

## **Part 7 Shareholders**

### **16-10a-701 Annual meeting.**

- (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.
- (2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action or work a forfeiture or dissolution of the corporation.

Enacted by Chapter 277, 1992 General Session

### **16-10a-702 Special meeting.**

- (1) A corporation shall hold a special meeting of shareholders:
  - (a) on call of its board of directors or the person or persons authorized by the bylaws to call a special meeting; or
  - (b) if the holders of shares representing at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting, stating the purpose or purposes for which it is to be held.
- (2) If not otherwise fixed under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to demand a special meeting pursuant to Subsection (1)(b) is the earliest date of any of the demands pursuant to which the meeting is called or the date that is 60 days prior to the date the first of the written demands pursuant to which the meeting is called is received by the corporation, whichever is later.
- (3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
- (4) Only business within the purpose or purposes described in the meeting notice required by Subsection 16-10a-705(3) may be conducted at a special shareholders' meeting, unless notice of the meeting is waived by all shareholders pursuant to Section 16-10a-706.

Enacted by Chapter 277, 1992 General Session

### **16-10a-703 Court-ordered meeting.**

- (1) The district court of the county in this state where a corporation's principal office is located or, if it has no principal office in this state, the district court for Salt Lake County may summarily order a meeting of shareholders to be held:
  - (a) on application of any shareholder of the corporation entitled to participate in an annual meeting or any director of the corporation if an annual meeting was not held within 15 months after its last annual meeting, or if there has been no annual meeting, the date of incorporation; or
  - (b) on application of any person who participated in a call of or demand for a special meeting effective under Subsection 16-10a-702(1) if:

- (i) notice of the special meeting was not given within 60 days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was delivered to the corporation pursuant to Subsection 16-10a-702(1)(b), as the case may be; or
  - (ii) the special meeting was not held in accordance with the notice.
- (2) The court may fix the time and place of the meeting, state whether or not it is an annual or special meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary or appropriate to accomplish the purpose or purposes of holding the meeting.

Amended by Chapter 364, 2008 General Session

**16-10a-704 Action without meeting.**

- (1)
- (a) Unless otherwise provided in the articles of incorporation, and subject to the limitations of Subsection 16-10a-1704(4), any action that may be taken at an annual or special meeting of shareholders may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.
  - (b) A shareholder shall deliver written consent under this section to the corporation by delivering the written consent to:
    - (i) the corporation's principal place of business; or
    - (ii) an officer or agent of the corporation having custody of the book in which a proceeding of a meeting of shareholders is recorded.
  - (c) A written consent under this section shall bear the date of signature of each shareholder who signs the consent.
  - (d)
    - (i) Notwithstanding Subsection (1)(c), and unless otherwise provided by the bylaws, a shareholder may deliver a written consent under this section by an electronic transmission that provides the corporation with a complete copy of the written consent.
    - (ii) An electronic transmission consenting to an action under this section is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the corporation can determine:
      - (A) that the electronic transmission is transmitted by the shareholder, proxyholder, or other person authorized to act for the shareholder or proxyholder; and
      - (B) the date on which the electronic transmission is transmitted.
    - (iii) The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.
  - (e) A consent signed pursuant to this section has the effect of a vote taken at a meeting and may be described as such in a document.
- (2)
- (a) Except as provided in Subsection (3), unless the written consents of all shareholders entitled to vote are obtained, written notice of shareholder approval of an action without a meeting

shall be given at least 10 days before the consummation of the transaction, action, or event authorized by the shareholder action to:

