose, or one of the purposes, of the meeting is to consider the
20 proposed merger.

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

24 (d) If the board seeks to have the plan approved by the members entitled to vote thereon
25 at a membership meeting, the corporation shall give notice of the membership meeting to those
26 members in accordance with G.S. 55A-7-05. The notice shall state that the purpose, or one of
27 the purposes, of the meeting is to consider the plan of merger and contain or be accompanied
28 by a copy or summary of the plan. The copy or summary of the plan for members of the
29 surviving corporation shall include any provision that, if contained in a proposed amendment to
30 the articles of incorporation or bylaws, would entitle members to vote on the provision. The
31 copy or summary of the plan for members of the disappearing corporation shall include a copy
32 or summary of the articles of incorporation and bylaws that will be in effect immediately after
33 the merger takes effect.

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

42 (f) Voting by a class of members is required on a plan of merger if the plan contains a
43 provision that, if contained in a proposed amendment to articles of incorporation or bylaws,
44 would entitle the class of members to vote as a class on the proposed amendment under G.S.
45 55A-10-04 or G.S. 55A-10-22. The plan is approved by a class of members by two-thirds of the
46 votes cast by the class or a majority of the votes entitled to be cast by the class, whichever is
47 less.

48 (g) After a merger is adopted but before the articles of merger become effective, the
49 plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be
50 abandoned, subject to any contractual rights, as provided in the plan of merger, or, if there is no
51 such provision, as determined by the board of directors without further action by the members

1 or other persons who approved the plan of merger. (1955, c. 1230; 1993, c. 398, s. 1; 2005-268,
2 s. 39.)

3
4 **§ 55A-11-04. Articles of merger.**

5 (a) After a plan of merger has been authorized as required by this Chapter, the
6 surviving corporation shall deliver to the Secretary of State for filing articles of merger setting
7 forth:

- 8 (1) The name and state or country of incorporation of each merging corporation.
9 (2) The name of the merging corporation that will survive the merger and, if the
10 surviving corporation is not authorized to transact business or conduct affairs
11 in this State, a designation of its mailing address and a commitment to file
12 with the Secretary of State a statement of any subsequent change in its
13 mailing address.
14 (3) If the surviving corporation is a domestic corporation, any amendment to the
15 articles of incorporation of the corporation provided in the plan of merger.
16 (4) A statement that the plan of merger has been approved by each merging
17 corporation in the manner required by law.

18 (a1) If the plan of merger is amended after the articles of merger have been filed but
19 before the articles of merger become effective and any statement in the articles of merger
20 becomes incorrect as a result of the amendment, the surviving corporation shall deliver to the
21 Secretary of State for filing prior to the time the articles of merger become effective an
22 amendment to the articles of merger correcting the incorrect statement. If the articles of merger
23 are abandoned after the articles of merger are filed but before the articles of merger become
24 effective, the surviving corporation shall deliver to the Secretary of State for filing prior to the
25 time the articles of merger become effective an amendment reflecting abandonment of the plan
26 of merger.

27 (b) A merger takes effect when the articles of merger become effective.

28 (c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

29 (d) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references
30 in subsections (a) and (a1) of this section to "corporation" shall include a domestic corporation,
31 a foreign nonprofit corporation, a domestic business corporation, and a foreign business
32 corporation as applicable. (1955, c. 1230; 1967, c. 823, s. 22; 1993, c. 398, s. 1; 2005-268, s.
33 40; 2006-264, s. 44(d).)

34
35 **§ 55A-11-05. Effect of merger.**

36 (a) When a merger pursuant to G.S. 55A-11-01, 55A-11-06, or 55A-11-08 takes effect:

- 37 (1) Each other merging corporation merges into the surviving corporation and
38 the separate existence of each merging corporation except the surviving
39 corporation ceases.
40 (2) The title to all real estate and other property owned by each merging
41 corporation is vested in the surviving corporation without reversion or
42 impairment subject to any and all conditions to which the property was
43 subject prior to the merger.
44 (3) The surviving corporation has all liabilities and obligations of each merging
45 corporation.
46 (4) A proceeding pending by or against any merging corporation may be
47 continued as if the merger did not occur or the surviving corporation may be
48 substituted in the proceeding for a merging corporation whose separate
49 existence ceases in the merger.
50 (5) If a domestic corporation survives the merger, its articles of incorporation
51 are amended to the extent provided in the articles of merger.

- 1 (6) If a foreign corporation or a foreign business corporation survives the
2 merger, it is deemed:
- 3 a. To agree that it may be served with process in this State in any
4 proceeding for enforcement (i) of any obligation of any merging
5 domestic corporation and (ii) of any obligation of the surviving
6 foreign corporation or foreign business corporation arising from the
7 merger.
- 8 b. To have appointed the Secretary of State as its agent for service of
9 process in any proceeding for enforcement as specified in
10 sub-subdivision a. of this subdivision. Service of process on the
11 Secretary of State shall be made by delivering to, and leaving with,
12 the Secretary of State, or with any clerk authorized by the Secretary
13 of State to accept service of process, duplicate copies of the process
14 and the fee required by G.S. 55A-1-22(b). Upon receipt of service of
15 process on behalf of a surviving foreign corporation or foreign
16 business corporation in the manner provided for in this section, the
17 Secretary of State shall immediately mail a copy of the process by
18 registered or certified mail, return receipt requested, to the surviving
19 foreign corporation or foreign business corporation. If the surviving
20 foreign corporation or foreign business corporation is authorized to
21 transact business or conduct affairs in this State, the address for
22 mailing shall be its principal office designated in the latest document
23 filed with the Secretary of State that is authorized by law to designate
24 the principal office, or if there is no principal office on file, its
25 registered office. If the surviving foreign corporation or foreign
26 business corporation is not authorized to transact business or conduct
27 affairs in this State, the address for mailing shall be the mailing
28 address designated pursuant to G.S. 55A-11-04(a)(2).

29 The merger shall not affect the liability or absence of liability of any member of a merging
30 corporation for acts, omissions, or obligations of any merging corporation made or incurred
31 prior to the effectiveness of the merger.

32 (b) In the case of a merger pursuant to G.S. 55A-11-06 or G.S. 55A-11-08, references
33 in subsection (a) of this section to "corporation" shall include a domestic corporation, a foreign
34 nonprofit corporation, a domestic business corporation, and a foreign business corporation, as
35 applicable. (1955, c. 1230; 1967, c. 950, s. 2; 1993, c. 398, s. 1; 1999-369, s. 2.5; 2005-268, s.
36 41; 2006-264, s. 44(e).)

37
38 **§ 55A-11-06. Merger with foreign corporation.**

39 (a) Except as provided in G.S. 55A-11-02, one or more foreign corporations may merge
40 with one or more domestic nonprofit corporations if:

- 41 (1) The merger is permitted by the law of the state or country under whose law
42 each foreign corporation is incorporated and each foreign corporation
43 complies with that law in effecting the merger;
- 44 (2) The foreign corporation complies with G.S. 55A-11-04 if it is the surviving
45 corporation of the merger; and
- 46 (3) Each domestic nonprofit corporation complies with the applicable provisions
47 of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving
48 corporation of the merger, with G.S. 55A-11-04.

49 (b) Repealed by Session Laws 2005, c. 268, s. 42.

50 (c) This section does not limit the power of a foreign corporation to acquire all or part
51 of the memberships of one or more classes of a domestic nonprofit corporation through a

1 voluntary exchange or otherwise. (1973, c. 314, s. 4; 1985 (Reg. Sess., 1986), c. 801, s. 39;
2 1993, c. 398, s. 1; 1995, c. 400, s. 7; 2001-387, ss. 36, 37; 2005-268, s. 42; 2006-226, s. 16(c);
3 2006-264, s. 44(f).)

4
5 **§ 55A-11-07. Devises and gifts.**

6 Any devise, gift, grant, or promise contained in a will or other instrument of donation,
7 subscription, or conveyance, that is made to a constituent corporation and that takes effect or
8 remains payable after the merger, inures to the survivor in the merger unless the will or other
9 instrument otherwise specifically provides. (1993, c. 398, s. 1; 1999-369, s. 2.6; 2011-284, s.
10 53.)

11
12 **§ 55A-11-08. Merger with business corporation.**

13 (a) One or more domestic or foreign business corporations may merge with one or more
14 domestic nonprofit corporations if:

- 15 (1) Each domestic business corporation complies with the applicable provisions
16 of G.S. 55-11-01, 55-11-03, and 55-11-04;
- 17 (2) In a merger involving one or more foreign business corporations, the merger
18 is permitted by the law of the state or country under whose law each foreign
19 business corporation is incorporated and each foreign business corporation
20 complies with that law in effecting the merger;
- 21 (3) The domestic or foreign business corporation complies with G.S. 55A-11-04
22 if it is the surviving corporation; and
- 23 (4) Each domestic nonprofit corporation complies with the applicable provisions
24 of G.S. 55A-11-01 through G.S. 55A-11-03 and, if it is the surviving
25 corporation, with G.S. 55A-11-04.

26 (b) Repealed by Session Laws 2005, c. 268, s. 43.

27 (c) This section does not limit the power of a domestic or foreign business corporation
28 to acquire all or part of the memberships of one or more classes of a domestic nonprofit
29 corporation through a voluntary exchange or otherwise. (1995, c. 400, s. 8; 2001-387, ss. 38,
30 39; 2005-268, s. 43.)

