Chapter 7 (Member Meetings) of the
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compared with

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Additions in Exposure Draft shown in blue with double underline
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[CHAPTER] 7
MEMBER MEETINGS

Subchapter
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[Subchapter] A
PROCEDURES

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§ 7.01. ANNUAL AND REGULAR MEETINGS
(a) Except in the case of a membership corporation that holds meetings only of
delegates and not of the members, a membership corporation shall hold a meeting of members
annually at a time stated in or fixed in accordance with the articles of incorporation or bylaws.
The articles of incorporation or bylaws of a membership corporation that holds meetings only of
delegates and not of the members may provide for meetings of the delegates to be held less
frequently than annually but at least every six years.

(b) A membership corporation may hold regular meetings on a regional or other basis
at times stated in or fixed in accordance with the articles of incorporation or bylaws.

(c) Except as provided in subsection (e), annual and regular meetings of the members
may be held in or out of this state at the place stated in or fixed in accordance with the articles of
incorporation or bylaws. If no place is specified in or fixed in accordance with the articles or
bylaws, annual and regular meetings shall be held at the nonprofit corporation’s principal office.

(d) The failure to hold an annual or regular meeting at the time stated in or fixed in
accordance with the articles of incorporation or bylaws does not affect the validity of any
 corporate action.

(e) The articles of incorporation or bylaws may provide that an annual or regular
meeting of members does not need to be held at a geographic location if the meeting is held by
means of the Internet or other electronic communications technology in a fashion pursuant to any
means of communication by which the members have the opportunity to read or hear the
proceedings substantially concurrently with their occurrence, vote on matters submitted to the
members, pose questions, and make comments.

Source Note: Subsections (a), (c), and (d) are
patterned after Model Nonprofit Corporation Act, 3rd
Ed. (2008), § 7.01. Cf Model Business Corporation Act—
3d Ed. (2002) § 7.01. Subsections (a)-(d) are
derived from Revised Model Nonprofit
Corporation Act (1987) § 7.01(a)-(c) and (f).
Subsection (e) is patterned after 15 Pa.C.S. §
1704(a) (last sentence). (2016 Revision), § 7.01.

CROSS-REFERENCES

Action by ballot, see § 7.09709.
Action without meeting, see § 7.04704.
Annual election of directors, § 803.
Court-ordered meeting, see § 7.03703.
Director holdover terms, § 805.
List of members at meeting, see § 7.20720.
“Membership corporation” defined, see § 1.40102.
Notice of meeting, see § 7.05705.
“Principal office”
OFFICIAL COMMENT

Section 7.01(a) requires every membership corporation to hold an annual meeting of members each year, unless the corporation holds meetings only of delegates (in which case the articles of incorporation or bylaws may provide for less frequent meetings of delegates, so long as a meeting of delegates is held at least once every six years). The principal action to be taken at the annual meeting is the election of directors pursuant to Section 8.04, but the purposes of an annual meeting are not limited and any matters appropriate for member action may also be considered at that meeting. An annual meeting is also an appropriate forum for a member to raise any relevant question about the corporation’s operations.

Rather than holding an annual meeting, the members may elect directors and take other appropriate action by consent under Section 7.04. If the members fail to elect directors, the directors currently in office continue in office under Section 8.05 beyond the expiration of their terms.

The requirement of Section 701(a) that an annual meeting be held is phrased in mandatory terms to ensure that every member entitled to participate in an annual meeting has the unqualified right to (i) demand that an annual meeting be held and (ii) compel the holding of the meeting under Section 703 if the nonprofit corporation does not promptly hold the meeting and if the members have not elected directors by written consent. If no member objects, rather than holding an annual meeting, the members may elect directors and take other appropriate action by consent under Section 704. That practice creates no problem under Section 701, because Section 701(d) provides that failure to hold an annual meeting does not affect the validity of any corporate action. If the members fail to elect directors, the directors currently in office continue in office under Section 805(d) beyond the expiration of their terms except as provided in the articles of incorporation or bylaws.

Some membership corporations hold regular meetings of members in addition to holding an annual meeting of members. Section 7.01(b) recognizes this practice and allows corporations to hold regular meetings at times stated in or fixed in accordance with their articles of incorporation or bylaws. The act does not specify any particular business that must be considered at regular meetings.

The time and place of the annual meeting may is to be “stated in or fixed in accordance with the articles of incorporation or bylaws.” If the articles or bylaws do not themselves fix a time and place for the annual meeting, authority to fix them may be delegated to the board of directors or to a specified corporate officer. This section, Section 701, thus gives nonprofit corporations the flexibility to hold annual meetings in varying places at varying times as convenience may dictate.
The annual meeting may be held either inside or outside the state or in a foreign country, but if the bylaws do not fix, or state the method of fixing, the place of the meeting, the meeting must be held at the “principal office” of the membership corporation. The principal office is defined in Section 140102 as the location of the principal executive office of the corporation and, which may or may not be its registered or official office under Section 501220. Section 1621421 requires that the address of the principal office be specified in the corporation’s annual report. An annual meeting may also be held electronically if the requirements of Section 701(e) are satisfied.

If the annual meeting is not held either within 6 months of the close of membership corporation’s fiscal year or within 15 months of the last annual meeting, a member may compel an annual meeting to be held under Section 703. In the absence of a demand for a meeting, a corporation can operate indefinitely without actually holding an annual meeting. Because communications technology is evolving rapidly, Section 701(e) does not attempt to identify the types of communications technology that may be used to conduct an annual or regular meeting of the members that is not held at a geographic location. Any type of technology may be used as long as it satisfies the substantive requirements of Section 701(e). A similar provision regarding special meetings is provided in Section 702(f). Because both Section 701(e) and Section 702(f) require the articles of incorporation or bylaws to authorize the use of communications technology when it is the sole way a meeting will be conducted, such a provision should be clear regarding whether it applies to annual and regular meetings as well as to special meetings.

**§ 7.02702. SPECIAL MEETING**

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

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

(2) if the holders of at least 10%, or such other amount less than 10% or up to 25% as the articles of incorporation or bylaws shall specify, of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more demands in the form of a record for the meeting describing the purpose or purposes for which it is to be held.

(b) Unless otherwise provided in the articles of incorporation or bylaws, a demand for a special meeting may be revoked by notice to that effect received by the membership corporation from the members calling the meeting prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(c) If not otherwise fixed under Section 703 or 707 (court-ordered meeting) or 707 (record date), the record date for determining members entitled to demand a special meeting
the date the first member signs a demand shall be the first date on which a signed demand of members is delivered to the nonprofit corporation. A demand for a special meeting shall not be effective unless, within 60 days after the earliest date on which a demand delivered to the corporation was signed, demands signed by members holding at least the percentage of votes specified in or fixed in accordance with Section 702(a)(2) have been delivered to the corporation.

(d) Except as provided in subsection Section 702(f), special meetings of the members may be held in or out of this state at the place stated in or fixed in accordance with the articles of incorporation or bylaws. If no place is so stated or fixed in accordance with the articles or bylaws, special meetings shall be held at the corporation’s principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by Section 7.05705(c) (notice of meeting) may be conducted at a special meeting of the members.

(f) The articles of incorporation or bylaws may provide that a special meeting of members does not need to be held at a geographic location if the meeting is held by means of the Internet or other electronic communications technology in a fashion pursuant to which whereby the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.


CROSS-REFERENCES

Action by ballot, see § 7.09709.
Action without meeting, see § 7.04704.
Annual meeting, see § 7.01701.
Court-ordered meeting, see § 7.03703.
List of members at meeting, see § 7.20720.
“Membership corporation” defined, see § 1.40102.
Notice of meeting, see § 7.05705.
“Principal office”: defined, see § 1.40102.
designated in annual report, see § 16.21421.
Quorum and voting requirements, see §§ 7.24724-7.26726.
Regular meeting, see § 7.01701.
“Voting group” defined, § 102.
Waiver of notice, see § 7.06706.
OFFICIAL COMMENT

Any meeting other than an annual or regular meeting is a special meeting under Section 7.02. At an annual meeting directors are elected and, subject to any applicable special notice requirement prescribed by the act or by the articles of incorporation, any relevant issue pertaining to the corporation may be considered, while at a special meeting must be called for specific purposes and may only consider matters within those specific purposes for which the meeting is called may be considered.

1. Who May Call A Special Meeting

A special meeting may be called under Section 7.02(a) by the board of directors or the persons authorized to do so by the articles of incorporation or bylaws or upon demand by members as described below. Typically, the person or persons holding certain designated offices within the corporation, e.g., the president, chair of the board of directors, or chief executive officer, are given authority to call special meetings of the members. In addition, the holders of at least 10 percent of the votes entitled to be cast on a proposed issue at the special meeting may require the membership corporation to hold a special meeting by signing, dating, and delivering one or more demands for a special meeting that set forth the purpose of the desired meeting. That percentage may be decreased or increased (but to not more than 25 percent) by a provision in the articles of incorporation or bylaws fixing a different percentage.