- (i) those shareholders entitled to vote who have not consented in writing; and
  - (ii) those shareholders not entitled to vote and to whom this chapter requires that notice of the proposed action be given.
- (b) Notice under this Subsection (2) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.
- (3)
- (a) A transaction, action, or event authorized by shareholder action under this section may take effect in accordance with Subsection (5) notwithstanding that the written consents of all shareholders entitled to vote are not obtained if the articles of incorporation or bylaws of the corporation provide for notice under this Subsection (3).
  - (b) A corporation may provide in its articles of incorporation or bylaws that if the written consents of all shareholders entitled to vote are not obtained, the corporation shall give written notice of shareholder approval of an action without a meeting:
    - (i) not more than 10 days after the later of the day on which:
      - (A) the written consents sufficient to take the action are delivered to the corporation; or
      - (B) the tabulation of the written consents is completed in accordance with Subsection (1); and
    - (ii) to a shareholder who:
      - (A) would be entitled to notice of a meeting at which the action could be taken;
      - (B) would be entitled to vote if the action were taken at a meeting; and
      - (C) did not consent in writing to the action.
  - (c) Notice under this Subsection (3) shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.
  - (d) The notice requirement in this Subsection (3) does not delay the effectiveness of an action taken by written consent in accordance with Subsection (5). Failure to comply with the notice requirement under this Subsection (3) by itself does not invalidate an action taken by written consent, except this Subsection (3)(d) does not limit judicial power to fashion an appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the time period required under Subsection (3)(b).
- (4) The following may revoke a written consent under this section by a signed writing describing the action and stating that a shareholder's prior consent is revoked, if the writing is received by the corporation before the effectiveness of the action:
- (a) the shareholder that gave the written consent;
  - (b) the proxyholder for the shareholder described in Subsection (4)(a);
  - (c) a transferee of the shares of the shareholder described in Subsection (4)(a);
  - (d) a personal representative of the shareholder described in Subsection (4)(a); or
  - (e) a proxyholder for a person described in this Subsection (4).
- (5)
- (a) An action taken pursuant to this section is not effective unless all written consents on which the corporation relies for taking the action pursuant to Subsection (1) are:
    - (i) received by the corporation by no later than 60 days after the date the earliest written consent is delivered to the corporation as provided in Subsection (1); and
    - (ii) not revoked pursuant to Subsection (4).
  - (b)

- (i) Unless otherwise provided by this Subsection (5) and subject to Subsection (2), an action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation.
  - (ii) If all of the written consents necessary to effect an action specify a later date as the effective date of the action, the later date is the effective date of the action.
  - (iii) If the corporation receives written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to an action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action.
- (6) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.
- (7) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) or (3) is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).
- (8) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

Amended by Chapter 424, 2011 General Session

**16-10a-705 Notice of meeting.**

- (1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.
- (2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.
- (3) Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.
- (4)
- (a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment.
  - (b) If the adjournment is for more than 30 days, or if after the adjournment a new record date for the adjourned meeting is or shall be fixed under Section 16-10a-707, notice of the adjourned meeting shall be given pursuant to the requirements of this section to shareholders of record who are entitled to vote at the meeting.
- (5)
- (a) Notwithstanding a requirement that notice be given under any provision of this chapter, the articles of incorporation, or bylaws of any corporation, notice is not required to be given to any shareholder to whom:
    - (i) a notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting during the period between the two consecutive annual meetings, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable; or

- (ii) at least two payments, if sent by first class mail, of dividends or interest on securities during a 12 month period, have been mailed, addressed to the shareholder at the shareholder's address as shown on the records of the corporation, and have been returned undeliverable.
- (b) Any action taken at a meeting held without notice to a shareholder to whom notice is excused under Subsection (5) has the same force and effect as if notice had been duly given. If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a written notice setting forth the shareholder's current address, or if another address for the shareholder is otherwise made known to the corporation, the requirement that notice be given to the shareholder is reinstated. In the event that the action taken by the corporation requires the filing of a certificate under any provision of this chapter, the certificate need not state that notice was not given to shareholders to whom notice was not required pursuant to this Subsection (5).

Amended by Chapter 424, 2011 General Session

**16-10a-706 Waiver of notice.**

- (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or the bylaws before or after the date and time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (2) A shareholder's attendance at a meeting:
  - (a) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice; and
  - (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Amended by Chapter 378, 2010 General Session

**16-10a-707 Record date.**

- (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to be given notice of a shareholders' meeting, to determine shareholders entitled to take action without a meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for the manner of fixing a record date, the board of directors of the corporation may fix a future date as the record date.
- (2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.
- (3) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.
- (4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

- (5) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Amended by Chapter 378, 2010 General Session

**16-10a-708 Meetings by telecommunication.**

Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special meeting of shareholders by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is considered to be present in person at the meeting.