31
32 **§ 55A-11-09. Merger with unincorporated entity.**

33 (a) As used in this section, "business entity" means a domestic business corporation
34 (including a professional corporation as defined in G.S. 55B-2), a foreign business corporation
35 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign
36 nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign
37 limited partnership, a registered limited liability partnership or foreign limited liability
38 partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether
39 or not formed under the laws of this State.

40 (b) One or more domestic nonprofit corporations may merge with one or more
41 unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic
42 business corporations, or foreign business corporations if:

- 43 (1) The merger is permitted by the laws of the state or country governing the
44 organization and internal affairs of each of the other merging business
45 entities;
- 46 (2) Each merging domestic nonprofit corporation and each other merging
47 business entity comply with the requirements of this section and, to the
48 extent applicable, the laws referred to in subdivision (1) of this subsection;
49 and
- 50 (3) The merger complies with G.S. 55A-11-02, if applicable.

1 (c) Each merging domestic nonprofit corporation and each other merging business
2 entity shall approve a written plan of merger containing:

- 3 (1) For each merging business entity, its name, type of business entity, and the
4 state or country whose laws govern its organization and internal affairs;
- 5 (2) The name of the merging business entity that shall survive the merger;
- 6 (3) The terms and conditions of the merger;
- 7 (4) The manner and basis for converting the interests in each merging business
8 entity into interests, obligations, or securities of the surviving business entity
9 or into cash or other property in whole or in part; and
- 10 (5) If the surviving business entity is a domestic nonprofit corporation, any
11 amendments to its articles of incorporation that are to be made in connection
12 with the merger.

13 (c1) The plan of merger may contain other provisions relating to the merger.

14 (c2) The provisions of the plan of merger, other than the provisions referred to in
15 subdivisions (1), (2), and (5) of subsection (c) of this section, may be made dependent on facts
16 objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner
17 in which the facts will operate upon the affected provisions. The facts may include any of the
18 following:

- 19 (1) Statistical or market indices, market prices of any security or group of
20 securities, interest rates, currency exchange rates, or similar economic or
21 financial data.
- 22 (2) A determination or action by the domestic nonprofit corporation or by any
23 other person, group, or body.
- 24 (3) The terms of, or actions taken under, an agreement to which the domestic
25 nonprofit corporation is a party, or any other agreement or document.

26 (c3) In the case of a merging domestic nonprofit corporation, approval of the plan of
27 merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. If any
28 member of a merging domestic nonprofit corporation has or will have personal liability for any
29 existing or future obligation of the surviving business entity solely as a result of holding an
30 interest in the surviving business entity, then in addition to the requirements of G.S. 55A-11-03,
31 approval of the plan of merger by the domestic nonprofit corporation shall require the
32 affirmative vote or written consent of the member. In the case of each other merging business
33 entity, the plan of merger must be approved in accordance with the laws of the state or country
34 governing the organization and internal affairs of such merging business entity.

35 (c4) After a plan of merger has been approved by a domestic nonprofit corporation but
36 before the articles of merger become effective, the plan of merger (i) may be amended as
37 provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as
38 provided in the plan of merger or, if there is no such provision, as determined by the board of
39 directors.

40 (d) After a plan of merger has been approved by each merging domestic nonprofit
41 corporation and each other merging business entity as provided in subsection (c) of this section,
42 the surviving business entity shall deliver articles of merger to the Secretary of State for filing.
43 The articles of merger shall set forth:

- 44 (1) Repealed by Session Laws 2005-268, s. 45.
- 45 (2) For each merging business entity, its name, type of business entity, and the
46 state or country whose laws govern its organization and internal affairs.
- 47 (3) The name of the merging business entity that will survive the merger and, if
48 the surviving business entity is not authorized to transact business or conduct
49 affairs in this State, a designation of its mailing address and a commitment to
50 file with the Secretary of State a statement of any subsequent change in its
51 mailing address.

- 1 (3a) If the surviving business entity is a domestic corporation, any amendment to
2 its articles of incorporation as provided in the plan of merger.
3 (4) A statement that the plan of merger has been approved by each merging
4 business entity in the manner required by law.
5 (5) Repealed by Session Laws 2005-268, s. 45.

6 If the plan of merger is amended after the articles of merger have been filed but before the
7 articles of merger become effective, and any statement in the articles of merger becomes
8 incorrect as a result of the amendment, the surviving business entity shall deliver to the
9 Secretary of State for filing prior to the time the articles of merger become effective an
10 amendment to the articles of merger correcting the incorrect statement. If the articles of merger
11 are abandoned after the articles of merger are filed but before the articles of merger become
12 effective, the surviving business entity shall deliver to the Secretary of State for filing prior to
13 the time the articles of merger become effective an amendment reflecting abandonment of the
14 plan of merger.

15 Certificates of merger shall also be registered as provided in G.S. 47-18.1.

16 (e) A merger takes effect when the articles of merger become effective. When a merger
17 takes effect:

- 18 (1) Each other merging business entity merges into the surviving business entity
19 and the separate existence of each merging business entity except the
20 surviving business entity ceases;
21 (2) The title to all real estate and other property owned by each merging
22 business entity is vested in the surviving business entity without reversion or
23 impairment;
24 (3) The surviving business entity has all liabilities of each merging business
25 entity;
26 (4) A proceeding pending by or against any merging business entity may be
27 continued as if the merger did not occur, or the surviving business entity
28 may be substituted in the proceeding for a merging business entity whose
29 separate existence ceases in the merger;
30 (5) If a domestic nonprofit corporation is the surviving business entity, its
31 articles of incorporation shall be amended to the extent provided in the
32 articles of merger;
33 (6) The interests in each merging business entity that are to be converted into
34 interests, obligations, or securities of the surviving business entity or into the
35 right to receive cash or other property are thereupon so converted, and the
36 former holders of the interests are entitled only to the rights provided to
37 them in the plan of merger or, in the case of former holders of shares in a
38 domestic business corporation, any rights they may have under Article 13 of
39 Chapter 55 of the General Statutes; and
40 (7) If the surviving business entity is not a domestic business corporation, the
41 surviving business entity is deemed to agree that it will promptly pay to the
42 shareholders of any merging domestic business corporation exercising
43 appraisal rights the amount, if any, to which they are entitled under Article
44 13 of Chapter 55 of the General Statutes and otherwise to comply with the
45 requirements of Article 13 as if it were a surviving domestic business
46 corporation in the merger.

47 The merger shall not affect the liability or absence of liability of any holder of an interest in
48 a merging business entity for any acts, omissions, or obligations of any merging business entity
49 made or incurred prior to the effectiveness of the merger. The cessation of separate existence of
50 a merging business entity in the merger shall not constitute a dissolution or termination of the
51 merging business entity.

1 (e1) If the surviving business entity is not a domestic limited liability company, a
2 domestic business corporation, a domestic nonprofit corporation, or a domestic limited
3 partnership, when the merger takes effect the surviving business entity is deemed:

4 (1) To agree that it may be served with process in this State in any proceeding
5 for enforcement of (i) any obligation of any merging domestic limited
6 liability company, domestic business corporation, domestic nonprofit
7 corporation, domestic limited partnership, or other partnership as defined in
8 G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights
9 of shareholders of any merging domestic business corporation under Article
10 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the
11 surviving business entity arising from the merger; and

12 (2) To have appointed the Secretary of State as its agent for service of process in
13 any such proceeding. Service on the Secretary of State of any such process
14 shall be made by delivering to and leaving with the Secretary of State, or
15 with any clerk authorized by the Secretary of State to accept service of
16 process, duplicate copies of such process and the fee required by G.S.
17 55A-1-22(b). Upon receipt of service of process on behalf of a surviving
18 business entity in the manner provided for in this section, the Secretary of
19 State shall immediately mail a copy of the process by registered or certified
20 mail, return receipt requested, to the surviving business entity. If the
21 surviving business entity is authorized to transact business or conduct affairs
22 in this State, the address for mailing shall be its principal office designated in
23 the latest document filed with the Secretary of State that is authorized by law
24 to designate the principal office or, if there is no principal office on file, its
25 registered office. If the surviving business entity is not authorized to transact
26 business or conduct affairs in this State, the address for mailing shall be the
27 mailing address designated pursuant to subdivision (3) of subsection (d) of
28 this section.

29 (f) This section does not apply to a merger that does not include a merging
30 unincorporated entity. (1999-369, s. 2.7; 2000-140, s. 48; 2001-387, ss. 40, 41, 42; 2001-487,
31 s. 62(f); 2005-268, ss. 44, 45, 46; 2007-385, s. 3; 2011-347, ss. 13, 14.)
32

33 **§ 55A-11-10. Merger with certain charitable or religious corporation or hospital**
34 **authority.**

35 (a) A hospital authority created by a city may merge into a charitable or religious
36 corporation having its principal office in the county in which the city is located, under a plan of
37 merger approved by the city and the county and by a majority of the members of the board of
38 commissioners of such authority and by or for the corporation as provided in G.S. 55A-11-03.

39 This section applies only to the merger of a hospital authority formed by a city in a county
40 with a population of less than 150,000 as of the most recent U.S. Census and either (i) a
41 charitable or religious corporation formed on or before September 29, 2005 having its
42 principal office located in such county as of September 29, 2005, or (ii) a hospital authority
43 formed after September 29, 2005 by the county in which the city is located.

