Article 14.

Dissolution.

Part 1. Voluntary Dissolution.

§ 55-14-01. Dissolution by incorporators or directors.

(a) The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(1a) The names and addresses of its officers, if any;

(1b) The names and addresses of its directors, if any, or if none, the names and addresses of its incorporators;

(2) The date of its incorporation;

(3) That none of the corporation's shares has been issued;

(4) That no debt of the corporation remains unpaid;

(5) Reserved for future codification purposes; and

(6) That a majority of the incorporators or the board of directors authorized the dissolution.

(b) A corporation is dissolved upon the effective date of its articles of dissolution. (1955, c. 1371, s. 1; 1959, c. 1316, s. 261/2; 1989, c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.19.)

§ 55-14-02. Dissolution by board of directors and shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) The following requirements shall be met for a proposal to dissolve to be adopted:

(1) The board of directors shall recommend to the shareholders that the proposal to dissolve be approved unless one of the following circumstances exist, in which event the board of directors shall communicate the basis for not recommending approval of the proposal to dissolve to the shareholders at the time it submits the proposal to dissolve to the shareholders:

a. The board of directors determines that, because of conflict of interest or other special circumstances, it should not make a recommendation that the shareholders approve the proposal to dissolve.

b. G.S. 55-8-26 applies.

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with G.S. 55-7-05. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation, a bylaw adopted by the shareholders, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal. (1901, c. 2, s. 34; Rev., s. 1195; C.S., s. 1182; 1941, c. 195; G.S., s. 55-121; 1951, c. 1005, s. 4; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 2013-153, s. 14.)

§ 55-14-03. Articles of dissolution.

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

(1) The name of the corporation;

(1a) The names and addresses of its officers;

(1b) The names and addresses of its directors;

(2) The date dissolution was authorized;

(3) A statement that shareholder approval was obtained as required by this Chapter.

(4) Repealed by Session Laws 1991, c. 645, s. 10(c).

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this Chapter, a dissolved corporation is a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of a liquidation. (1901, c. 2, s. 34; Rev., s. 1195; C.S., s. 1182; 1941, c. 195; G.S., s. 55-121; 1951, c. 1005, s. 4; 1955, c. 1371, s. 1; 1989, c. 265, s. 1; 1991, c. 645, s. 10(c); 2005-268, s. 31.)

§ 55-14-04. Revocation of dissolution.

(a) A corporation may revoke its dissolution within 120 days after its effective date.

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

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

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by G.S. 55-14-03(a)(3) or (4) with respect to the revocation.

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

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the filing of the articles of dissolution. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

§ 55-14-05. Effect of dissolution.

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

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to its shareholders;
(3) Discharging or making provision for discharging its liabilities;
(4) Distributing its remaining property among its shareholders according to their interests; and
(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:
(1) Transfer title to the corporation's property;
(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
(3) Subject its directors or officers to standards of conduct different from those prescribed in Article 8;
(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
(7) Terminate the authority of the registered agent of the corporation.

(c) After the end of the tax year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless it engages in business activities not appropriate to winding up and liquidating its business and affairs as permitted by subsection (a). (1955, c. 1371, s. 1; 1973, c. 469, ss. 39, 40, c. 476, s. 193; 1989, c. 265, s. 1.)

§ 55-14-06. Known claims against dissolved corporation.

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

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
(1) Describe information that must be included in a claim;
(2) Provide a mailing address where a claim may be sent;
(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
(4) State that the claim will be barred if not received by the deadline.

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

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. (1955, c. 1371, s. 1; 1973, c. 469, ss. 39, 40, c. 476, s. 193; 1989, c. 265, s. 1.)

§ 55-14-07. Unknown and certain other claims against dissolved corporation.

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

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this State, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

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

(1) A claimant who did not receive written notice under G.S. 55-14-06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution. (1955, c. 1371, s. 1; 1973, c. 469, ss. 39, 40, c. 476, s. 193; 1989, c. 265, s. 1.)

§ 55-14-08. Enforcement of claims.

(a) A claim under G.S. 55-14-06 or G.S. 55-14-07 may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets, including coverage under any applicable insurance policy, or

(2) Except as provided in G.S. 55-14-09(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

(b) Nothing in G.S. 55-14-06 or G.S. 55-14-07 shall extend any applicable period of limitation. (1955, c. 1371, s. 1; 1973, c. 469, ss. 39, 40; 1989, c. 265, s. 1; 2005-268, s. 32.)

§ 55-14-09. Court proceedings.