Enacted by Chapter 277, 1992 General Session

**16-10a-720 Shareholders' list for meeting.**

- (1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares. The list shall be alphabetical within each class or series and shall show the address of, and the number of shares held by, each shareholder.
- (2) The shareholders' list shall be available for inspection by any shareholder, beginning on the earlier of 10 days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting and any meeting adjournments, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to the corporation and, subject to the requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during the period it is available for inspection.
- (3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment, for any purposes germane to the meeting.
- (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by Subsection (2), the district court of the county where a corporation's principal office is located, or, if it has none in this state, the district court for Salt Lake County, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.
- (5) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), unless the corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the shareholders' list:
  - (a) the court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order;
  - (b) the court may order the corporation to pay the shareholder for any damages incurred; and
  - (c) the court may grant the shareholder any other remedy afforded by law.

- (6) If a court orders inspection or copying of the shareholders' list pursuant to Subsection (4), the court may impose reasonable restrictions on the use or distribution of the list by the shareholder.
- (7) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Amended by Chapter 378, 2010 General Session

**16-10a-721 Voting entitlement of shares.**

- (1) Except as otherwise provided in Subsections (2) and (4), in Section 61-6-10, or in the articles of incorporation, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.
- (2) Except as otherwise ordered by a court of competent jurisdiction upon a finding that the purpose of this subsection would not be violated in the circumstances presented to the court, the shares of a corporation are not entitled to be voted or to be counted in determining the total number of outstanding shares eligible to be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.
- (3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- (4) Redeemable shares are not entitled to be voted after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Enacted by Chapter 277, 1992 General Session

**16-10a-722 Proxies.**

- (1) A shareholder may vote his shares in person or by proxy.
- (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.
- (3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.
- (4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:
  - (a) a pledgee;
  - (b) a person who purchased or agreed to purchase the shares;
  - (c) a creditor of the corporation who extended its credit under terms requiring the appointment;
  - (d) an employee of the corporation whose employment contract requires the appointment; or
  - (e) a party to a voting agreement created under Section 16-10a-731.

- (5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
- (6) An appointment made irrevocable under Subsection (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:
  - (a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment; or
  - (b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.
- (7) The corporation is not required to recognize an appointment made irrevocable under Subsection (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision does not affect any claim the other person may have against the shareholder with respect to the revocation.
- (8) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.
- (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Amended by Chapter 378, 2010 General Session

**16-10a-723 Shares held by nominees.**

- (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.
- (2) The procedure described in Subsection (1) may set forth:
  - (a) the types of nominees to which it applies;
  - (b) the rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;
  - (c) the manner in which the procedure may be used by the nominee;
  - (d) the information that shall be provided by the nominee when the procedure is used;
  - (e) the period for which the nominee's use of the procedure is effective; and
  - (f) other aspects of the rights and duties created.

Amended by Chapter 378, 2010 General Session

**16-10a-724 Corporation's acceptance of votes.**

- (1) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith,

- is entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder.
- (2) If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the shareholder if:
    - (a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
    - (b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
    - (c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
    - (d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;
    - (e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all cotenants or fiduciaries; or
    - (f) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this section.
  - (3) If shares are registered in the names of two or more persons, whether fiduciaries, members of a partnership, cotenants, husband and wife as community property, voting trustees, persons entitled to vote under a shareholder voting agreement or otherwise, or if two or more persons, including proxyholders, have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation or other officer or agent entitled to tabulate votes is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:
    - (a) if only one votes, the act binds all;
    - (b) if more than one vote, the act of the majority so voting binds all;
    - (c) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionately;
    - (d) if the instrument so filed or the registration of the shares shows that any tenancy is held in unequal interests, a majority or even split for the purpose of this section shall be a majority or even split in interest.
  - (4) The corporation is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.
  - (5) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the

standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

- (6) Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.