44 (b) A hospital authority created by a city may merge into a hospital authority created by
45 the county in which the city is located, pursuant to a plan of merger approved by the city and
46 the county and by a majority of the members of the board of commissioners of each authority.

47 (c) The plan of merger shall include all of the following:

48 (1) The name of the city hospital authority and the charitable or religious
49 corporation or the county hospital authority planning to merge and the name
50 of the surviving charitable or religious corporation or county hospital
51 authority into which such city hospital authority plans to merge.

- 1 (2) The terms and conditions of the merger.
- 2 (3) Any amendments to the articles or certificate of incorporation or bylaws of
- 3 the surviving charitable or religious corporation or the surviving county
- 4 hospital authority to be effected by the merger.
- 5 (4) Other provisions relating to the merger.
- 6 (d) After the plan of merger is approved, the surviving charitable or religious
- 7 corporation or the surviving county hospital authority shall deliver to the Secretary of State for
- 8 filing articles of merger that include all of the following:
 - 9 (1) The plan of merger.
 - 10 (2) In the case of a merger of a city hospital authority into a charitable or
 - 11 religious corporation, a statement that the plan of merger was approved by
 - 12 the city and by a majority of the members of the board of commissioners of
 - 13 the city hospital authority and the statements required under G.S.
 - 14 55A-11-04(a)(2), (3), or (4); or
 - 15 (3) In the case of a merger of a city hospital authority into a county hospital
 - 16 authority, a statement that the plan of merger was approved by the city and
 - 17 the county and a majority of each of the boards of commissioners of the
 - 18 authorities.
- 19 (e) A merger takes effect upon the effective date of the articles of merger.
- 20 (f) Certificates of merger shall also be registered as provided in G.S. 47-18.1.
- 21 (g) All of the following shall occur upon an effective merger under this section:
 - 22 (1) The separate existence of the city hospital authority that merges into the
 - 23 charitable or religious corporation or into the county hospital authority
 - 24 ceases.
 - 25 (2) The title to all real estate and other property owned by the hospital authority
 - 26 is vested in the surviving charitable or religious corporation or in the
 - 27 surviving county hospital authority without reversion or impairment subject
 - 28 to any and all conditions to which the property was subject prior to the
 - 29 merger.
 - 30 (3) The surviving charitable or religious corporation or the surviving county
 - 31 hospital authority has all liabilities and obligations of the city hospital
 - 32 authority and the charitable or religious corporation or the county hospital
 - 33 authority party to the merger.
 - 34 (4) A proceeding pending by or against the city hospital authority and the
 - 35 charitable or religious corporation or the county hospital authority party to
 - 36 the merger may be continued as if the merger did not occur or the surviving
 - 37 charitable or religious corporation or the surviving county hospital authority
 - 38 may be substituted in the proceeding for the city hospital authority whose
 - 39 existence ceased.
 - 40 (5) The articles or certificate of incorporation and bylaws of the surviving
 - 41 charitable or religious corporation or the surviving county hospital authority
 - 42 are amended to the extent provided in the plan of merger.
 - 43 (6) Any devise, gift, grant, or promise contained in a will or other instrument of
 - 44 donation, subscription, or conveyance that is made to a city hospital
 - 45 authority that has merged into a charitable or religious corporation or into a
 - 46 county hospital authority and that takes effect or remains payable after the
 - 47 merger, inures to the surviving charitable or religious corporation or the
 - 48 surviving county hospital authority unless the will or other instrument
 - 49 otherwise specifically provides.
- 50 (h) A merger pursuant to the provisions of this section will not be deemed to be a sale
- 51 or conveyance of a hospital facility under or pursuant to G.S. 131E-8, 131E-13, or 131E-14 of

1 the Municipal Hospital Act (Part 1, Article 2, Chapter 131E of the General Statutes) and G.S.
2 131E-13(d) will not be applicable to such merger. (2005-449, ss. 1, 2; 2011-284, s. 54.)

3
4 Article 12.

5 Transfer of Assets.

6 **§ 55A-12-01. Sale of assets in regular course of activities and mortgage of assets.**

7 (a) A corporation may on the terms and conditions and for the consideration determined
8 by the board of directors:

9 (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its
10 property in the usual and regular course of its activities; or

11 (2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with
12 or without recourse), or otherwise encumber any or all of its property
13 whether or not in the usual and regular course of its activities.

14 (b) Unless the articles of incorporation require it, approval of the members or any other
15 person of a transaction described in subsection (a) of this section is not required. (1955, c.
16 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40; 1993, c. 398, s. 1.)

17
18 **§ 55A-12-02. Sale of assets other than in regular course of activities.**

19 (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially
20 all, of its property other than in the usual and regular course of its activities on the terms and
21 conditions and for the consideration determined by the corporation's board of directors if the
22 proposed transaction is authorized by subsection (b) of this section.

23 (b) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors
24 or members (acting pursuant to subsection (d) of this section) require a greater vote or voting
25 by class, the proposed transaction to be authorized shall be approved:

26 (1) By the board;

27 (2) By the members entitled to vote thereon by two-thirds of the votes cast or a
28 majority of the votes entitled to be cast on the proposed transaction,
29 whichever is less; and

30 (3) In writing by any person or persons whose approval is required by a
31 provision of the articles of incorporation authorized by G.S. 55A-10-30 for
32 an amendment to the articles of incorporation or bylaws.

33 (c) If the corporation does not have members entitled to vote thereon, the transaction
34 shall be approved by a vote of a majority of the directors then in office. The corporation shall
35 provide at least five days' written notice of any directors' meeting at which such approval will
36 be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is
37 to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the
38 property or assets of the corporation and contain or be accompanied by a description of the
39 transaction.

40 (d) The board may condition its approval of the proposed transaction, and the members
41 entitled to vote thereon may condition their approval of the transaction, on receipt of a higher
42 percentage of affirmative votes or on any other basis.

43 (e) If the corporation seeks to have the transaction approved by the members entitled to
44 vote thereon at a membership meeting, the corporation shall give notice of the membership
45 meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the
46 purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other
47 disposition of all, or substantially all, of the property or assets of the corporation and contain or
48 be accompanied by a description of the transaction.

49 (f) If the board seeks to have the transaction approved by the members entitled to vote
50 thereon by written consent or written ballot, the material soliciting the approval shall contain or
51 be accompanied by a description of the transaction.

1 (g) A charitable or religious corporation shall give written notice to the Attorney
2 General 30 days before it sells, leases, exchanges, or otherwise disposes of all, or a majority of,
3 its property if the transaction is not in the usual and regular course of its activities unless the
4 Attorney General has given the corporation a written waiver of this subsection. This notice
5 shall include all the information the Attorney General determines is required for a complete
6 review of the proposed transaction. The Attorney General may require an additional 30-day
7 period to review the proposed transaction by providing written notice to the charitable or
8 religious corporation prior to the expiration of the initial notice period. During this 30-day
9 period, the transaction may not be finalized.

10 (h) After a sale, lease, exchange, or other disposition of property is authorized, the
11 transaction may be abandoned (subject to any contractual rights), without further action by the
12 members or any other person who approved the transaction, in accordance with the procedure
13 set forth in the resolution proposing the transaction or, if none is set forth, in the manner
14 determined by the board of directors. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40;
15 1993, c. 398, s. 1; 1999-204, s. 2.)

16
17 Article 13.
18 Distributions.

19 **§ 55A-13-01. Prohibited distributions.**

20 Except as authorized by G.S. 55A-13-02 or Article 14 of this Chapter, a corporation shall
21 not make any distributions. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 32; 1993, c. 398,
22 s. 1.)

23
24 **§ 55A-13-02. Authorized distributions.**

25 (a) A corporation may pay reasonable amounts to its members, directors, or officers for
26 services rendered or other value received and may confer benefits upon its members in
27 conformity with its purposes.

28 (b) Subject to the provisions of subsection (d) of this section:

- 29 (1) A corporation may make distributions to any entity that is exempt under
30 section 501(c)(3) of the Internal Revenue Code of 1986 or any successor
31 section, or that is organized exclusively for one or more of the purposes
32 specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any
33 successor section and that upon dissolution shall distribute its assets to a
34 charitable or religious corporation, the United States, a state or an entity that
35 is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or
36 any successor section.
- 37 (2) Any corporation other than a charitable or religious corporation may make
38 distributions to any domestic or foreign corporation.
- 39 (3) Except as otherwise prohibited by statute, a corporation not operated for
40 profit, the membership of which is limited to the owners or occupants of real
41 property in a condominium, cooperative housing corporation, or other real
42 property development, having as its primary purposes the management,
43 operation, preservation, maintenance, and repair of common areas and
44 improvements upon the real property owned by the members and the
45 corporation or organization, may make distribution to its members of excess
46 or surplus membership dues, fees, or assessments remaining after the
47 payment of or provisions for common expenses and any prepayment of
48 reserves; provided that these distributions are in proportion to the dues, fees,
49 or assessments collected from the members.

50 (c) Subject to the provisions of subsection (d) of this section, a corporation other than a
51 charitable or religious corporation may make distributions to purchase its memberships.

1 (d) A corporation shall not make any distribution under subsection (b) or (c) of this
2 section if at the time of or as a result of such distribution:

- 3 (1) The corporation would not be able to pay its debts as they become due in the
4 usual course of business; or
- 5 (2) The corporation's total assets would be less than the sum of its total
6 liabilities. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 32; 1993, c.
7 398, s. 1; 1999-369, s. 7.)