Members demanding a special meeting do not all need to sign a single demand, but the demands must all describe essentially the same purpose or purposes. Revocations of demands will be effective if notice is delivered to the corporation in the manner contemplated by Section 4.103 and received before the corporation receives the requisite number of demands requiring that a special meeting be called. However, revocations received after that time will be a nullity and will have no effect. Upon receipt of demands by members with the requisite number of votes, the corporation (through an appropriate officer) must call the special meeting at a reasonable time and place. The members’ demand may suggest a time and place but the final decision on such matters belongs to the corporation. If no meeting is held within the time periods specified in Section 7.03, the members may obtain a summary court order, a member who is entitled to participate, or who signed a demand, may seek judicial relief under that section requiring that the meeting be held.

Section 7.02(c) fixes a record date for determining the members entitled to sign a demand for a special meeting of members. Unless a record date is otherwise fixed for this purpose, the record date is the date the first member signs the demand. If a member initially signs a demand but later seeks to withdraw the demand, the corporation may permit the member to do so.

2. Discretion as to Call of Special Meeting

Under Section 7.02(a)(2) it is possible that more than one faction of members may demand meetings at roughly the same time or that a single (or changing) faction of members may
request consecutive, overlapping, or repetitive meetings. The responsible corporate officers
should have some discretion as to the call and purposes of a meeting, and where demands are
repetitious or overlapping, they should have the right to refuse to call a meeting for a purpose
identical or similar to a purpose for which a previous special meeting was held in the recent past.
Similarly, they should have some discretion to decline to call a special meeting when an annual
or regular meeting will be held in the near future. This limited discretion of the corporation to
deny repetitive or overlapping demands may ultimately be tested under Section 7.03703, which
itself gives the court discretion whether or not to compel the holding of a special meeting under
these circumstances. See the Official Comment to Section 7.03703.

3. Business That May Be Conducted at a Special Meeting

Section 7.03705(c) provides that a notice of a special meeting must include a “description
of the purpose for which the meeting is called.” Section 7.02702(e) states that only business that
is within that purpose may be conducted at the special meeting. The word “within” was chosen,
rather than a broader phrase like “reasonably related to,” to describe the relationship between the
notice and the authorized business to assure a member who does not attend a special meeting that
new or unexpected matters will not be considered in the member’s absence.

4. Location

A special meeting may be held either inside or outside the state or in a foreign country,
but if the bylaws do not fix, or state the method of fixing, the place of the meeting, the meeting
must be held at the “principal office” of the membership corporation. The principal office is
defined in Section 1.40102 as the location of the principal executive office of the corporation and
may or may not be its registered or official office under Section 5.01220. Section 16.21421
requires that the address of the principal office be specified in the corporation’s annual report. A
special meeting may also be held electronically if the requirements of Section 7.02(f) are
satisfied.

A special meeting may also be held using electronic technology, such as the Internet, if
the requirements of Section 702(f) are satisfied. Because communications technology is evolving
rapidly, Section 702(f) does not attempt to identify the types of communications technology that
may be used to conduct a special meeting of the members that is not held at a geographic
location. Any type of technology may be used as long as it satisfies the substantive requirements
of Section 702(f). A similar provision regarding annual and regular meetings is provided in
Section 701(e). Because both Section 701(e) and Section 702(f) require the articles of
incorporation or bylaws to authorize the use of communications technology when it is the sole
way a meeting will be conducted, such a provision should be clear regarding whether it applies
to annual and regular meetings as well as to special meetings.

5. Designated Body

The provisions of this section relating to the board of directors also apply to a designated
body under Section 8.12812. Thus a designated body may be given the authority to call and
otherwise act with respect to a special meeting.
§ 7.03703. COURT-ORDERED MEETING

(a) The [name or describe] court of the county where the principal office of a membership corporation (or, if not in this state, its registered office) is located may summarily order a meeting to be held:

(1) on application of any member entitled to participate in an annual or regular meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting; or

(2) on application of a member who signed a demand for a special meeting under Section 7.02702 (special meeting), if:

   (i) notice of the special meeting was not given within 30 days after the date the demand was first day on which the requisite number of demands have been delivered to the corporation’s secretary; or

   (ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date for determining members 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 to accomplish the purpose or purposes of the meeting.


CROSS-REFERENCES

Annual meeting, see § 7.01701.
Effective date of notice, see § 7.20720.
Member list for voting at meeting, see § 7.26726.
“Membership corporation” defined, see § 1.40102.
“Principal office”: defined, see § 1.40102.
Designated in annual report, see § 16.21421.
Quorum and voting requirements, see §§ 7.24724-7.26726.
Registered office: designated in annual report, see § 16.21421.
OFFICIAL COMMENT

Section 7.03 provides the remedy for members if the membership corporation refuses or fails to hold a meeting as required by Section 7.01 or 7.02. A member entitled to participate in a meeting may apply for a summary court order to command the holding of a meeting if (1) an annual meeting is not held within 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting, or (2) a special meeting is not properly noticed within 30 days after a valid demand is delivered to the secretary of the corporation or, if properly noticed, is not held in accordance with the notice. Because a meeting must be held within 60 days of the notice date under Section 7.05, the maximum delay between the demand for a special meeting and the right to petition a court for a summary order is 90 days.

1. THE COURT WITH JURISDICTION TO ADMINISTER SECTION 7.03

The identity of the specific court with jurisdiction to order a meeting of members under Section 7.03(a) must be supplied by each state when enacting this section. It is intended that this should be a court of general civil jurisdiction. Generally, all matters relating to a nonprofit corporation should be addressed to the court in the county where the corporation’s principal office is located in the state or, if the corporation does not have its principal office in the state, to the court in the county in which its registered office is located.

21. Discretion of the Court to Order a Meeting

The court has broad discretion under Section 7.03 whether to order that a meeting be held, since the language of the statute is that the court “may summarily order” that a meeting be held. A court, for example, may refuse to order a special meeting if the specified purpose is repetitive of the purpose of a special meeting held in the recent past. See the Official Comment to Section 7.02. Alternatively, the court may view the demand as a good faith request for reconsideration of an action taken in the recent past and may order a meeting to be held. Similarly, even though a demand for an annual meeting is not a formal prerequisite for an application for a summary order under this section, the court may withhold setting a time and date for the annual meeting for a reasonably short period in order to permit the corporation to do so.

3. BURDEN OF PROOF

A member applying for an order to hold a meeting has the burden of showing that the member is entitled to the order. In the case of a special meeting, the member has the burden of showing that the demand was executed by the holders of at least 10 percent of the votes entitled to be cast on the record date and that the demand was duly delivered to the corporation’s secretary.

42. Notice, Time, Place, and Quorum Requirements
If the court orders that a meeting be held, it may fix the time and place of the meeting, determine the voting groups entitled to participate in the meeting, set the record date, order notice to be given as required by Section 7.05, and enter such other orders as may be appropriate for the holding of the meeting. The court may also establish the quorum requirements for specific matters to be considered at the meeting or direct that the votes represented at the meeting automatically constitute a quorum for the taking of any action without regard to Section 7.24 or any provision to the contrary in the nonprofit corporation’s articles of incorporation or bylaws. In order to the court has wide discretion over the terms of the order, including the matters set forth in Section 703(b). The discretion of the court with respect to quorum requirements prevents a holder of the majority of the votes (who may not desire that a meeting be held) from frustrating the court-ordered meeting by not attending to prevent the existence of a quorum. To prevent misunderstanding about a special quorum requirement, if one is imposed, it is appropriate for the court to order that the notice of the meeting state specifically and conspicuously that a special quorum requirement is applicable to the court-ordered meeting. The court may also enter orders overriding the articles of incorporation or bylaws relating to matters such as notice (including advance notice requirements), and the time and place of the meeting.

53. Status as Annual Meeting

The court may provide that a meeting it has ordered is to be the annual meeting. If so provided, the meeting should be viewed as compliance with Section 7.04704, precluding all other member requests for an annual meeting for that year.

§ 7.04704. ACTION WITHOUT MEETING

(a) Except as provided in the articles of incorporation or bylaws, action required or permitted by this act to be taken at a meeting of the members may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more consents in the form of a record bearing the date of signature and describing the action taken, signed by all the members entitled to vote on the action, and delivered to the membership corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under Section 7.03 or 7.07704 (record date) and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a). If not otherwise fixed under Section 707 and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date is the close of business on the day the board of directors took the prior action. A consent shall be effective to take the corporate action referred to therein unless, within 60 days after the earliest date appearing on which a consent delivered to the membership corporation in the manner required by this section was signed, consents signed by members entitled to cast the required number of votes on the action are received by the corporation. A consent may be revoked by a signed notice in the form of a record to that
effect received by the corporation prior to receipt by the corporation of unrevoked consents sufficient in number to take the corporate action have been delivered to the corporation.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such.

(d) If the articles of incorporation or the bylaws require that notice of proposed corporate action be given to members not entitled to vote on the action and the action is to be taken by consent of the members entitled to vote, the membership corporation must deliver to the members not entitled to vote notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that would have been required to be delivered to members not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the members for action.


CROSS-REFERENCES

Acceptance of consents, see § 7.23723.
“Deliver” defined, see § 1.40102.
“Membership corporation” defined, see § 1.40102.
Notice, see § 1.41.
“Secretary” defined, see § 1.40103.
“Sign” defined, see § 1.40102.
Voting entitlement generally, see § 7.24721.

OFFICIAL COMMENT

Section 7.04 provides as a The default rule under Section 7.04 is that all the members entitled to vote on an issue may validly act by unanimous consent without a meeting, unless the articles of incorporation or bylaws expressly limit the use of action by consent.

