

## Article 10.

### Amendment of Articles of Incorporation and Bylaws.

#### Part 1. Amendment of Articles of Incorporation.

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

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

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

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

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

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

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

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

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

- (1) By the board or in lieu thereof in writing by the number or proportion of members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to consider such amendment;

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

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

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

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

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

(e) If the board or the members seek to have the amendment approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment. (1955, c. 1230; 1981, c. 372; 1985 (Reg. Sess., 1986), c. 801, ss. 36, 37; 1993, c. 398, s. 1; 1995, c. 400, s. 4.)

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

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

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

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner that is different from the manner in which the amendment would affect another class;

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

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

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

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

(6) Authorize a new class of memberships.

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

(d) If a class vote is required to approve an amendment to the articles of incorporation of a corporation, the amendment shall be approved by the members of the class by two-thirds of the

votes cast by the class or a majority of the votes entitled to be cast by the class on the amendment, whichever is less.

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

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

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

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

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

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

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

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

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

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

- (1) Set forth the name of the corporation;
- (2) Attach as an exhibit thereto the text of the restated articles of incorporation;
- (3) State whether the restated articles of incorporation contain an amendment to the articles of incorporation requiring member approval and, if they do not, that the board of directors adopted the restated articles of incorporation;

- (4) If the restated articles of incorporation contain an amendment to the articles of incorporation requiring member approval, state that member approval was obtained as required by this Chapter; and
  - (5) If the restated articles of incorporation contain an amendment to the articles of incorporation requiring approval by a person whose approval is required pursuant to G.S. 55A-10-30, state that such approval was obtained.
- (f) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.
- (g) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the other information required by subsection (e) of this section. (1965, c. 762; 1993, c. 398, s. 1.)

**§ 55A-10-07. Effect of amendment.**

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

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

Part 2. Bylaws.

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

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

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

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

- (1) By the board or in lieu thereof in writing by the number or proportion of members entitled under G.S. 55A-7-02(a)(2) to call a special meeting to consider such amendment;
- (2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less; and

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

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

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

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

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

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

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

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

- (1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner that is different from the manner in which such amendment would affect another class;
- (2) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships by changing the rights, privileges, preferences, restrictions, or conditions of another class;
- (3) Increase or decrease the number of memberships authorized for that class;
- (4) Increase the number of memberships authorized for another class;
- (5) Effect an exchange, reclassification, or termination of all or part of the memberships of that class; or
- (6) Authorize a new class of memberships.

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

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

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

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

Part 3. Articles of Incorporation and Bylaws.

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

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