8
9 Article 14.

10 Dissolution.

11 Part 1. Voluntary Dissolution.

12 **§ 55A-14-01. Dissolution by incorporators or directors prior to commencement of**
13 **activities.**

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

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

27 (b) Upon the filing of articles of dissolution under this section, the corporation becomes
28 nonexistent and is cancelled as if such corporation had never been created. (1955, c. 1230;
29 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, ss. 41, 43; 1993, c. 398, s. 1.)
30

31 **§ 55A-14-02. Dissolution by directors, members, and third persons.**

32 (a) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors
33 or members (acting pursuant to subsection (c) of this section) require a greater vote or voting
34 by class, dissolution is authorized if a plan of dissolution meeting the requirements of G.S.
35 55A-14-03 is approved:

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

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

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

1 (d) If the board of directors seeks to have dissolution approved by the members entitled
2 to vote thereon at a membership meeting, the corporation shall give notice of the membership
3 meeting to those members in accordance with G.S. 55A-7-05. The notice shall state that the
4 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and
5 contain or be accompanied by a copy or summary of the plan of dissolution.

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

10
11 **§ 55A-14-03. Plan of dissolution.**

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

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

26 (b) The plan of dissolution may set forth other provisions relating to the dissolution.
27 (1955, c. 1230; 1993, c. 398, s. 1.)

28
29 **§ 55A-14-04. Articles of dissolution.**

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

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

46 (b) A corporation is dissolved upon the effective date of its articles of dissolution.
47 (1955, c. 1230; 1973, c. 314, s. 7; 1993, c. 398, s. 1.)

48
49 **§ 55A-14-05. Revocation of dissolution.**

50 (a) A corporation may revoke its dissolution authorized under G.S. 55A-14-02 within
51 120 days of its effective date.

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

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

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

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

21 (e) When the revocation of dissolution is effective, it relates back to and takes effect as
22 of the effective date of the dissolution and the corporation resumes carrying on its activities as
23 if dissolution had never occurred, subject to the rights of any person who reasonably relied to
24 his prejudice upon the filing of the articles of dissolution. (1955, c. 1230; 1993, c. 398, s. 1.)
25

26 **§ 55A-14-06. Effect of dissolution.**

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

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

36 (b) Dissolution of a corporation does not:

- 37 (1) Transfer title to the corporation's property;
- 38 (2) Subject its directors or officers to standards of conduct different from those
39 prescribed in Article 8 of this Chapter;
- 40 (3) Change quorum or voting requirements for its board of directors or
41 members; change provisions for selection, resignation, or removal of its
42 directors or officers or both; or change provisions for amending its bylaws;
- 43 (4) Prevent commencement of a proceeding by or against the corporation in its
44 corporate name;
- 45 (5) Abate or suspend a proceeding pending by or against the corporation on the
46 effective date of dissolution; or
- 47 (6) Terminate the authority of the registered agent of the corporation. (1955, c.
48 1230; 1993, c. 398, s. 1.)
49

50 **§ 55A-14-07. Known claims against dissolved corporation.**

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

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

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

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

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

17 (d) For purposes of this section, "claim" does not include a contingent liability or a
18 claim based on an event occurring after the effective date of dissolution. (1955, c. 1230; 1973,
19 c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s. 41; 1993, c. 398, s. 1.)
20

21 **§ 55A-14-08. Unknown and certain other claims against dissolved corporation.**

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

24 (b) The notice shall:

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

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

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

42 (d) Nothing in this section shall bar:

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

46 to the extent that the corporation is protected by insurance coverage with respect to such claim,
47 proceeding, or judgment. (1955, c. 1230; 1973, c. 314, s. 5; 1985 (Reg. Sess., 1986), c. 801, s.
48 41; 1993, c. 398, s. 1.)
49

50 **§ 55A-14-09. Enforcement of claims.**

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

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

9 (b) Nothing in G.S. 55A-14-07 or G.S. 55A-14-08 shall extend any applicable period of
10 limitation. (1985 (Reg. Sess., 1986), c. 801, s. 33; 1993, c. 398, s. 1.)
11

12 **§§ 55A-14-10 through 55A-14-19. Reserved for future codification purposes.**
13

14 Part 2. Administrative Dissolution.

15 **§ 55A-14-20. Grounds for administrative dissolution.**

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

- 18 (1) The corporation does not pay within 60 days after they are due any penalties,
19 fees, or other payments due under this Chapter;
20 (2) Repealed by Session Laws 1995, c. 539, s. 24.
21 (3) The corporation is without a registered agent or registered office in this State
22 for 60 days or more;
23 (4) The corporation does not notify the Secretary of State within 60 days that its
24 registered agent or registered office has been changed, that its registered
25 agent has resigned, or that its registered office has been discontinued;
26 (5) The corporation's period of duration stated in its articles of incorporation
27 expires;
28 (6) The corporation knowingly fails or refuses to answer truthfully and fully
29 within the time prescribed in this Chapter interrogatories propounded by the
30 Secretary of State in accordance with the provisions of this Chapter; or
31 (7) The corporation does not designate the address of its principal office with
32 the Secretary of State or does not notify the Secretary of State within 60 days
33 that the principal office has changed. (1993, c. 398, s. 1; 1995, c. 539, ss. 24,
34 25.)
35

36 **§ 55A-14-21. Procedure for and effect of administrative dissolution.**

37 (a) If the Secretary of State determines that one or more grounds exist under G.S.
38 55A-14-20 for dissolving a corporation, the Secretary of State shall mail the corporation written
39 notice of the Secretary of State's determination.

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

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

48 (d) The administrative dissolution of a corporation does not terminate the authority of
49 its registered agent. (1993, c. 398, s. 1.)
50

51 **§ 55A-14-22. Reinstatement following administrative dissolution.**

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

3 (1) Recite the name of the corporation and the effective date of its
4 administrative dissolution; and

5 (2) State that the ground or grounds for dissolution either did not exist or have
6 been eliminated.

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

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

18 (c) When the reinstatement is effective, it relates back to and takes effect as of the
19 effective date of the administrative dissolution and the corporation resumes carrying on its
20 activities as if the administrative dissolution had never occurred, subject to the rights of any
21 person who reasonably relied to his prejudice upon the certificate of dissolution. (1993, c. 398,
22 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,
23 7.3.)
24

25 **§ 55A-14-23. Appeal from denial of reinstatement.**

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

29 (b) The corporation may appeal the denial of reinstatement to the Superior Court of
30 Wake County within 30 days after service of the notice of denial is perfected. The appeal is
31 commenced by filing a petition with the court and with the Secretary of State requesting the
32 court to set aside the dissolution. The petition shall have attached to it copies of the Secretary of
33 State's certificate of dissolution, the corporation's application for reinstatement, and the
34 Secretary of State's notice of denial. No service of process on the Secretary of State is required
35 except for the filing of the petition as set forth in this subsection. The appeal to the superior
36 court shall be determined by a judge of the superior court upon such further evidence, notice,
37 and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.
38 The corporation shall have the burden of establishing that it is entitled to reinstatement.

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

42 (d) The court's final decision may be appealed as in other civil proceedings. (1993, c.
43 398, s. 1; 2001-358, ss. 5A(c), 48(e); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)
44

45 **§ 55A-14-24. Inapplicability of Administrative Procedure Act.**

46 The Administrative Procedure Act shall not apply to any proceeding or appeal provided for
47 in G.S. 55A-14-20 through G.S. 55A-14-23. (1993, c. 398, s. 1.)
48

49 **§§ 55A-14-25 through 55A-14-29. Reserved for future codification purposes.**

1 **§ 55A-14-30. Grounds for judicial dissolution.**

- 2 (a) The superior court may dissolve a corporation:
- 3 (1) In a proceeding by the Attorney General if it is established that:
- 4 a. The corporation obtained its articles of incorporation through fraud;
- 5 or
- 6 b. The corporation has, after written notice by the Attorney General
- 7 given at least 20 days prior thereto, continued to exceed or abuse the
- 8 authority conferred upon it by law;
- 9 (2) In a proceeding by a member or director, if it is established that:
- 10 a. The directors are deadlocked in the management of the corporate
- 11 affairs, and the members, if any, are unable to break the deadlock;
- 12 b. The directors or those in control of the corporation have acted, are
- 13 acting, or will act in a manner that is illegal, oppressive, or
- 14 fraudulent;
- 15 c. The members are deadlocked in voting power and have failed, for a
- 16 period that includes at least two consecutive annual meeting dates, to
- 17 elect successors to directors whose terms have, or would otherwise
- 18 have, expired;
- 19 d. The corporate assets are being misapplied or wasted; or
- 20 e. The corporation is no longer able to carry out its purposes.
- 21 (3) In a proceeding by a creditor if it is established that:
- 22 a. The creditor's claim has been reduced to judgment and execution on
- 23 the judgment has been returned unsatisfied; or
- 24 b. The corporation has admitted in writing that the creditor's claim is
- 25 due and owing and the corporation is insolvent.
- 26 (4) In a proceeding by the corporation to have its voluntary dissolution
- 27 continued under court supervision.
- 28 (b) Prior to dissolving a corporation, the court shall consider whether:
- 29 (1) There are reasonable alternatives to dissolution;
- 30 (2) Dissolution is in the public interest, if the corporation is a charitable or
- 31 religious corporation; and
- 32 (3) Dissolution is reasonably necessary for the protection of the rights or
- 33 interests of the members, if any. (1955, c. 1230; 1985 (Reg. Sess., 1986), c.
- 34 801, s. 42; 1993, c. 398, s. 1.)
- 35

36 **§ 55A-14-31. Procedure for judicial dissolution.**

37 (a) Venue for a proceeding to dissolve a corporation lies in the county where a

38 corporation's principal office, or, if there is none in this State, its registered office, is or was last

39 located.