Unanimous consent is generally obtainable, as a practical matter, only on for matters on which there are only a relatively few members entitled to vote. The default rule is based on the fundamental premise that if all the voting members desire some action to be taken, no purpose is served by requiring the formality of holding a meeting of members. Although Section 7.04 only authorizes unanimous consent, it permits the articles of incorporation or bylaws to vary that rule. Thus, the articles or bylaws could provide for consent by less than all the members (typically a majority) or prohibit action by consent and require a meeting whenever the members are to act on an issue.
Action by consent has the same effect as a meeting vote and may be described as such, including in filings with the secretary of state. Unless the articles of incorporation or bylaws expressly limit the use of action by consent, Section 7.04 is applicable to any action taken by the members, including, without limitation, election of directors, approval of mergers or sales of substantially all the corporate property not in the ordinary course of business, amendments of articles of incorporation, and dissolution.

1. **Form of Consent**

To be effective, consents must be in the form of a record, dated, signed by all the members entitled to vote, and delivered to the membership corporation in the manner contemplated by Section 1.41(103(d).

A member or proxy may use an electronic transmission to consent to an action. If an electronic transmission is used to consent to an action, the corporation must be able to determine from the transmission the date of the signature and that the consent was authorized by the member or a proxy. See Sections 102 (“electronic,” “sign,” and “signature”) and 103(d).

In some cases, more votes may be required to approve an action by less than unanimous consent than would be required to approve the same action at a meeting that is not attended by all members. For example, for a corporation with 1,000 members eligible to vote, unrevoked consents from at least 501 members are necessary to take action by consent under the default quorum and voting requirement provisions of Section 725. In contrast, at a meeting at which the minimum quorum is present, the same action could be taken with the vote of 251 members, or even fewer if not all members present vote. Where the act or the corporation’s articles of incorporation or bylaws provide for a greater voting requirement, however, the number of members required to consent to an action may be the same as the number of members required to approve the action at a meeting of members.

The phrase “one or more consents” is included in Section 7.04(704(a) to make it clear that all members do not need to sign the same piece of paper or electronic record. The record date for determining who is entitled to vote, if not otherwise fixed by or in accordance with the articles of incorporation or bylaws, is the date the first member signs a consent. To minimize the possibility that action by consent will be authorized by action of persons who may no longer be members at the time the action is taken, Section 7.04(704(b) requires that all consents be signed within 60 days after the earliest signature date appearing on the consents delivered to the corporation.

2. **Revocation of Consent**

Action by consent is effective only when the last member has signed and all consents have been delivered to the membership corporation in the manner contemplated by Section 1.41(d). Before that time, any member may withdraw a consent simply by advising the corporation of that fact. Cf. *Calumet Industries, Inc. v. McClure*, 464 F. Supp. 19 (N.D. Ill. 1978). If consents must be unanimous in a particular case, the withdrawal of a single consent will prohibit action by consent. Withdrawal of a consent in cases where less than unanimity is
required may or may not make action by consent impossible. If a member seeks to withdraw a consent after the requisite number of members have signed consents and filed them with the corporation, the withdrawal will be a nullity and will not be given effect.

Before action by consent is effective, any member may withdraw a consent simply by delivering a revocation of consent to the corporation.

3. **CONSENT TO FUNDAMENTAL CORPORATE CHANGES**

**Notice to Nonvoting Members**

Section 7.04704 is applicable to all member actions, including the approval of fundamental corporate changes described in Chapters 9, 10, 11, and 12, and 14. Section 7.05705(a) requires that notice of an annual, regular, or special meeting be given only to members entitled to vote at the meeting. The articles of incorporation or bylaws, however, may require that notice also be given to members not entitled to vote. If notice is required to be given to members not entitled to vote, Section 7.04704(d) provides that notice to those members must be given at least 10 days before a corporate action taken by consent is effective.

§ 7.05705. NOTICE OF MEETING

(a) A membership corporation must deliver notice to the members of the date, time, and place of each annual, regular, or special meeting of the members. If the board of directors has authorized participation by means of remote communication pursuant to Section 7.10 (remote participation in member meeting) for members of any class, the notice to the members of that class must describe the means of remote communication to be used. Except as provided in the articles of incorporation or the bylaws:

(1) the notice must be given no fewer than 10 nor more than 60 days before the meeting date; and

(2) the corporation must give notice only to members entitled to vote at the meeting as of the record date for determining the members entitled to notice of the meeting.

(b) Unless this [act Act], the articles of incorporation, or the bylaws require otherwise, notice of an annual or regular meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting of members must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Section 7.03 or 7.07703 (court-ordered meeting) or 7.07 (record date), the record date for determining members entitled to notice of and to vote at an annual, regular, or special meeting of the members is the day before the first notice is delivered to members.
(e) Unless the articles of incorporation or bylaws require otherwise, if an annual, regular, or special meeting of the members 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. If a new record date for the adjourned meeting is or must be fixed under Section 7.077, notice of the adjourned meeting must be given under this section to the members entitled to vote on the adjourned meeting as of the record date fixed for notice of the adjourned meeting.

(f) Except as provided in the articles of incorporation or bylaws, when giving notice of an annual or regular meeting of members, a nonprofit corporation must give notice of a matter a member intends to raise at the meeting if:

(1) requested in writing to do so by a person entitled to raise the matter at the meeting; and

(2) the request is received by the secretary of the corporation at least ten days before the corporation gives notice of the meeting.


CROSS-REFERENCES

Annual meeting, see § 7.01.
“Deliver” defined, see § 4.41.102.
“Membership corporation” defined, see § 4.40.102.
Notice, see § 4.41.103.
Notice otherwise required:
Amendment of articles of incorporation, § 903.
Amendment of Bylaws, see § 10.03.922.
conversion, see § 9.52.1252.
disposition of assets, see § 12.02.1002.
dissolution, see § 14.02.1102.
domestication, see § 9.21.1242.
merger and membership exchange, see § 11.04.1220.
Regular meeting, see § 7.01.701.
Remote participation in members’ meetings, see § 710.
Special meeting, see § 7.02.702.
Waiver of notice, see § 7.06.706.

OFFICIAL COMMENT
Members entitled to notice must be given notice of annual, regular, and special meetings pursuant to Section 7.05 unless the notice is waived pursuant to Section 7.06. Notice must be given at least 10 but not more than 60 days before the meeting date.

1. Members Entitled to Notice

Generally, only members who are entitled to vote at a meeting are entitled to notice. Thus, notice usually needs to be sent only to members entitled to vote for an election of directors or generally on other matters (in the case of an annual or regular meeting), and on matters within the specified purposes set forth in the notice (in the case of a special meeting), and only to such members on the record date. In addition, the articles of incorporation or bylaws may require that notice of meeting be given to all or specified voting groups of members who are not entitled to vote on the matters considered at those meetings.

2. Statement of Matters to be Considered at an Annual Meeting

Notice of all special meetings must include a description of the purpose or purposes for which the meeting is called and the matters acted upon at the meeting are limited to those within the notice of meeting. By contrast, the act does not require that the notice of an annual or regular meeting refer to any specific purpose or purposes, and any matter appropriate for member action may be considered. As recognized in subsection Section 705(b), however, other provisions of the act provide that certain types of fundamental corporate changes may be considered at an annual or regular meeting only if specific reference to the proposed action appears in the notice of meeting. See, e.g., Sections 10.03, 11.04, 12.02, and 14.02. If the board of directors chooses, a notice of an annual or regular meeting may contain references to purposes or proposals not required by statute. In the event that management intends to present non-routine proposals for a member vote and members have not otherwise been informed of such proposals, good corporate practice suggests that references to such proposals be made in the notice. In any event, if a notice of an annual or regular meeting refers specifically to one or more purposes, the meeting is not limited to those purposes.

3. Record Date

Section 7.05(d) is a catch-all record date provision for annual, regular, and special meetings. If the record date for notice and for voting entitlement is not otherwise fixed pursuant to Sections 7.03 or 7.07, the record date for purposes of determining who is entitled to notice and to vote at the meeting is the day before the notice is given to the first members.

The selection of the day before the notice is given as the catch-all record date under Section 705(d) is intended to permit the corporation to deliver notices to members on a given day without regard to any changes in membership during that day. For this reason, this section is not inconsistent with the general principle set forth in the last sentence of Section 7.07(a) that the board of directors may not fix a retroactive record date.

4. Notice of Adjourned Meetings

Section 7.05(e) provides rules for adjourned meetings and determines whether new
notice must be given to members. Under this subsection a meeting may be adjourned to a
different date, time, or place without additional notice to the members (unless the bylaws require
otherwise) if the new date, time, or place is announced before adjournment. But new notice is
required if a new record date is or must be fixed under Section 7.077(c). If a new record
date is or must be fixed, all of the, the 10 to 60 day notice requirement and all other requirements
of Section 7.057 must be complied with because notice must be given to the persons who
are members as of the new record date. In such circumstances, a new quorum for the adjourned
meeting must also be established. See Section 7.24.

5. Alternative Forms of Notice

The manner in which notice may be delivered to the members is governed by Section
4.41. A church or similar religious body may decide to provide for notice of meetings by
announcement at church or religious services, in which case it should specify the frequency and
timing of notice (e.g., “announcement at any two services held during different weeks within 30
days before the time at which the meeting of members will be held”). Other nonprofit
corporations may choose to deliver notice in a manner similar to the way business corporations
deliver notice to their shareholders.