Enacted by Chapter 277, 1992 General Session

**16-10a-725 Quorum and voting requirements for voting groups.**

- (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.
- (2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or shall be set for that adjourned meeting.
- (3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.
- (4) The election of directors is governed by Section 16-10a-728.

Amended by Chapter 378, 2010 General Session

**16-10a-726 Action by single and multiple voting groups.**

- (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 16-10a-725.
- (2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 16-10a-725. One voting group may vote on a matter even though another voting group entitled to vote on the matter has not voted.

Enacted by Chapter 277, 1992 General Session

**16-10a-727 Greater quorum or voting requirements.**

- (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.
- (2) An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

Amended by Chapter 378, 2010 General Session

**16-10a-728 Voting for directors -- Cumulative voting.**

- (1) At each election of directors, unless otherwise provided in the articles of incorporation or this chapter, every shareholder entitled to vote at the election has the right to cast, in person or by proxy, all of the votes to which the shareholder's shares are entitled for as many persons as there are directors to be elected and for whose election the shareholder has the right to vote.
- (2) Unless otherwise provided in the articles of incorporation or this chapter, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election, at a meeting of shareholders at which a quorum is present.
- (3) Shareholders do not have a right to cumulate their votes for the election of directors unless the articles of incorporation so provide.
- (4) A statement included in the articles of incorporation to the effect that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.
- (5) Shares entitled to vote cumulatively may be voted cumulatively at each election of directors unless the articles of incorporation provide alternative procedures for the exercise of the cumulative voting rights.

Enacted by Chapter 277, 1992 General Session

**16-10a-730 Voting trusts.**

- (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, and transferring to the trustee the shares with respect to which the trustee is to act. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and promptly cause the corporation to receive copies of the list and agreement. Thereafter the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.
- (2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for the period provided in the agreement, but not more than 10 years after its effective date unless extended under Subsection (3).
- (3) All or some of the parties to a voting trust may extend the voting trust for additional terms of not more than 10 years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than 10 years from the date the first shareholder signs the extension agreement. The trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Amended by Chapter 378, 2010 General Session

**16-10a-731 Voting agreements.**

- (1) Two or more persons, one or more of whom are shareholders, may provide for the manner in which the shareholders will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of Section 16-10a-730.
- (2) A voting agreement created under this section may be specifically enforceable.

Enacted by Chapter 277, 1992 General Session

**16-10a-732 Shareholder agreements.**

- (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:
  - (a) eliminates the board of directors or restricts the discretion or powers of the board of directors;
  - (b) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in Section 16-10a-640;
  - (c) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
  - (d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
  - (e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;
  - (f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
  - (g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
  - (h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.
- (2) An agreement authorized by this section shall be:
  - (a) set forth:
    - (i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or
    - (ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
  - (b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and
  - (c) valid for 10 years, unless the agreement provides otherwise.
- (3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by Section 16-10a-626(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection shall be

commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

- (4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.
- (5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by laws on directors to the extent that the discretion or powers of the directors are limited by the agreement.
- (6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.
- (7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Amended by Chapter 378, 2010 General Session

**16-10a-740 Procedure in derivative proceedings.**

- (1) As used in this section:
  - (a) "derivative proceeding" means a civil suit in the right of:
    - (i) a domestic corporation; or
    - (ii) to the extent provided in Subsection (7), a foreign corporation; and
  - (b) "shareholder" includes a beneficial owner whose shares are held:
    - (i) in a voting trust; or
    - (ii) by a nominee on the beneficial owner's behalf.
- (2) A shareholder may not commence or maintain a derivative proceeding unless the shareholder:
  - (a)
    - (i) was a shareholder of the corporation at the time of the act or omission complained of; or
    - (ii) became a shareholder through transfer by operation of law from one who was a shareholder at the time of the act or omission complained of; and
  - (b) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.
- (3)
  - (a) A shareholder may not commence a derivative proceeding until:
    - (i) a written demand has been made upon the corporation to take suitable action; and
    - (ii) 90 days have expired from the date the demand described in Subsection (3)(a)(i) is made unless:
      - (A) the shareholder is notified before the 90 days have expired that the demand has been rejected by the corporation; or
      - (B) irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.
  - (b) A complaint in a derivative proceeding shall be:

- (i) verified; and
- (ii) allege with particularity the demand made to obtain action by the board of directors.
- (c) A derivative proceeding shall comply with the procedures of Utah Rules of Civil Procedure, Rule 23A.
- (d) The court shall stay any derivative proceeding until the inquiry is completed and for such additional period as the court considers appropriate if:
  - (i) the corporation commences an inquiry into the allegations made in the demand or complaint; and
  - (ii) a person or group described in Subsection (4) is conducting an active review of the allegations in good faith.
- (e) If a corporation proposes to dismiss a derivative proceeding pursuant to Subsection (4)(a), discovery by a shareholder following the filing of the derivative proceeding in accordance with this section:
  - (i) shall be limited to facts relating to:
    - (A) whether the person or group described in Subsection (4)(b) or (4)(f) is independent and disinterested;
    - (B) the good faith of the inquiry and review by the person or group described in Subsection (4)(b) or (4)(f); and
    - (C) the reasonableness of the procedures followed by the person or group described in Subsection (4)(b) or (4)(f) in conducting its review; and
  - (ii) may not extend to any facts or substantive matters with respect to the act, omission, or other matter that is the subject matter of the derivative proceeding.
- (4)
  - (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if a person or group specified in Subsections (4)(b) or (4)(f) determines in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.
  - (b) Unless a panel is appointed pursuant to Subsection (4)(f), the determination in Subsection (4)(a) shall be made by:
    - (i) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or
    - (ii) a majority vote of a committee consisting of two or more independent directors appointed by a majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors appointing the committee constituted a quorum.
  - (c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:
    - (i) the nomination or election of the director by persons:
      - (A) who are defendants in the derivative proceeding; or
      - (B) against whom action is demanded;
    - (ii) the naming of the director as:
      - (A) a defendant in the derivative proceeding; or
      - (B) a person against whom action is demanded; or
    - (iii) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.
  - (d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

- (i) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or
  - (ii) that the requirements of Subsection (4)(a) have not been met.
- (e)
- (i) If a majority of the board of directors does not consist of independent directors at the time the determination is made rejecting a demand by a shareholder, the corporation has the burden of proving that the requirements of Subsection (4)(a) have been met.
  - (ii) If a majority of the board of directors consists of independent directors at the time the determination is made rejecting a demand by a shareholder, the plaintiff has the burden of proving that the requirements of Subsection (4)(a) have not been met.
- (f)
- (i) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation.
  - (ii) If the court appoints a panel under Subsection (4)(f)(i), the plaintiff has the burden of proving that the requirements of Subsection (4)(a) have not been met.
- (g) A person may appeal from an interlocutory order of a court that grants or denies a motion to dismiss brought pursuant to Subsection (4)(a).
- (5)
- (a) A derivative proceeding may not be discontinued or settled without the court's approval.
  - (b) If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.
- (6) On termination of the derivative proceeding the court may order:
- (a) the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding, if it finds that the proceeding has resulted in a substantial benefit to the corporation;
  - (b) the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:
    - (i) without reasonable cause; or
    - (ii) for an improper purpose; or
  - (c) a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was:
    - (i)
      - (A) not well grounded in fact, after reasonable inquiry; or
      - (B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
    - (ii) interposed for an improper purpose, such as to:
      - (A) harass;
      - (B) cause unnecessary delay; or
      - (C) cause needless increase in the cost of litigation.
- (7)
- (a) In any derivative proceeding in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for Subsections (3)(c), (3)(d), (5), and (6), which are procedural and not matters relating to the internal affairs of the foreign corporation.
  - (b) In the case of matters relating to a foreign corporation under Subsection (3)(c):

- (i) references to a person or group described in Subsection (4) are considered to refer to a person or group entitled under the laws of the jurisdiction of incorporation of the foreign corporation to review and dispose of a derivative proceeding; and
- (ii) the standard of review of a decision by the person or group to dismiss the derivative proceeding is to be governed by the laws of the jurisdiction of incorporation of the foreign corporation.

Amended by Chapter 369, 2012 General Session