40 (b) It is not necessary to make directors or members parties to a proceeding to dissolve

41 a corporation unless relief is sought against them individually.

42 (c) A court in a proceeding brought to dissolve a corporation may issue injunctions,

43 appoint a receiver with all powers and duties the court directs, take other action required to

44 preserve the corporate assets wherever located, and carry on the activities of the corporation.

45 (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1.)

46

47 **§ 55A-14-32. Receivership.**

48 (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one

49 or more receivers to wind up and liquidate, or to manage, the affairs of the corporation. The

50 court shall hold a hearing, after notifying all parties to the proceeding and any interested

1 persons designated by the court, before appointing a receiver. The court appointing a receiver
2 has exclusive jurisdiction over the corporation and all of its property wherever located.

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

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

9 (1) To dispose of all or any part of the assets of the corporation wherever
10 located, at a public or private sale, if authorized by the court;

11 (2) To sue and defend in his own name as receiver of the corporation in all
12 courts of this State; and

13 (3) To exercise all of the powers of the corporation, through or in place of its
14 board of directors or officers, to the extent necessary to manage the affairs of
15 the corporation in the best interests of its members and creditors.

16 (d) The court from time to time during the receivership may order compensation paid
17 and expense disbursements or reimbursements made to the receiver and his counsel from the
18 assets of the corporation or proceeds from the sale of the assets. (1955, c. 1230; 1993, c. 398, s.
19 1.)
20

21 **§ 55A-14-33. Decree of dissolution.**

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

26 (b) After entering the decree of dissolution, the court shall direct the winding up and
27 liquidation of the corporation's affairs in accordance with G.S. 55A-14-06 and the notification
28 of its claimants in accordance with G.S. 55A-14-07 and G.S. 55A-14-08. The corporation's
29 name becomes available for use by another entity as provided in G.S. 55D-21. (1955, c. 1230;
30 1967, c. 823, s. 23; 1985 (Reg. Sess., 1986), c. 801, s. 42; 1993, c. 398, s. 1; 2001-358, s. 24;
31 2001-387, ss. 173, 175(a); 2001-413, s. 6.)
32

33 **§§ 55A-14-34 through 55A-14-39. Reserved for future codification purposes.**

34 35 Part 4. Miscellaneous.

36 **§ 55A-14-40. Disposition of amounts due to unavailable members and creditors.**

37 Upon liquidation of a corporation, the portion of the assets distributable to a creditor or
38 member who is unknown or cannot be found shall be disposed of in accordance with Chapter
39 116B of the General Statutes. (1955, c. 1230; 1981, c. 682, s. 13; 1993, c. 398, s. 1.)
40

41 Article 14A.

42 Reorganization.

43 **§ 55A-14A-01. Fundamental changes in reorganization proceedings.**

44 (a) Whenever a plan of reorganization of a corporation is confirmed by decree or order
45 of a court of competent jurisdiction in proceedings for the reorganization of the corporation
46 pursuant to the provisions of any applicable statute of the United States relating to
47 reorganization of corporations, the corporation may put into effect and carry out the plan and
48 the decrees and orders of the court relative thereto and may take any action provided in the plan
49 or directed by the decrees and orders without further action by its directors or members. Such
50 action may be taken, as may be directed by the decrees or orders, by the trustee or trustees of
51 the corporation appointed in the reorganization proceedings, or by designated officers of the

1 corporation, or by a master or other representative appointed by the court, with like effect as if
2 taken by unanimous action of the directors and members of the corporation. In particular and
3 without limiting the generality or effect of the foregoing, the corporation may:

- 4 (1) Amend its articles of incorporation or bylaws, or both, so long as the articles
5 of incorporation and bylaws as amended contain only such provisions as
6 might be lawfully contained therein at the time of making such amendment;
- 7 (2) Constitute or reconstitute and classify or reclassify its board of directors, and
8 name, constitute or appoint directors and officers in place of or in addition to
9 all or any of the directors or officers then in office;
- 10 (3) Make any change in its memberships or securities or cancel any or all of its
11 outstanding memberships or securities;
- 12 (4) Dissolve and liquidate;
- 13 (5) Effect a merger;
- 14 (6) Transfer all or part of its assets;
- 15 (7) Change its registered office or registered agent, or both;
- 16 (8) Authorize the issuance of bonds, debentures, or other obligations of the
17 corporation and fix the terms and conditions thereof.

18 (b) Any articles of amendment, statement of change of registered office or registered
19 agent, restated articles of incorporation, articles of merger, articles of dissolution, or any other
20 document appropriate to complete any action permitted by this section shall be executed and
21 filed in accordance with the provisions of this Chapter on behalf of the corporation by such
22 person or persons as may be authorized to take such action pursuant to subsection (a) of this
23 section.

24 (c) This section does not apply after entry of a final decree in the reorganization
25 proceeding even though the court retains jurisdiction of the proceeding for limited purposes
26 unrelated to consummation of the reorganization plan. (1993, c. 398, s. 1.)
27

28 Article 15.

29 Foreign Corporations.

30 Part 1. Certificate of Authority.

31 **§ 55A-15-01. Authority to conduct affairs required.**

32 (a) A foreign corporation shall not conduct affairs in this State until it obtains a
33 certificate of authority from the Secretary of State.

34 (b) Without excluding other activities which might not constitute conducting affairs in
35 this State, a foreign corporation shall not be considered to be conducting affairs in this State
36 solely for the purposes of this Chapter, by reason of carrying on in this State any one or more of
37 the following activities:

- 38 (1) Maintaining or defending any action or suit or any administrative or
39 arbitration proceeding, or affecting the settlement thereof or the settlement
40 of claims or disputes;
- 41 (2) Holding meetings of its directors or members or carrying on other activities
42 concerning its internal affairs;
- 43 (3) Maintaining bank accounts or borrowing money in this State, with or
44 without security, even if such borrowings are repeated and continuous
45 transactions;
- 46 (4) Maintaining offices or agencies for the transfer, exchange, and registration
47 of memberships or securities, or appointing and maintaining trustees or
48 depositories with relation to those securities;
- 49 (5) Soliciting or procuring orders, whether by mail or through employees or
50 agents or otherwise, where the orders require acceptance without this State
51 before becoming binding contracts;

- 1 (6) Making or investing in loans with or without security including servicing of
2 mortgages or deeds of trust through independent agencies within the State,
3 the conducting of foreclosure proceedings and sale, the acquiring of property
4 at foreclosure sale, and the management and rental of such property for a
5 reasonable time while liquidating its investment, provided no office or
6 agency therefor is maintained in this State;
- 7 (7) Taking security for or collecting debts due to it or enforcing any rights in
8 property securing the same;
- 9 (8) Conducting affairs in interstate commerce;
- 10 (9) Conducting an isolated transaction completed within a period of six months
11 and not in the course of a number of repeated transactions of like nature;
- 12 (10) Selling through independent contractors;
- 13 (11) Owning, without more, real or personal property. (1955, c. 1230; 1993, c.
14 398, s. 1.)
15

16 **§ 55A-15-02. Consequences of conducting affairs without authority.**

17 (a) No foreign corporation conducting affairs in this State without permission obtained
18 through a certificate of authority under this Chapter or through domestication under prior acts
19 shall be permitted to maintain any action or proceeding in any court of this State unless the
20 foreign corporation has obtained a certificate of authority prior to trial.

21 An issue arising under this subsection must be raised by motion and determined by the trial
22 judge prior to trial.

23 (b) A foreign corporation failing to obtain a certificate of authority as required by this
24 Chapter or by prior acts then applicable shall be liable to the State for the years or parts thereof
25 during which it conducted affairs in this State without a certificate of authority in an amount
26 equal to all fees and taxes which would have been imposed by law upon the corporation had it
27 duly applied for and received such permission, plus interest and all penalties imposed by law
28 for failure to pay such fees and taxes. In addition, the foreign corporation shall be liable for a
29 civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand
30 dollars (\$1,000) for each year or part thereof, it conducts affairs in this State without a
31 certificate of authority. The Attorney General may bring actions to recover all amounts due the
32 State under the provisions of this subsection. The clear proceeds of civil penalties provided for
33 in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
34 G.S. 115C-457.2.

35 (c) Notwithstanding subsection (a) of this section, the failure of a foreign corporation to
36 obtain a certificate of authority does not impair the validity of its corporate acts or prevent it
37 from defending any proceeding in this State.