§ 7.06. WAIVER OF NOTICE

(a) A member may waive any notice required by this act, the articles of
incorporation, or the bylaws before or after the date and time stated in the notice or of the
meeting or action. The waiver must be in the form of a record, be signed by the member entitled
to the notice, and be delivered to the membership corporation for inclusion in the filing by the
corporation with the minutes or filing with the corporate records.

(b) The attendance of a member at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting,
unless the member at the beginning of the meeting objects to holding the meeting or transacting
business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that
is not within the purpose described in the meeting notice, unless the member objects at the
meeting to considering the matter.

Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 7.06. Derived
Business Corporation Act (2016 Revision), § 7.06.
OFFICIAL COMMENT

Section 7.06(a) permits any member to waive any notice required by Section 7.05 by a waiver in the form of a record, signed by the member and delivered to the membership corporation. A waiver is effective even though it is signed at or after the time set for the meeting.

A notice of member meetings serves two principal purposes: (1) it advises members of the date, time and place of the annual, regular, or special meeting, and (2) in the case of a special meeting (or an annual or regular meeting at which fundamental changes may be made), it advises members of the purposes of the meeting. If a member attends a meeting, the member has probably received some form of notice of the date, time, and place of the meeting, whether from the membership corporation or from another source. As a result, Section 7.06(b)(1) provides that attendance at a meeting constitutes waiver of any failure to receive the notice or defects in the statement of the date, time, and place of any meeting. Defects waived by attendance for this purpose include a failure to send the notice altogether, delivery to the wrong address, a misstatement of the date, time, or place of the meeting, and a failure to notice the meeting within the time periods specified in Section 7.05(a). If a member believes that the defect in or failure of notice was in some way prejudicial, the member must object and state at the beginning of the meeting that the member objects, an objection is waived. If this objection is made, the corporation may correct the defect by sending proper notice to the members for a subsequent meeting or by obtaining waivers of notice from all members who did not receive the notice required by Section 7.05.

For purposes of this section, “attendance” at a meeting involves the presence of the member in person or by proxy, or if authorized in accordance with Section 710, the member or proxy may attend by means of remote communication. A member who attends a meeting solely for the purpose of objecting to the notice may be counted as present for purposes of determining whether a quorum is present. See Section 724 and the Official Comment to Section 7.24.

In the case of special meetings, or annual or regular meetings at which fundamental corporate changes are considered, a second purpose of the notice is to tell members what is of the matters to be considered at the meeting. An objection that a particular matter is not within the stated purposes of the meeting cannot be raised until the matter is presented. Thus Section 7.06(b)(2) provides that a member waives this kind of objection if the member
fails by failing to object promptly after when the matter is first presented. If this objection is made, the membership corporation may correct the defect by sending proper notice to the members for a subsequent meeting or obtaining waivers of notice from all members. Of course, whether or not a specific matter is within a stated purpose of a meeting is ultimately a matter for judicial determination, typically in a suit to invalidate action taken at the meeting brought by a member who was not present at the meeting or who was present at the meeting and preserved an objection under Section 7.06706(b).

The purpose of both waiver rules in Section 7.06706(b) is to require members with technical objections to holding the meeting or considering a specific matter to raise them at the outset and not reserve them to be raised only if they are unhappy with the outcome of the meeting. The rules set forth in this section differ in some respects from the waiver rules for directors set forth in Section 8.23823 where a waiver is inferred if the director acquiesces in the action taken at a meeting even if the director raised a technical objection to the notice of a meeting at the outset.

§ 7.07707. RECORD DATE

(a) The articles of incorporation or bylaws may fix or provide the manner of fixing the record date for one or more voting groups to determine the members entitled to notice of a meeting of the members, to demand a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or provide for fixing the record date, the board of directors of the membership corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members and may not be retroactive.

(c) A determination of members entitled to notice of or to vote at a meeting of the members is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) 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.


CROSS-REFERENCES

Annual meeting, see § 7.01701.
Court-ordered meeting, see § 7.03703.
“Membership corporation” defined, see § 1.40102.

Other record date provisions:
- action without meeting, see § 7.04704.
- notice of meeting, see § 7.05705.
- special meeting, see § 7.02702.

“Voting group” defined, § 102.

OFFICIAL COMMENT

Section 7.07707 authorizes the board of directors to fix record dates for determining members entitled to take any action unless the articles of incorporation or bylaws themselves fix or provide for the fixing of a record date. A separate record date may be established for each voting group entitled to vote separately on a matter at a meeting, or a single record date may be established for all voting groups entitled to participate in the meeting. If a record date for a specific action is not fixed by the articles, bylaws, or the board, the section of this act that deals with that action itself fixes the record date. For example, Section 7.05705(d), relating to giving notice of a meeting, provides that the record date for determining who is entitled to notice of and to vote at a meeting (if not otherwise fixed by the articles, bylaws, or directors) is the close of business on the day before the date the corporation first gives notice to members of the meeting.

A record date may not be fixed more than 70 days before the meeting or action in question and may not be fixed retroactively. Once set, the same record date may be utilized for an adjournment of the meeting that reconvenes within 120 days after the date fixed for the original meeting or the board of directors may fix a new record date. If the adjourned meeting takes place more than 120 days after the date fixed for the original meeting, Section 7.07707(c) requires that a new record date be fixed. But if an adjournment is ordered by a court, Section 7.07707(d) allows the court to provide that the original record date continues to be applicable or to fix a different date. In any event, if a different record date is fixed, if a new record date subsequently is or must be fixed under this section, Section 7.05705 requires that new notice be given to the persons who are members entitled to vote as of the new record date, and Section 7.24724 requires that a quorum be reestablished for that meeting.

§ 7.08708. CONDUCT OF MEMBER MEETING

(a) At each meeting of members, an individual appointed in one of the following ways must preside as chair. The chair shall be appointed:

(1) as provided in the articles of incorporation or bylaws;
(2) in the absence of a provision in the articles or bylaws, by the board of directors; or
(3) in the absence of both a provision in the articles or bylaws and an appointment by the board, by the members at the meeting.
(b) Except as provided in the articles of incorporation or bylaws, the chair shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to the members.

(d) The chair of the meeting shall announce when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, nor any otherwise permissible revocations or changes to ballots, proxies, or votes may be accepted.


CROSS-REFERENCES

Annual meeting, see § 7.01.
Court-ordered meeting, see § 7.03.
Regular meeting, see § 7.01.
Special meeting, see § 7.02.

OFFICIAL COMMENT

Section 7.08 provides that, at any meeting of the members, there shall be a chair who shall preside over the meeting. The chair is appointed in accordance with the articles of incorporation or bylaws. Generally, the chair of the board of directors presides over the meeting. However, the articles of incorporation or bylaws could provide that the chief executive officer, if different than the chair of the board, preside over the meeting and they should provide a means of designating an alternate if that individual is for any reason unable to preside.

Section 7.08(b) gives the chair, unless the articles of incorporation or bylaws provide otherwise, the authority to determine in what order items of business should be discussed and decided. Section 7.08 provides that, at any meeting of the members, there will be a chair who presides over the meeting. Inherent in the chair’s power in Section 708(b) to establish rules for the conduct of the meeting is the authority to require that the order of business be observed and that any discussion or comments from members or their proxies be confined to the business item under discussion. However, it is also expected that the chair will not misuse the power to determine the rules for conduct of the meeting may cover such subjects as the proper means for obtaining the floor, who shall have the right to address the meeting, the manner in which members will be recognized to speak, time limits per speaker, the number of times a member may address the meeting, and the person to whom questions should be addressed. The chair must be fair in determining the order of business and to establish rules for the conduct of the meeting so as not to unfairly foreclose the right of members – subject to the act, the articles of
incorporation, and the bylaws – to raise items which are properly a subject for member
discussion or action at some point in the meeting prior to adjournment.

The act provides that only business within the purpose or purposes described in the
meeting notice may be conducted at a special meeting of members. See Sections 7.02702(e) and 7.05705(c).

Section 7.08(b) also provides that the chair shall have the authority to establish rules for the
course of meetings of the members. The rules may cover such subjects as the proper means
for obtaining the floor, who shall have the right to address the meeting, the manner in which
members will be recognized to speak, time limits per speaker, the number of times a member
may address the meeting, and the person to whom questions should be addressed. The substance
of the rules should be communicated to members prior to or at the beginning of the meeting.
The chair is entitled to wide latitude in conducting the meeting and, unless inconsistent with a previously prescribed rule, may set requirements, observe practices, and follow customs that facilitate a fair and orderly meeting. Since, absent a modifying provision in the articles or bylaws, the chair has exclusive authority with respect to the rules for and the conduct of the meeting, rulings by the chair may not be overruled by members. On the other hand, any rule for or conduct of the meeting which does not satisfy the fairness mandate of Section 7.08(c) would be subject to a judicial remedy.