(a) A dissolved corporation that has published a notice under G.S. 55-14-07 may file an application with the superior court of the county where the dissolved corporation's principal office, or its registered office if the corporation does not have a principal office in this State, is located for a determination of the amount and form of security to be provided for payments of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provisions need not be made for any claim that is or is reasonably anticipated to be barred under G.S. 55-14-07(c).

(b) Within 10 days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and the claims shall not be enforced against a shareholder who received assets in liquidation. (2005-268, s. 33.)

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

Part 2. Administrative Dissolution.

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

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

(1) The corporation does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter;

(2) The corporation is delinquent in delivering its annual report;

(3) The corporation is without a registered agent or registered office in this State for 60 days or more;

(4) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expires; or

(6) The corporation knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter. (1989, c. 265, s. 1; 1993, c. 552, s. 15; 1997-475, s. 6.4.)

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

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

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

(c) The provisions of G.S. 55-14-05, 55-14-06, and 55-14-07 apply to a corporation administratively dissolved.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent. (1989, c. 265, s. 1.)

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

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

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

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

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6.

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

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

(c) When the reinstatement is effective, it relates back to and takes effect as of the date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred, subject to the rights of any person who reasonably relied to his prejudice upon the certificate of dissolution. (1989, c. 265, s. 1; 1995, c. 539, ss. 6, 7; 1996, 2nd Ex. Sess., c. 17, s. 15.1(b); 1997-200, ss. 1, 2(b); 1997-485, s. 1; 2001-390, s. 7; 2001-413, ss. 7, 7.1.)

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

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

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

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

(d) The court's final decision may be appealed as in other civil proceedings. (1989, c. 265, s. 1; 2001-358, ss. 5A(a), 47(d); 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

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

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 55-14-20 through 55-14-23. (1989, c. 265, s. 1.)

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

Part 3. Judicial Dissolution.

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

The superior court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that (i) the corporation obtained its articles of incorporation through fraud; or (ii) the corporation has, after written notice by the Attorney General given at least 20 days prior thereto, continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that (i) the directors or those in control of the corporation are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock; (ii) liquidation is reasonably necessary for the protection of the rights or interests of the complaining shareholder; (iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; (iv) the corporate assets are being misapplied or wasted; or (v) a written agreement, whether embodied in the articles of incorporation or separate therefrom, entitles the complaining shareholder to liquidation or dissolution of the corporation at will or upon the occurrence of some event which has subsequently occurred, and all present shareholders, and all subscribers and transferees of shares, either are parties to such agreement or became a shareholder, subscriber or transferee with actual notice thereof;

(3) In a proceeding by a creditor if it is established that (i) the creditor's claim has been reduced to judgment and the execution on the judgment returned unsatisfied; or (ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision. (Code, ss. 604, 605, 619, 668, 669, 694; 1889, c. 533; 1901, c. 2, ss. 61, 62, 73; Rev., ss. 1196, 1198, 1203, 1204; C.S., ss. 1185, 1187, 1195; G.S., ss. 55-124, 55-126, 55-134; 1955, c. 1371, s. 1; 1959, c. 1316, s. 26; 1989, c. 265, s. 1.)

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

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

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

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation.

(d) In any proceeding brought by a shareholder under G.S. 55-14-30(2)(ii) in which the court determines that dissolution would be appropriate, the court shall not order dissolution if, after such determination, the corporation elects to purchase the shares of the complaining shareholder at their fair value, as determined in accordance with such procedures as the court may provide. (1955, c. 1371, s. 1; 1959, c. 1316, s. 26; 1973, c. 469, s. 41; 1989, c. 265, s. 1.)

§ 55-14-32. Receivership.

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

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

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

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

(1a) To sue and defend in his own name as receiver of the corporation in all courts of this State; and

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

(d) Reserved for future codification purposes.

(e) The court from time to time during the receivership may order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets. (1955, c. 1371, s. 1; 1989, c. 265, s. 1.)

§ 55-14-33. Decree of dissolution.

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

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with G.S. 55-14-05 and the notification of claimants in accordance with G.S. 55-14-06 and G.S. 55-14-07. The corporation's name becomes available for use by another entity as provided in G.S. 55D-21. (1955, c. 1371, s. 1;

1959, c. 1316, s. 26; 1967, c. 823, s. 19; 1969, c. 965, s. 1; 1973, c. 469, s. 42; 1989, c. 265, s. 1; 2001-358, s. 19; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

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

Part 4. Miscellaneous.

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

Upon liquidation of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found shall be disposed of in accordance with Chapter 116B. (1947, c. 613, c. 621, s. 1; G.S., s. 55-132; 1955, c. 1371, s. 1; 1971, c. 1135, s. 4; 1979 2nd Sess., c. 1311, s. 6; 1989, c. 265, s. 1.)