38 (d) The Secretary of State is hereby directed to require that every foreign corporation
39 conducting affairs in this State comply with the provisions of this Chapter. The Secretary of
40 State is authorized to employ such assistants as shall be deemed necessary in the Secretary of
41 State's office for the purpose of enforcing the provisions of this Article and for making such
42 investigations as shall be necessary to ascertain foreign corporations now conducting affairs in
43 this State which may have failed to comply with the provisions of this Chapter. (1955, c. 1230;
44 1993, c. 398, s. 1; 1998-215, s. 118; 1999-151, s. 2.)
45

46 **§ 55A-15-03. Application for certificate of authority.**

47 (a) A foreign corporation may apply for a certificate of authority to conduct affairs in
48 this State by delivering an application to the Secretary of State for filing. The application shall
49 set forth:

- 1 (1) The name of the foreign corporation or, if its name is unavailable for use in
2 this State, a corporate name that satisfies the requirements of Article 3 of
3 Chapter 55D of the General Statutes;
- 4 (2) The name of the state or country under whose law it is incorporated;
- 5 (3) Its date of incorporation and period of duration;
- 6 (4) The street address, and mailing address if different from the street address,
7 of its principal office;
- 8 (5) The street address, and the mailing address if different from the street
9 address, of its registered office in this State, the county in which the
10 registered office is located, and the name of its registered agent at that office;
- 11 (6) The names and usual business addresses of its current officers; and
- 12 (7) Whether it has members.

13 (b) The foreign corporation shall deliver with the completed application a certificate of
14 existence (or a document of similar import) duly authenticated by the Secretary of State or
15 other official having custody of corporate records in the state or country under whose law it is
16 incorporated.

17 (c) If the Secretary of State finds that the application conforms to law, the Secretary of
18 State shall when all fees have been tended as prescribed in this Chapter:

- 19 (1) Endorse on the application and an exact or conformed copy thereof the word
20 "filed" and the hour, day, month, and year of the filing thereof;
- 21 (2) File in the Secretary of State's office the application and the certificate of
22 existence (or document of similar import as described in subsection (b) of
23 this section);
- 24 (3) Issue a certificate of authority to conduct affairs in this State to which the
25 Secretary of State shall affix the exact or conformed copy of the application;
26 and
- 27 (4) Send to the foreign corporation or its representative the certificate of
28 authority, together with the exact or conformed copy of the application
29 affixed thereto. (1955, c. 1230; 1957, c. 979, s. 14; 1969, c. 875, s. 8; 1993,
30 c. 398, s. 1; 2001-358, s. 21; 2001-387, ss. 169(b), 173, 175(a); 2001-413, s.
31 6.)
32

33 **§ 55A-15-04. Amended certificate of authority.**

34 (a) A foreign corporation authorized to conduct affairs in this State shall obtain an
35 amended certificate of authority from the Secretary of State if it changes:

- 36 (1) Its corporate name;
- 37 (2) The period of its duration; or
- 38 (3) The state or country of its incorporation.

39 (b) A foreign corporation may apply for an amended certificate of authority by
40 delivering an application to the Secretary of State for filing that sets forth:

- 41 (1) The name of the foreign corporation and the name in which the corporation
42 is authorized to conduct affairs in North Carolina if different;
- 43 (2) The name of the state or country under whose law it is incorporated;
- 44 (3) The date it was originally authorized to conduct affairs in this State; and
- 45 (4) A statement of the change or changes being made.

46 Except for the content of the application, the requirements of G.S. 55A-15-03 for obtaining
47 an original certificate of authority apply to obtaining an amended certificate under this section.
48 (1955, c. 1230; 1993, c. 398, s. 1.)
49

50 **§ 55A-15-05. Effect of certificate of authority.**

1 (a) A certificate of authority authorizes the foreign corporation to which it is issued to
2 conduct affairs in this State subject, however, to the right of the State to revoke the certificate
3 as provided in this Chapter. A foreign corporation, however, is not eligible or entitled to
4 qualify in this State as executor, administrator, or guardian, or as trustee under the will of any
5 person domiciled in this State at the time of his death.

6 (b) Except as otherwise provided by this Chapter, a foreign corporation with a valid
7 certificate of authority has the same but no greater rights and has the same but no greater
8 privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or
9 later imposed on, a domestic corporation of like character. (1955, c. 1230; 1993, c. 398, s. 1.)

10
11 **§ 55A-15-06:** Repealed by Session Laws 2001-358, s. 22, effective January 1, 2002.

12
13 **§ 55A-15-07. Registered office and registered agent of foreign corporation.**

14 Each foreign corporation authorized to conduct affairs in this State must maintain a
15 registered office and registered agent as required by Article 4 of Chapter 55D of the General
16 Statutes and is subject to service on the Secretary of State under that Article. (1955, c. 1230;
17 1993, c. 398, s. 1; 2000-140, s. 101(e); 2001-358, s. 48(b); 2001-387, ss. 173, 175(a);
18 2001-413, s. 6.)

19
20 **§§ 55A-15-08 through 55A-15-10:** Repealed by Session Laws 2001-358, s. 48(c), effective
21 January 1, 2002.

22
23 **§§ 55A-15-11 through 55A-15-19. Reserved for future codification purposes.**

24
25 **Part 2. Withdrawal.**

26 **§ 55A-15-20. Withdrawal of foreign corporation.**

27 (a) A foreign corporation authorized to conduct affairs in this State shall not withdraw
28 from this State until it obtains a certificate of withdrawal from the Secretary of State.

29 (b) A foreign corporation authorized to conduct affairs in this State may apply for a
30 certificate of withdrawal by delivering an application to the Secretary of State for filing. The
31 application shall set forth:

- 32 (1) The name of the foreign corporation and the name of the state or country
33 under whose law it is incorporated;
- 34 (2) That it is not conducting affairs in this State and that it surrenders its
35 authority to conduct affairs in this State;
- 36 (3) That the corporation revokes the authority of its registered agent to accept
37 service of process and consents that service of process in any action or
38 proceeding based upon any cause of action arising in this State, or arising
39 out of affairs conducted in this State, during the time the corporation was
40 authorized to conduct affairs in this State may thereafter be made on such
41 corporation by service thereof on the Secretary of State;
- 42 (4) A mailing address to which the Secretary of State may mail a copy of any
43 process served on the Secretary of State under subdivision (3) of this
44 subsection; and
- 45 (5) A commitment to file with the Secretary of State a statement of any
46 subsequent change in its mailing address.

47 (c) If the Secretary of State finds that the application conforms to law, the Secretary of
48 State shall:

- 49 (1) Endorse on the application and an exact or conformed copy thereof the word
50 "filed", and the hour, day, month, and year of the filing thereof;
- 51 (2) File the application in the Secretary of State's office;

- 1 (3) Issue a certificate of withdrawal to which the Secretary of State shall affix
2 the exact or conformed copy of the application; and
3 (4) Send to the foreign corporation or its representative the certificate of
4 withdrawal together with the exact or conformed copy of the application
5 affixed thereto.

6 (d) After the withdrawal of the foreign corporation is effective, service of process on
7 the Secretary of State in accordance with subsection (b) of this section shall be made by
8 delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary
9 of State to accept service of process, duplicate copies of the process and the fee required by
10 G.S. 55A-1-22(b). Upon receipt of process in the manner provided in this subsection, the
11 Secretary of State shall immediately mail a copy of the process by registered or certified mail,
12 return receipt requested, to the foreign corporation at the mailing address designated pursuant
13 to subsection (b) of this section. (1955, c. 1230; 1973, c. 476, s. 193; 1993, c. 398, s. 1; 1995, c.
14 400, s. 9; 2001-387, ss. 44, 45.)
15

16 **§ 55A-15-21. Withdrawal of foreign corporation by reason of a merger, consolidation, or**
17 **conversion.**

18 (a) Whenever a foreign corporation authorized to conduct affairs in this State ceases its
19 separate existence as a result of a statutory merger or consolidation permitted by the laws of the
20 state or country under which it was incorporated, or converts into another entity as permitted by
21 those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the
22 foreign corporation by delivering to the Secretary of State for filing a copy of the articles of
23 merger, consolidation, or conversion or a certificate reciting the facts of the merger,
24 consolidation, or conversion duly authenticated by the secretary of state or other official having
25 custody of corporate records in the state or country under the laws of which the foreign
26 corporation was incorporated. If the surviving or resulting entity is not authorized to conduct
27 affairs or transact business in this State, the articles or certificate shall be accompanied by an
28 application which must set forth:

- 29 (1) The name of the foreign corporation authorized to conduct affairs in this
30 State, the type of entity and the name of the surviving or resulting entity, and
31 a statement that the surviving or resulting entity is not authorized to conduct
32 affairs or transact business in this State;
33 (2) A statement that the surviving or resulting entity consents that service of
34 process based upon any cause of action arising in this State, or arising out of
35 affairs conducted in this State, during the time the foreign corporation was
36 authorized to conduct affairs in this State may thereafter be made by service
37 thereof on the Secretary of State;
38 (3) A mailing address to which the Secretary of State may mail a copy of any
39 process served on the Secretary of State under subdivision (a)(2) of this
40 section; and
41 (4) A commitment to file with the Secretary of State a statement of any
42 subsequent change in its mailing address.

43 (b) If the Secretary of State finds that the articles or certificate and the application for
44 withdrawal, if required, conform to law the Secretary of State shall:

- 45 (1) Endorse on the articles or certificate and the application for withdrawal, if
46 required, the word "filed", and the hour, day, month, and year of filing
47 thereof;
48 (2) File the articles or certificate and the application, if required;
49 (3) Issue a certificate of withdrawal; and

- 1 (4) Send to the surviving or resulting entity or its representative the certificate of
2 withdrawal, together with the exact or conformed copy of the application, if
3 required, affixed thereto.