As an alternative to having the chair of the meeting determine the rules for its conduct, the articles of incorporation or bylaws may specify that meetings of the members are to be conducted pursuant to the rules of a specified parliamentary authority. If a particular edition of a parliamentary authority is specified in the articles or bylaws, that edition will control even though the parliamentary authority is subsequently revised. A general reference to a parliamentary authority, however, that does not specify a particular edition of the chosen rules will mean that the current edition of the parliamentary authority is intended to control. The rules in a parliamentary authority cannot vary the provisions of the act, for example with respect to issues such as quorums, notice of meetings, or voting rights, unless the requirements of those provisions for varying them are satisfied.

Section 7.08(d) requires that an announcement be made at the meeting of members specifying when the polls will close for each matter voted upon. It also provides that, once the polls close, no ballots, proxies, or votes and no changes thereto may be accepted. This statutory provisions eliminates an area of uncertainty which had developed in the relatively sparse case law dealing with the effect of closing the polls, some of which suggested that, notwithstanding the closing of the polls, votes could be changed up until the time that the inspectors of election announced the results. See, e.g., Young v. Jebbett, 213 A.D. 774, 211 N.Y.S. 61 (N.Y. App. Div. 1925); State ex rel. David v. Dailey, 158 P.2d 330 (Wash. 1945). Any abusive use of the poll closing power would be subject to judicial review under subsection (c) as well as under that line of cases requiring that meetings of members be conducted fairly and proscribing inequitable manipulations of the voting machinery. See, e.g., Duffy v. Loft, Inc., 151 A. 223 (Del. Ch. 1930); Schnell v. Chris-Craft Ind., Inc., 285 A.2d 437 (Del. 1971).

§ 7.09709. ACTION BY BALLOT
(a) Except as otherwise restricted by the articles of incorporation or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the membership corporation delivers notice that includes a ballot to every member entitled to vote on the matter.

(b) A ballot must:

(1) be in the form of a record;

(2) set forth each proposed action;

(3) provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director; and

(4) provide an opportunity to vote for or against each other proposed action.

(c) Approval by ballot pursuant to this section of action other than election of directors is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ballot must:

(1) indicate the number of responses needed to meet the quorum requirements;

(2) state the percentage of approvals necessary to approve each matter other than election of directors; and

(3) specify the time by which a ballot must be received by the membership corporation in order to be counted.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a ballot may not be revoked.


CROSS-REFERENCES

Acceptance of ballot, see § 7.23723.
Action by members by consent, see § 7.04704.
Election of directors, see § 7.27727.
“Members” defined, see § 4.40102.
“Membership corporation” defined, see § 1.40102.

**OFFICIAL COMMENT**

If ballots are used in the manner authorized by this section Section 709, the membership corporation does not need to convene a meeting of its members. Thus the use of ballots under this section Section 709 is different from the distribution of ballots at a meeting to facilitate voting at the meeting. If ballots are to be used in the manner authorized by Section 709, the corporation must deliver a notice to each member entitled to vote, except that Section 103 will apply to the delivery of the notice and excuse the corporation from giving notice with an accompanying ballot to members that are not reachable.

Voting by ballot under this section is an alternative to acting by consent under Section 7.04704. In effect, the use of ballots is a way to conduct a vote of members remotely instead of at a meeting. Thus Section 7.09709(d) provides rules that are substantively similar to the rules on quorums and required vote applicable to member meetings, but which differ from the rules in Section 7.04704 on action by consent.

**§ 710. REMOTE PARTICIPATION IN MEMBER MEETING**

(a) Members of any class may participate in any meeting of members by means of remote communication to the extent the board of directors authorizes such participation for that class. Participation as a member by means of remote communication is subject to any guidelines and procedures the board of directors adopts that conform to Section 708(c).

(b) Members participating by means of remote communication are deemed present and may vote at the meeting if the membership corporation has implemented reasonable measures:

1. to verify that each person participating remotely as a member is a member; and
2. to provide the members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings.

**OFFICIAL COMMENT**

Section 710 permits members to participate in meetings by means of remote communication, such as over the Internet or through telephone conference calls, subject to the conditions set forth in Section 710(b) and any other guidelines and procedures that the board of directors adopts. This would include the use of electronic ballots to the extent authorized by the board of directors. This authorization extends as well to anyone to whom a member has granted a
proxy appointment. Section 710(a) ensures that the board of directors has the sole discretion to
determine whether to allow members to participate by means of remote communication.

Section 710 allows the board of directors to limit participation by means of remote
communication to all members of a particular class, but does not permit the board of directors to
limit such participation to particular members within a class.

Section 710 is not intended to expand the rights to participate in meetings or otherwise
alter the ability of the board of directors or the chair to conduct meetings, pursuant to section
708, in a manner that is fair. For example, many corporations limit member comments and, if
that practice is fair to members consistent with section 708, that practice is not changed by
section 710. The two requirements under section 710(b) reflect the minimum deemed necessary
to safeguard the integrity of the members’ meeting. Section 710 specifically gives the board of
directors the flexibility and discretion to adopt additional guidelines and procedures for allowing
members to participate in a meeting by means of remote communication.

To give corporations the flexibility to choose the most efficient means of remote
communication under Section 710(a), the board of directors may require that members
communicate their desire to participate by a certain date and condition the provision of remote
communication or the form of communication to be used on the affirmative response of a certain
number or proportion of members eligible to participate. If the board of directors authorizes
member participation by means of remote communication pursuant to Section 710, that
authorization and the process for participating by remote means of communication must be
included in the meeting notice required by Section 705.

[Subchapter] B
VOTING

§ 7.20720. Members list for meeting.
§ 7.21721. Voting entitlement of members.
§ 7.22722. Proxies.
§ 7.23723. Acceptance of votes and other instruments.
§ 7.24724. Quorum and voting requirements for voting groups.
§ 7.25725. Action by single and multiple voting groups.
§ 7.26726. Different quorum or voting requirements.
§ 7.27727. Voting for directors.
§ 7.28728. Inspectors of election.

§ 7.20720. MEMBERS LIST FOR MEETING

(a) After fixing a record date for a meeting, a membership corporation shall must
prepare an alphabetical list of the names of all its members who are entitled to notice of vote at
that meeting of the members. The list must show the address of and number of votes each
member is entitled to cast at the meeting.
(b) The list of members must be available for inspection by any member, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the membership corporation’s principal office or at a place identified in the meeting notice in the city where the meeting will be held. A member or the member’s agent is entitled on demand to inspect and copy the list, during regular business hours and at the member’s expense, during the period it is available for inspection.

(c) The membership corporation must make the list of members available at the meeting, and a member or the member’s agent is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If a membership corporation refuses to allow a member or the member’s agent to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), the court of the county where the corporation’s principal office (or, if none in this state, its registered office) is located, on application of the member, may:

1. summarily order the inspection or copying at the corporation’s expense;
2. postpone the meeting for which the list was prepared until the inspection or copying is complete;
3. order the corporation to pay the member’s costs (including reasonable counsel fees) incurred to obtain the order; and
4. order other appropriate relief.

(e) Refusal or failure to prepare or make available the list of members does not affect the validity of action taken at the meeting.

(f) Instead of making the list of members available as provided in subsection (b), a membership corporation may state in a notice of meeting that the corporation has elected to proceed under this subsection. A member of a corporation that has elected to proceed under this subsection must state in the member’s demand for inspection a proper purpose for which inspection is demanded. Within ten business days after receiving a demand under this subsection, the corporation must deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the corporation from making the list of members available under subsection (b), unless within a reasonable time after acceptance of the offer the corporation fails to do the things it offered to do. Any rejection of the corporation’s offer must be in the form of a record and must indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand.

Subsections (a) through (e) are substantially a reenactment of Revised Model Nonprofit Corporation Act (1987) § 7.20(a)-(e).


CROSS-REFERENCES

Annual meeting, see § 7.04701.
Charge for providing copy, see § 16.031603.
Inspection of corporate records generally, see Ch. 16A.
“Membership corporation” defined, see § 1.40102.
Notice, see Notices and other communications, § 1.41103.
Notice of meeting, see § 7.05705.
“Principal office”:
   defined, see § 1.40102.
   designated in annual report, see § 16.211621.
Proper purpose for copying, see § 16.021602.
Record date, see § 7.07707.
Record of members, see § 16.011601.
Registered office:
   designated in annual report, see § 16.21.
   required, see §§ 2.02, 5.01, and 15.07.
Regular meeting, see § 7.01701.
Special meeting, see § 7.02702.
Voting entitlement generally, see § 7.21721.
“Voting group” defined, see § 1.40102.

OFFICIAL COMMENT

Section 7.20 requires the preparation of a list of members entitled to notice of a meeting and requires that this list be made available on request to members within two business days after the meeting notice is given.

The list of members is often referred to as the “voting list” and usually the list will include only the names of those members entitled to vote at the meeting. The list, however, must also include the names of nonvoting members if they are entitled to notice of the meeting by reason of the nature of the actions proposed to be taken at the meeting. See Section 7.05 and its Official Comment.

1. When the List Must be Available

The Section 720(b) and (c) govern when the list of members must generally be available for inspection two business days after notice of the meeting is given and continuously thereafter until the meeting occurs. The requirement of availability for continuous inspection permits the membership corporation and others soliciting votes to be on a relatively equal footing. If, however, notice of the meeting is waived by all the members, the list need be available only at
the meeting itself under Section 7.20720(c) unless one or more waivers are conditioned upon
receipt of the list.

2. Where the List Must be Maintained

Section 7.20(b) permits the list to be maintained either at the membership corporation’s
principal office or at another location in the city in which the meeting is to be held, the precise
location to be designated in the notice of the meeting. If the corporation changes the location of
its annual meeting, it thus may correspondingly change the location of the list of members
pursuant to this subsection.

Sections 720(b) and (c) also govern where the membership corporation must maintain the
list. If the corporation changes the location of its meeting, it may correspondingly change the
location of the list under Section 720(b).

Section 7.20(c) also requires a copy of the list of members to be available at the meeting
itself for inspection. This list may be used to determine attendance, the presence or absence of a
quorum, and the right to vote.

3. Form in Which the List is Maintained

Section 7.20720 does not require the list of members to be in any particular form. It may
be maintained, for example, in electronic form. If the list is maintained in other than written
form, however, suitable equipment must be provided so that a comprehensible list may be
inspected by a member as permitted by this sectionrequired by Section 720.

4. Consequences of Failing to Prepare the List or Refusal to Make it Available

Section 7.20720 creates a corporate obligation rather than an obligation imposed upon a
member to inspect it, either before the meeting as required by Section 7.20720(b) or at the
meeting itself as required by Section 7.20720(c), a member may apply to the appropriate court
under Section 7.20720(d) for a summary order permitting inspection of the list; the court may
further order the meeting to be postponed for a reasonable time. If the court orders a copy of the
list to be provided to the members, the copying is at the corporation’s expense; if the corporation
produces the list voluntarily pursuant to Section 7.20720(b) or (c), any inspection and copying
are the member’s expense.

This judicial remedy is the only sanction for violation of Section 7.20720 since Section
7.20720(e) provides that the failure to prepare, maintain, or produce the list does not affect the
validity of any action taken at the meeting.

5. Right to Obtain a Copy of the List

Section 7.20720(b) permits members to “inspect” the list without limitation, but permits
the member to “copy” the list only if the member complies with the requirement of Section
16.02402(c), that the demand be “made in good faith and for a proper purpose.” The right to
copy the list includesmay be satisfied at the corporation’s option, if reasonable, the right to
receive by furnishing to the member a copy of the list upon payment of a reasonable charge. See Sections 16.03403(b) and (c). The distinction between “inspection” and “copying” set forth in Section 7.20720(b) reflects an accommodation between competing considerations of permitting members access to the list before a meeting and possible misuse of the list.

6. Relationship to Right to Inspect Corporate Records Generally

The rights Section 7.20 creates a right of members under Section 7.20 are to inspect a list of members in advance of and at a meeting that is independent of the rights of members to inspect corporate records under Subchapter 164A. A member may obtain the right to inspect the list of members as provided in Subchapter 164A without regard to the provisions relating to the pendency of a meeting in Section 7.20720, and similarly the limitations of Subchapter 164A are not applicable to the right of inspection created by Section 7.20720 except to the extent the member seeks to copy the list in advance of the meeting.

The right to inspect under Subchapter 164A is also broader in the sense that in some circumstances the member may be entitled to make or receive copies of the documents the member is entitled to inspect. See Section 16.03403.

§ 7.21721. VOTING ENTITLEMENT OF MEMBERS

(a) Except as provided in the articles of incorporation or bylaws, each member is entitled to one vote on each matter voted on by the members:

(1) each candidate for election as a director;

(2) approval of a fundamental transaction; and

(3) any other matter on which the articles or bylaws require a vote of the members.

(b) Except as provided in the articles of incorporation or bylaws, if a membership stands of record in the names of two or more persons, then acts with respect to voting the membership shall have the following effects:

(1) if only one person acts, that act binds all; and

(2) if more than one person acts, the voting of the membership shall be divided on a pro rata basis among all of the persons acting.


CROSS-REFERENCES

Acceptance of votes, see § 7.23.
Meetings of members, see §§ 7.01-7.03.
Proxy voting, see § 7.22.
Voting by nominees, see § 7.23.
Voting by voting groups, see §§ 1.40, 7.24, 7.25.

OFFICIAL COMMENT

Section 7.21 deals with the entitlement of members to vote, while Section 7.22 deals with voting by proxy and Section 7.23 establishes rules for a membership corporation’s acceptance or rejection of votes.

Section 7.21(a) provides that each member, regardless of class, is entitled to one vote unless otherwise provided in the articles of incorporation or bylaws. See Section 6.01 and its Official Comment. The articles or bylaws may provide for multiple or fractional votes, and may provide that some classes of members are nonvoting on some or all matters, or that some classes of members have a single vote per member or different multiple or fractional votes per member, or that some classes constitute one or more separate voting groups and are entitled to vote separately on the matter.

In order to reflect the possibility that members may have multiple or fractional votes, all provisions relating to quorums, voting, and similar matters in the act are phrased in terms of “votes” rather than “members.”

Section 7.21(b) deals with a single membership held by two or more persons jointly. In the absence of a contrary provision in the articles of incorporation or bylaws:

(i) if only one person acts with respect to voting the membership, e.g., by signing a proxy appointment, completing a ballot, or affirmatively indicating an abstention, that acts bind all of the joint holders of the membership; or

(ii) if more than one person acts, the voting of the membership is split pro rata based on the number of persons acting.

§ 7.22. PROXIES

(a) Except as otherwise provided in the articles of incorporation or bylaws, a member may vote in person or by proxy.

(b) A member or the member’s agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form in the form of a record. An appointment form must contain or be accompanied by information from which it can be determined that the member or the member’s agent or attorney-in-fact authorized the appointment of the proxy.
(c) An appointment of a proxy is effective when a signed appointment in the form of a record is received by the inspectors of election, the officer or agent of the membership corporation authorized to tabulate count votes, or the secretary. An appointment is valid for 11 months unless a longer period, which may not exceed three years, is expressly provided in the appointment form.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the membership corporation to accept the proxy’s authority unless notice of the death or incapacity is received by the inspectors of election, the officer or agent authorized to tabulate count votes, or the secretary before the proxy exercises his authority under the appointment.

(e) Subject to Section 7.23 (acceptance of votes and other instruments) and to any express limitation on the proxy’s authority stated in the appointment form, a membership corporation is entitled to accept the proxy’s vote or other action as that of the member making the appointment.


CROSS-REFERENCES

Acceptance of proxy votes, see § 7.23.
“Membership corporation” defined, see § 1.40102.
Notice, see Notices and other communications, § 1.41103.
“Secretary” defined, see § 1.40102.

OFFICIAL COMMENT

Section 7.22 provides that members may vote in person or by proxy and establishes the basic rules for appointing a proxy.

1. Nomenclature

The word “proxy” is often used ambiguously, sometimes referring to the grant of authority to vote, sometimes to the document granting the authority, and sometimes to the person to whom the authority is granted. In the act the word “proxy” is used only in the last sense; the term “appointment form” is used to describe the document or communication appointing the proxy; and the word “appointment” is used to describe the grant of authority to vote.

2. Appointment of Proxy

A member may appoint a proxy to vote by signing an appointment form, either personally or by his agent or attorney-in-fact. Section 7.22(b) is intended to sanction
(b) permits the practice whereby members who have been provided in proxy materials with a personal identification number may call their vote and identifying number to a person who, acting as the member’s agent, causes that information to be transmitted, directly or indirectly, to the inspector of election.

The appointment is effective when a written appointment form or an electronic transmission (or documentary evidence thereof, including verification information) is received by the inspectors of election, the officer or agent of the corporation authorized to receive and tabulate votes, or the secretary. The proxy has the same power to vote as that possessed by the member, unless “received” and “effective.” If the appointment form contains an express limitation on the power to vote or direction as to how to vote the membership on a particular matter, in which event the corporation must tabulate the votes in a manner consistent with that limitation or direction. See Section 7.22(e).

3. Duration of Proxy Appointment

Section 7.22(c) limits the validity of an appointment form that contains no expiration date to 11 months. See Section 7.22(c) unless it provides for a longer period of up to three years. This ensures that in the normal course a new appointment will be solicited at least once every 12 months. An appointment form may validly specify a longer period if the parties agree, which may be longer or shorter than 11 months.

While death or incapacity of the appointing member revokes an agency appointment under common law principles, Section 7.22(d) modifies the common law rule to provide that the membership corporation may accept the vote of the proxy until the appropriate person receives notice of the member’s death or incapacity. In view of the widespread dispersal of members in many corporations, it is not feasible for the corporation to learn of these events independently of notice. On the other hand, Section 7.22(d) does not affect the validity of the proxy appointment or its manner of exercise as between the proxy and the personal representatives of the decedent or incompetent. That relationship is governed by the law of agency independent of the act.

§ 7.23. ACCEPTANCE OF VOTES AND OTHER INSTRUMENTS

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

(b) If the name signed on a ballot, consent, waiver, demand, or proxy appointment does not correspond to the name of its member, the membership corporation if acting in good faith is nevertheless entitled to accept the ballot, consent, waiver, demand, or proxy appointment and give it effect as the act of the member if:
(1) the member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, demand, or proxy appointment;

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the ballot, consent, waiver, demand, or proxy appointment;

(4) the name signed purports to be that of a beneficial owner or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory’s authority to sign for the member has been presented with respect to the ballot, consent, waiver, demand, or proxy appointment;

(5) two or more persons are the member as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The membership corporation is entitled to reject a ballot, consent, waiver, demand, or proxy appointment 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 member.