4 (c) After the withdrawal of the foreign corporation is effective, service of process on
5 the Secretary of State in accordance with subsection (a) of this section shall be made by
6 delivering to and leaving with the Secretary of State, or any clerk authorized by the Secretary
7 of State to accept service of process, duplicate copies of the process and the fee required by
8 G.S. 55A-1-22(b). Upon receipt of process in the manner provided in this subsection, the
9 Secretary of State shall immediately mail a copy of the process by registered or certified mail,
10 return receipt requested, to the foreign corporation at the mailing address designated pursuant
11 to subsection (a) of this section. (1993, c. 398, s. 1; 1999-369, s. 2.8; 2001-387, ss. 46, 47;
12 2001-487, s. 62(g).)

13
14 **§§ 55A-15-22 through 55A-15-29. Reserved for future codification purposes.**

15
16 Part 3. Revocation of Certificate of Authority.

17 **§ 55A-15-30. Grounds for revocation.**

18 (a) The Secretary of State may commence a proceeding under G.S. 55A-15-31 to
19 revoke the certificate of authority of a foreign corporation authorized to conduct affairs in this
20 State if:

- 21 (1) Repealed by Session Laws 1995, c. 539, s. 28.
22 (2) The foreign corporation does not pay within 60 days after they are due any
23 penalties, fees, or other payments due under this Chapter;
24 (3) The foreign corporation is without a registered agent or registered office in
25 this State for 60 days or more;
26 (4) The foreign corporation does not inform the Secretary of State under G.S.
27 55D-31 or G.S. 55D-32 that its registered agent or registered office has
28 changed, that its registered agent has resigned, or that its registered office
29 has been discontinued within 60 days of the change, resignation, or
30 discontinuance;
31 (5) An incorporator, director, officer, or agent of the foreign corporation signs a
32 document he knew was false in any material respect with intent that the
33 document be delivered to the Secretary of State for filing;
34 (6) The Secretary of State receives a duly authenticated certificate from the
35 secretary of state or other official having custody of corporate records in the
36 state or country under whose law the foreign corporation is incorporated
37 stating that it has been dissolved or disappeared as the result of a merger;
38 (7) The corporation is exceeding the authority conferred upon it by this Chapter;
39 or
40 (8) The corporation knowingly fails or refuses to answer truthfully and fully
41 within the time prescribed in this Chapter interrogatories propounded by the
42 Secretary of State in accordance with the provisions of this Chapter.

43 (b) Nothing herein shall be deemed to repeal or modify any provision of the Revenue
44 Act relating to the suspension of the certificate of authority of foreign corporations for failure
45 to comply with the provisions thereof. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 509, s. 32; c.
46 539, s. 28; 2001-358, s. 48(f); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

47
48 **§ 55A-15-31. Procedure and effect of revocation.**

49 (a) If the Secretary of State determines that one or more grounds exist under G.S.
50 55A-15-30 for revocation of a certificate of authority, the Secretary of State shall mail to the
51 foreign corporation written notice of the Secretary of State's determination.

1 (b) If the foreign corporation does not correct each ground for revocation or
2 demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined
3 by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of
4 State may revoke the foreign corporation's certificate of authority by signing a certificate of
5 revocation that recites the ground or grounds for revocation and its effective date. The
6 Secretary of State shall file the original of the certificate and mail a copy to the foreign
7 corporation.

8 (c) The authority of a foreign corporation to conduct affairs in this State ceases on the
9 date shown on the certificate revoking its certificate of authority.

10 (d) The Secretary of State's revocation of a foreign corporation's certificate of authority
11 appoints the Secretary of State the foreign corporation's agent for service of process in any
12 proceeding based on a cause of action arising in this State or arising out of affairs conducted in
13 this State during the time the foreign corporation was authorized to conduct affairs in this State.
14 The Secretary of State shall then proceed in accordance with G.S. 55D-33.

15 (e) Revocation of a foreign corporation's certificate of authority does not terminate the
16 authority of the registered agent of the corporation.

17 (f) The corporation shall not be granted a new certificate of authority until each ground
18 for revocation has been substantially corrected to the reasonable satisfaction of the Secretary of
19 State. (1955, c. 1230; 1993, c. 398, s. 1; 1995, c. 400, s. 10; 2001-358, s. 48(g); 2001-387, ss.
20 173, 175(a); 2001-413, s. 6.)

21
22 **§ 55A-15-32. Appeal from revocation.**

23 (a) A foreign corporation may appeal the Secretary of State's revocation of its
24 certificate of authority to the Superior Court of Wake County within 30 days after service of the
25 certificate of revocation is mailed. The appeal is commenced by filing a petition with the court
26 and with the Secretary of State requesting the court to set aside the revocation. The petition
27 shall have attached to it copies of the corporation's certificate of authority and the Secretary of
28 State's certificate of revocation. No service of process on the Secretary of State is required
29 except for the filing of the petition as set forth in this subsection. The appeal to the superior
30 court shall be determined by a judge of the superior court upon such further evidence, notice,
31 and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.
32 The foreign corporation shall have the burden of establishing that it is entitled to have the
33 revocation set aside.

34 (b) Upon consideration of the petition and any response made by the Secretary of State,
35 the court may, prior to entering final judgment, order the Secretary of State to set aside the
36 revocation or may take any other action the court considers appropriate.

37 (c) The court's final decision may be appealed as in other civil proceedings. (1993, c.
38 398, s. 1; c. 553, s. 83(b); 2001-358, s. 5A(d); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

39
40 **§ 55A-15-33. Inapplicability of Administrative Procedure Act.**

41 The Administrative Procedure Act shall not apply to any proceeding or appeal provided for
42 in G.S. 55A-15-30 through G.S. 55A-15-32. (1995, c. 400, s. 11.)

43
44 Article 16.
45 Records and Reports.
46 Part 1. Records.

47 **§ 55A-16-01. Corporate records.**

48 (a) A corporation shall keep as permanent records minutes of all meetings of its
49 members and board of directors, a record of all actions taken by the members or directors
50 without a meeting pursuant to G.S. 55A-7-04, 55A-7-08, or 55A-8-21, and a record of all

1 actions taken by committees of the board of directors in place of the board of directors on
2 behalf of the corporation.

3 (b) A corporation shall maintain appropriate accounting records.

4 (c) A corporation or its agent shall maintain a record of its members, in a form that
5 permits preparation of a list of the names and addresses of all members, in alphabetical order
6 by class, showing the number of votes each member is entitled to cast.

7 (d) A corporation shall maintain its records in written form or in another form capable
8 of conversion into written form within a reasonable time.

9 (e) A corporation shall keep a copy of the following records at its principal office:

10 (1) Its articles of incorporation or restated articles of incorporation and all
11 amendments to them currently in effect;

12 (2) Its bylaws or restated bylaws and all amendments to them currently in effect;

13 (3) Resolutions adopted by its members or board of directors relating to the
14 number or classification of directors or to the characteristics, qualifications,
15 rights, limitations, and obligations of members or any class or category of
16 members;

17 (4) The minutes of all membership meetings, and records of all actions taken by
18 the members without a meeting pursuant to G.S. 55A-7-04 or G.S.
19 55A-7-08, for the past three years;

20 (5) All written communications to members generally within the past three
21 years, and the financial statements, if any, that have been furnished or would
22 have been required to be furnished to a member upon demand under G.S.
23 55A-16-20 during the past three years;

24 (6) A list of the names and business or home addresses of its current directors
25 and officers; and

26 (7) Repealed by Session Laws 1995, c. 539, s. 29, effective July 29, 1995.
27 (1955, c. 1230; 1969, c. 875, s. 6; 1985 (Reg. Sess., 1986), c. 801, s. 31;
28 1993, c. 398, s. 1; 1995, c. 539, s. 29.)
29

30 **§ 55A-16-02. Inspection of records by members.**

31 (a) A member is entitled to inspect and copy, at a reasonable time and location
32 specified by the corporation, any of the records of the corporation described in G.S.
33 55A-16-01(e) if the member gives the corporation written notice of his demand at least five
34 business days before the date on which the member wishes to inspect and copy.

35 (b) A member is entitled to inspect and copy, at a reasonable time and reasonable
36 location specified by the corporation, any of the following records of the corporation if the
37 member meets the requirements of subsection (c) of this section and gives the corporation
38 written notice of his demand at least five business days before the date on which the member
39 wishes to inspect and copy:

40 (1) Excerpts from any records required to be maintained under G.S.
41 55A-16-01(a), to the extent not subject to inspection under G.S.
42 55A-16-02(a);

43 (2) Accounting records of the corporation; and

44 (3) Subject to G.S. 55A-16-05, the membership list.

45 (c) A member may inspect and copy the records identified in subsection (b) of this
46 section only if:

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

48 (2) The member describes with reasonable particularity the purpose and the
49 records the member desires to inspect; and

50 (3) The records are directly connected with this purpose.

51 (d) This section does not affect:

- 1 (1) The right of a member to inspect records under G.S. 55A-7-20 or, if the
2 member is in litigation with the corporation, to inspect the records to the
3 same extent as any other litigant; or
4 (2) The power of a court, independently of this Chapter, to compel the
5 production of corporate records for examination.

6 (e) A member of a corporation that has the power to elect, appoint, or designate a
7 majority of the directors of another domestic or foreign corporation, whether nonprofit or
8 business, shall have inspection rights with respect to the records of that other corporation.
9 (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1.)

10
11 **§ 55A-16-03. Scope of inspection rights.**

12 (a) A member's agent or attorney has the same inspection and copying rights as the
13 member the agent or attorney represents.