(d) The membership corporation and its officer or agent who any person authorized by the corporation, or an inspector of election appointed under Section 728 (inspectors of election) that accepts or rejects a ballot, consent, waiver, demand, or proxy appointment in good faith and in accordance with the standards of this section or Section 7.222(b) is not liable in damages to the member for the consequences of the acceptance or rejection.

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

(f) If an inspector of election has been appointed under Section 728, the inspector of election may request information and make determinations under Sections 723(a), (b), and (c). Any determination made by the inspector of election under those subsections is controlling.

§ 7.24.

CROSS-REFERENCES

Action by ballot, see § 7.09709.
Consents, see § 7.04704.
“Entity” defined, see § 1.40102.
Inspectors of election, see § 7.28728.
“Membership corporation” defined, see § 1.40102.
Officers, see § 8.40840.
Proxies, see § 7.22722.
“Secretary” defined, see § 1.40102.
“Sign” defined, see § 1.40102.
Waiver of notice, see § 7.06706.

OFFICIAL COMMENT

Membership corporations are often asked to accept a written instrument as evidence of action by a member. These instruments usually involve appointment forms for a proxy to vote on behalf of a member, but may also include waivers of notice, consents to action without a meeting, requests for a special meeting of members, and similar instruments involving action by the members. Included within the scope of this section are both ballots used as provided in Section 7.09709 as a substitute for a vote at a meeting and also ballots distributed at a meeting for the use of the members and proxies in attendance at the meeting. Usually the corporation or its officers will have no personal knowledge of the circumstances under which the instrument was executed and no way of verifying whether the signature on the instrument is in fact the signature of the member or other appropriate person.

Section 7.23723 establishes general rules permitting the membership corporation and its officers or agents, and any inspector of election appointed under section 728 to accept these instruments if they appear to be executed by the member or by a person who has authority to execute the instrument for the member and they are accompanied by whatever authenticating evidence the corporation reasonably requests. Section 7.23 also establishes general rules for rejecting these instruments. The rules set forth in this section are not exclusive and may be supplemented by additional rules appropriately established by the corporation. Section 7.23(a) authorizes acceptance of an instrument if the name appearing on the instrument “corresponds” to the name of the member, while Section 7.23(b) permits the acceptance of an instrument executed by a person other than the member if there is a designation or evidence of the capacity of the person executing the instrument that indicates the act of the person is the act of the member. On the other hand, Section 7.23(c) permits rejection of an instrument if the officer or agent tabulating votes has a “reasonable basis for doubt” about the validity of the signature or about the authority of the person acting on behalf of the member.

Section 7.23(b)(2) does not validate the transfer of a membership to an administrator, executor, or guardian, but if there has been a valid transfer to such a person the corporation will be required to accept their vote.
The purpose of Section 7.23 is to protect the membership corporation and its officers and agents and any inspector of election from liability for damages to a member if action is taken in accordance with the section. Thus Section 7.23. Under Section 7.23(d) provides that there is no liability to the member if the corporation’s officer or agent or inspector of election, acting in good faith, accepts an instrument that meets the requirements of Section 7.23(a) or (b) or accepts an electronic transmission authorized by Section 7.22(b), even if it turns out that the execution was invalid or unauthorized. Similarly, no liability exists if the officer or agent, an instrument is rejected in accordance with Section 7.23(c) because the corporation or inspection of election, again acting in good faith, rejects an instrument because of has a “reasonable basis for doubt,” even though it turns out that the instrument was properly executed by the member. But Section 7.23 does not extend to officers and other persons who are authorized by the corporation to accept or reject an instrument identified in Section 7.23. Section 7.23 does not, however, address the question whether an action was properly or improperly taken or approved, and Section 7.23(e) makes clear that the validity of corporate action is ultimately a matter for judicial resolution through review of the results of an election or vote in a suit to enjoin or compel corporate action. It is contemplated that any such proceeding will be brought promptly, typically before the corporate action is consummated or the corporation’s position otherwise changes in reliance on the vote, and that any proceeding that is not brought promptly under the circumstances would normally be barred because of laches.

Similarly, Section 7.23 does not address the liability of the proxy to the member for exercising authority beyond that granted or for disobeying instructions. These matters are governed by the law of agency and not by Section 7.23.

As indicated in the Official Comment to Section 7.22, a proxy is simply an agent of the member, and appointment as a proxy therefore involves primarily the law of agency. The law of agency determines the rights and duties of the member and the proxy, and it is important to recognize that Section 7.23 is not intended to affect these rights and duties. Rather, it recognizes that the great bulk of instruments signed by or on behalf of a member are in fact authorized and the corporation and its officers should be encouraged to accept them rather than to adopt unduly narrow requirements.

A corporation may wish to establish guidelines that it will follow in determining whether to accept a vote, ballot, consent, waiver, or proxy appointment to provide consistency in the corporation’s application of the general rules set forth in section 7.23.

If an inspector of election has been appointed under Section 7.29, the inspector has the authority under Section 7.23, as well as the corporation. If there is a difference in a determination by the corporation and the inspector, the inspector’s determination controls as against the corporation under Section 7.23(f).

§ 7.24. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS

(a) Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter. Except as
provided in the articles of incorporation or bylaws, 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.

(b) Except as provided in the articles of incorporation or bylaws, once a member is
present or represented for any purpose at a meeting, the member 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 must be set fixed for that adjourned meeting.

(c) 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 opposing the action, unless the articles of incorporation or bylaws require a greater
number of affirmative votes.

(d) An amendment of the articles of incorporation or bylaws adding, changing, or
deleting a quorum or voting requirement for a voting group greater than specified in
subsection Section 7.24 (a) or (c) is governed by Section 7.26 (different quorum or voting
requirements).

(e) If a meeting cannot be organized because a quorum is not present, those members
present may adjourn the meeting to such time and place as they may determine. The articles of
incorporation or bylaws may provide that when a meeting that has been adjourned for lack of a
quorum is reconvened, those members present, although less than a quorum as fixed in this
section, the articles, or the bylaws, nonetheless constitute a quorum if the original notice of the
meeting, or a notice of the adjourned meeting, states that those members who attend a meeting
that has been adjourned for lack of a quorum will constitute a quorum even though they are less
than a quorum.

(f) The election of directors is governed by Section 7.27 (voting by directors).


CROSS-REFERENCES

Adjourned meeting record date, see § 7.07.
Amendment of articles of incorporation, see Subch. 10A.
Amendment of bylaws, see Subch. 10B.
Multiple voting groups, see § 7.25.
Proxy voting, see § 7.22.
Record date, see § 7.07.
Supermajority requirements, see § 7.26.
“Voting group” defined, see § 1.401.
OFFICIAL COMMENT

Section 7.24 establishes general quorum and voting requirements for voting groups for purposes of the act. As defined in Section 1.40102, a “voting group” consists of all members of a class that under the articles of incorporation, bylaws, or the act are entitled to vote and be counted together collectively on a matter. Members entitled to vote “generally” on a matter (that is, all members entitled to vote on the matter by the articles, bylaws, or the act that do not expressly have the right to be counted or tabulated separately) are a single voting group. The determination of which members form part of a single voting group must be made from the provisions of the articles, bylaws, and the act. On most matters coming before meetings of the members, only a single voting group, consisting of a class of members, will be involved, and action on such a matter is effective when approved by that voting group pursuant to Section 7.24724. See Section 7.25725(a).

The voting group concept permits a single section of the act to deal with quorum and voting rules applicable to a variety of single and multiple voting group situations.

1. Determination of Voting Groups under the Act

Under the act, classes of members are generally not entitled to vote separately by voting group except to the extent specifically authorized by the articles of incorporation or bylaws. But Sections 10.04 and 11.04 of the act grant classes of members the right to vote separately when fundamental changes are proposed that may adversely affect that class. Under the act even a class that is expressly described as nonvoting under the articles of incorporation or bylaws may be entitled to vote separately on an amendment to the articles of incorporation or bylaws that affects the class in a designated way. See Section 1004(d).

In addition to the provisions of the act, separate voting by voting group may be authorized by the articles of incorporation or bylaws in such instances and on such terms as may be desired (except that the statutory privilege of voting by separate voting groups cannot be diluted or reduced). Finally, on some matters the board of directors may condition its submission of matters to members on their approval by specific voting groups designated by the board of directors. Sections 7.24724 and 7.25725 establish the mechanics by which all voting by single or multiple voting groups is carried out.

In some situations, members of a single class may be entitled to vote in two different voting groups. See the Official Comment to Section 7.25725.

2. Quorum and Voting Requirements in General

Implicit in Section 7.24 is the concept that the nonprofit corporation’s determination of the voting groups entitled to vote, and the quorum and voting requirements applicable thereto, must to that determination, should be determined separately for each “matter” coming before a meeting. As a result, different quorum and voting requirements may be applicable to different
portions of a meeting, depending on the matter being considered. In the normal case where only
a single voting group is entitled to vote on all matters coming before a meeting of members, a
single quorum and voting requirement will usually be applicable to the entire meeting.