14 (b) The right to copy records under G.S. 55A-16-02 includes, if reasonable, the right to
15 receive copies made by photographic, xerographic, electronic, magnetic, or other means.

16 (c) The corporation may impose a reasonable charge, covering the costs of labor and
17 material, for producing for inspection or copying any records provided to the member. The
18 charge shall not exceed the estimated cost of production or reproduction of the records.

19 (d) The corporation may comply with a member's demand to inspect the record of
20 members under G.S. 55A-16-02(b)(3) by providing the member with a list of its members that
21 was compiled no earlier than the date of the member's demand. (1955, c. 1230; 1985 (Reg.
22 Sess., 1986), c. 801, s. 31; 1993, c. 398, s. 1.)

23
24 **§ 55A-16-04. Court-ordered inspection.**

25 (a) If a corporation does not allow a member who complies with G.S. 55A-16-02(a) to
26 inspect and copy any records required by that subsection to be available for inspection, the
27 superior court in the county where the corporation's principal office (or, if there is none in this
28 State, its registered office) is located may, upon application of the member, summarily order
29 inspection and copying of the records demanded at the corporation's expense.

30 (b) If a corporation does not within a reasonable time allow a member to inspect and
31 copy any other record, the member who complies with G.S. 55A-16-02(b) and (c) may apply to
32 the superior court in the county where the corporation's principal office (or, if there is none in
33 this State, its registered office) is located for an order to permit inspection and copying of the
34 records demanded. The court shall dispose of an application under this subsection on an
35 expedited basis.

36 (c) If the court orders inspection and copying of the records demanded, it shall also
37 order the corporation to pay the member's cost (including reasonable attorneys' fees) incurred to
38 obtain the order unless the corporation proves that it refused inspection in good faith because it
39 had a reasonable basis for doubt about the right of the member to inspect the records
40 demanded.

41 (d) If the court orders inspection and copying of the records demanded, it may impose
42 reasonable restrictions on the use or distribution of the records by the demanding member.
43 (1993, c. 398, s. 1.)

44
45 **§ 55A-16-05. Limitations on use of membership list.**

46 Without consent of the board of directors, a membership list or any part thereof shall not be
47 obtained or used by any person for any purpose unrelated to a member's interest as a member.
48 Without limiting the generality of the foregoing, and without the consent of the board, a
49 membership list or any part thereof shall not be:

- 1 (1) Used to solicit money or property unless such money or property will be
2 used solely to solicit the votes of the members in an election to be held by
3 the corporation;
- 4 (2) Used for any commercial purpose; or
- 5 (3) Sold to or purchased by any person. (1993, c. 398, s. 1; 1995, c. 509, s. 33.)
6

7 **§§ 55A-16-06 through 55A-16-19. Reserved for future codification purposes.**
8

9 Part 2. Reports.

10 **§ 55A-16-20. Financial statements for members.**

11 (a) Except as provided in the articles of incorporation or bylaws of a charitable or
12 religious corporation, a corporation upon written demand from a member shall furnish that
13 member its latest annual financial statements, if any, which may be consolidated or combined
14 statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate,
15 that include a balance sheet as of the end of the fiscal year and statement of operations for that
16 year. If financial statements are prepared for the corporation on the basis of generally accepted
17 accounting principles, the annual financial statements shall also be prepared on that basis.

18 (b) If annual financial statements are reported upon by a public accountant, the
19 accountant's report shall accompany them. If not, the statements must be accompanied by the
20 statement of the president or the person responsible for the corporation's financial accounting
21 records:

- 22 (1) Stating the president's or other person's reasonable belief as to whether the
23 statements were prepared on the basis of generally accepted accounting
24 principles and, if not, describing the basis of preparation; and
- 25 (2) Describing any respects in which the statements were not prepared on a basis
26 of accounting consistent with the statements prepared for the preceding year.
27 (1993, c. 398, s. 1.)
28

29 **§ 55A-16-21. Notice of indemnification to members.**

30 If a corporation indemnifies or advances expenses to a director under G.S. 55A-8-51,
31 55A-8-52, 55A-8-53, 55A-8-54, or 55A-8-57 in connection with a proceeding by or in the right
32 of the corporation, the corporation shall give notice of the indemnification or advance in
33 writing to the members with or before the notice of the next meeting of members. (1993, c.
34 398, s. 1.)
35

36 **§ 55A-16-22:** Repealed by Session Laws 1995, c. 539, s. 8.
37

38 **§ 55A-16-23. Principal office address.**

39 (a) Any corporation that does not designate the street address and the mailing address,
40 if different from the street address, of the corporation's principal office and the county of
41 location in an annual report or its articles of incorporation shall file a Designation of Principal
42 Office Address form with the Secretary of State that contains that information.

43 (b) A corporation may change its principal office by delivering to the Secretary of State
44 for filing a Corporation's Statement of Change of Principal Office form that sets forth:

- 45 (1) The street address, and the mailing address if different from the street
46 address, of the corporation's current principal office and the county in which
47 it is located; and
- 48 (2) The street address, and the mailing address if different from the street
49 address, of the new principal office and the county in which it is located.
50 (1995, c. 539, s. 21; 2001-358, s. 48(d); 2001-387, ss. 173, 175(a);
51 2001-413, s. 6.)

1
2 Article 17.

3 Transition and Curative Provisions.

4 **§ 55A-17-01. Applicability of Chapter.**

5 (a) The provisions of this Chapter relating to domestic corporations shall apply to:

6 (1) All corporations heretofore or hereafter organized under this Chapter.

7 (2) All nonprofit corporations without capital stock heretofore or hereafter
8 organized under any other act, unless there is some other specific statutory
9 provision particularly applicable to such corporations or inconsistent with
10 some provisions of this Chapter, in which case that other provision prevails.
11 Nothing herein shall apply to hospital and medical service corporations as
12 defined in Article 65 of Chapter 58 of the General Statutes which were
13 incorporated prior to July 1, 1957, or repeal or modify the provisions of G.S.
14 54-138.

15 (b) The provisions of this Chapter relating to foreign corporations shall apply to all
16 corporations conducting affairs in this State for purposes for which a corporation might be
17 organized under this Chapter. A foreign corporation authorized to conduct affairs in this State
18 on July 1, 1994, is subject to this Chapter but is not required to obtain a new certificate of
19 authority to conduct affairs under this Chapter. (1955, c. 1230; 1967, c. 659; 1991, c. 720, s. 76;
20 1993, c. 398, s. 1; 1995, c. 400, s. 12.)

21
22 **§ 55A-17-02. Certain religious, etc., associations deemed incorporated.**

23 In all cases where a religious, educational, or charitable association has been formed prior
24 to January 1, 1894, and has since that date been acting as a corporation, exercising the powers
25 and performing the duties of religious, educational, or charitable corporations as prescribed by
26 the laws of this State, then such association shall be conclusively presumed to have been duly
27 and regularly organized and existing as a corporation under the laws of this State on January 1,
28 1894, and all of its acts as a corporation from and after said date, if otherwise valid, are hereby
29 declared to be valid corporate acts. (1955, c. 1230; 1993, c. 398, s. 1.)

30
31 **§ 55A-17-03. Saving provisions.**

32 (a) The existence of corporations formed before the effective date of this Chapter, shall
33 not be impaired by the enactment of this Chapter nor by any change made by this Chapter in
34 the requirements for the formation of corporations nor by any amendment or repeal by this
35 Chapter of the laws under which they were formed or created, and, except as otherwise
36 expressly provided in this Chapter, the repeal of a prior act by this Chapter shall not affect any
37 liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

38 (b) Any proceeding or corporate action commenced prior to the effective date of this
39 Chapter, may be completed in accordance with the law then in effect. (1993, c. 398, s. 1.)

40
41 **§ 55A-17-04. Severability.**

42 If any provision of this Chapter or its application to any person or circumstance is held
43 invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or
44 applications of the Chapter that can be given effect without the invalid provision or application,
45 and to this end the provisions of the Chapter are severable. (1993, c. 398, s. 1.)

46
47 **§ 55A-17-05. Validation of amendments to corporate charters extending corporate
48 existence; limitation of actions; intent.**

49 (a) In every case where a corporation chartered under either the general or private laws
50 of the State of North Carolina has continued or shall continue to act and conduct affairs as a
51 corporation after the expiration of its period of existence as theretofore fixed in its charter and

1 has thereafter filed in the office of the Secretary of State an amendment to its charter to extend
2 or renew its corporate existence, such amendment is hereby validated and made effective for all
3 intents and purposes to the same extent and with the same effect as if the amendment has been
4 made within the period of such corporation's existence as theretofore fixed in its charter.

5 (b) No action or proceeding shall be brought or defense or counterclaim pleaded later
6 than July 1, 1958, in which either the continued existence of the corporation or the validity of
7 any of the contracts, acts, deeds, rights, privileges, powers, franchises, and titles of the
8 corporation is attacked or otherwise questioned on the grounds that the amendment was not
9 filed within the period of the corporation's existence as theretofore fixed in its charter.

10 (c) In no event shall the limitation provided in subsection (b) of this section bar any
11 action, proceeding, defense, or counterclaim based upon grounds other than those mentioned in
12 subsection (b) of this section, unless the grounds set out in subsection (b) of this section are an
13 essential part thereof. (1957, c. 509; 1993, c. 398, s. 1.)