3. Quorum Requirements for Action by Voting Group

Sections 7.24(a) and (b) provide standard rules for the determination of a quorum for
each voting group required to act at a meeting of the members on a matter. In the absence of a
provision in the articles of incorporation or bylaws, Section 7.24(a) provides that a quorum
consists of a majority of the votes entitled to be cast on the matter at the meeting. The articles of
incorporation or bylaws may raise or lower that requirement. If a quorum is set at less than a
majority, consideration should be given to restricting the matters that may be voted on at the
meeting to only those matters that are described in the notice of the meeting; otherwise a
minority of the members may be able to make changes that would not have been adopted if the
absent members had been given notice that the changes would be considered and thus were on
notice that their attendance was needed to vote against the changes.

Under Section 7.24(b) retains, as a default rule, the common law view that a member is present at a meeting, the member is deemed present for quorum purposes throughout the meeting. Thus, a voting group may continue to act despite the withdrawal of members in an effort “to break the quorum.” In this respect, a meeting of members is governed by a different rule than a meeting of directors, where a sufficient number of directors must be present to constitute a quorum at the time action is taken. See Section 8.24 and its Official Comment. The articles of incorporation or bylaws, however, may modify this default rule.

A member who comes to a meeting to object on grounds of lack of notice is considered present for purposes of determining the presence of a quorum.

Once a member is present at a meeting the member is also deemed to be present at any adjourned meeting unless a new record date is or must be set for that adjourned meeting. If a new record date is set, new notice must be given to members of a voting group and a quorum must be established from within the members of that voting group on as of the new record date.

A member who comes to a meeting to object on grounds of lack of notice may be counted toward the presence of a quorum. Similarly, a member who attends a meeting solely for purposes of raising the objection that a quorum is not present is counted toward the presence of a quorum. Attendance at a meeting, however, does not constitute a waiver of other objections to the meeting such as the lack of notice. Such waivers are governed by Section 7.06(b).

As used in Sections 7.24 and 7.25, “represented at the meeting” means the physical presence of the member (whether in person or by proxy) in the meeting room after the meeting has been called to order or the presiding officer has commenced consideration of the business of the meeting, and before the final adjournment of the meeting.

4. Voting Requirements for Approval by Voting Group
Section 7.24(c) provides that an action (other than the election of directors, which is governed by Section 7.27) is approved by a voting group at a meeting at which a quorum is present if the votes cast in favor of the action exceed the votes cast opposing the action. This section changes the traditional rule, unless the articles of incorporation or bylaws require a greater number of votes. This default rule differs from a formulation appearing in some state statutes that an action is approved at a meeting at which a quorum is present if it receives the affirmative vote of a majority of the members represented at that meeting. The traditional rule that formulation in effect treated abstentions as negative votes; the act treats them truly as abstentions. The rule set forth in Section 7.24(c) is considered desirable in part because it permits action to be taken by the members when considered appropriate by a majority of those with views on the matter in question.

In the absence of a specific provision in the articles of incorporation or bylaws, members of a class that are entitled by statute to vote as a separate voting group are entitled to one vote per share. See Section 7.21.

5. Modification of Standard Requirements

The articles of incorporation or bylaws may modify the quorum and voting requirements of Section 7.24 for a single voting group or for all voting groups entitled to vote on any matter. The articles or bylaws may increase the quorum and voting requirements to any extent desired up to and including unanimity upon compliance with Section 7.26. They may also require that members of different classes are entitled to vote separately or together on specific issues or provide that actions are approved only if they receive the favorable vote of a majority of the members of a voting group present at a meeting at which a quorum is present. The articles or bylaws may also decrease the quorum requirement as desired.

Many nonprofit corporations have a low member turnout and need a low quorum to hold meetings of the members. In recognition of this need, this section does not set a lower limit on what the articles of incorporation or bylaws may set as a quorum requirement. For example, the bylaws may provide that a quorum is composed of those members who attend a meeting. This insures a quorum so long as one member is present.

With the low quorum authorized by Section 7.24(a), a few members may plan to take over an annual or regular meeting and vote upon matters that were not noticed. To protect against this possibility, the prior version of the act provided in Section 7.22(d) that:

Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

That provision has been omitted from the current version of the act, but a corporation may include a similar provision in its articles of incorporation or bylaws under Section 7.24(c). A similar rule is not required with respect to special meetings because at special meetings members may only vote on matters that have been noticed. See Section 7.02(e).

Section 7.24(d) provides that Section 7.26 governs the adoption or amendment of provisions in the articles of incorporation or bylaws that impose greater quorum or voting
§ 7.25. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS

(a) If this Act, the articles of incorporation, or the bylaws 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 7.24 (quorum and voting requirements for voting groups).

(b) If this Act, the articles of incorporation, or the bylaws 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 7.24. Action may be taken by different voting groups on a matter at different times.


CROSS-REFERENCES

Change of voting group requirements, see § 7.26.
Number of votes per member, see § 7.24.
Quorum and voting requirements, see § 7.24.
Supermajority requirements, see § 7.26.
Voting by voting groups on amendments of articles of incorporation, see § 10.04.
“Voting group” defined, see § 1.4.

OFFICIAL COMMENT

Section 7.25(a) provides that when a matter is to be voted upon by a single voting group, action is taken when the voting group votes upon the action as provided in Section 7.24. In most instances the single voting group will consist of all the members of the class or classes entitled to vote by the articles of incorporation or bylaws; voting Voting by two or more voting groups as contemplated by Section 7.25(b) is the exceptional case.

Implicit in Section 7.25(b) basically requires that if more than one voting group is entitled to vote on a matter, favorable action on a matter is taken only when it is voted upon favorably by each voting group, counted separately. Implicit in this section are the concepts that (1) different quorum and voting requirements may be applicable to different matters considered at a single meeting, and (2) different quorum and voting requirements may be applicable to different voting groups voting on the same matter. See the Official Comment to Section 7.24.

Thus, each group entitled to vote must independently meet the quorum and voting requirements established by Section 7.24. But if a quorum is present for one or more voting groups but not for all voting groups, Section 7.25(b) provides that the voting groups for which a quorum is present may vote upon the matter, even though their vote alone will not be sufficient for the matter to be approved.
A single meeting, furthermore, may consider matters on which action by several voting
groups is required and also matters on which only a single voting group may act. Action may be
taken on the matters on which the single voting group may act even though no quorum is present
to take action on other matters.

1. **Voting Requirements of Multiple Voting Group Matters**

   In many multiple voting group situations under the act, proposals are adopted only if a
   majority of all the votes entitled to be cast by each voting group approve the proposal. This
   percentage of votes is higher than that required by Section 7.24, and is required, for example,
   under Sections 10.03(7) for certain amendments to articles of incorporation.

2. **Participation of Members in Multiple Voting Groups**

   As described in Section 7.25(b), if voting by multiple voting groups is required, the votes
   of members of each voting group must be separately tabulated. Normally, each class of
   members will participate in only a single voting group. But since members entitled by the articles
   of incorporation or bylaws to vote generally on a matter are always entitled to vote in the voting
   group consisting of the general voting members, in some instances classes of members may be
   entitled to be counted *simultaneously* in two voting groups. This will occur whenever a class of
   members entitled to vote generally on a matter under the articles or bylaws is affected by the
   matter in a way that gives rise to the right to have its vote counted separately as an independent
   voting group under the act.

§ 7.26. **Different Requirements Modifying Quorum or Voting**

(a) The articles of incorporation or bylaws may provide for a higher or lower quorum
or voting requirement for members (or voting groups of members) than is provided for by this
[act].

(b) An amendment to the articles of incorporation or bylaws that adds, changes, or
deletes a greater quorum or voting requirement must 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 *or proposed to be adopted, whichever is greater*.


**CROSS-REFERENCES**

Amendment of articles of incorporation, *see* Ch. 10A.
Amendment of bylaws, *see* Ch. 10B.
Quorum and voting requirements in general, *see* § 7.25725.
Voting by voting group, *see* § 7.25725.
“Voting group” defined, *see* § 1.40102.
Section 7.26(a) permits the articles of incorporation or bylaws to increase or decrease the quorum or voting requirements for approval of an action by members to any desired level, including, in the case of an increase, unanimity. These provisions may relate to ordinary or routine actions by the general voting group (which otherwise may be acted upon under Section 7.24 if the number of affirmative votes exceeds the number of negative votes at a meeting at which a quorum of that voting group is present) or to one or more other voting groups or to actions for which the act provides a greater voting requirement—for example, changes of a fundamental nature in the corporation like certain amendments to articles of incorporation (Section 10.03), mergers (Section 11.04), sales of all or substantially all the property of a corporation not in the ordinary course of business (Section 12.02), and dissolution (Section 14.02). Generally, the act requires these fundamental changes to receive the affirmative vote of a majority of the votes entitled to be cast on the proposal by each voting group entitled to vote thereon rather than by a majority of the members voting affirmatively or negatively at a meeting at which a quorum is present.

A provision that increases the requirement for approval of an ordinary matter or a fundamental change is usually referred to as a “supermajority” provision. Section 7.26(b) requires any amendment of Section 7.26(a) permits the articles of incorporation or bylaws that adds, modifies, or repeals any supermajority provision to be approved by the quorum and vote required by the articles or bylaws before their amendment. Thus, a to increase or decrease the quorum or voting requirements for approval of an action by members to any desired level, so long as the change is adopted in accordance with the requirements of section 7.26. For example, a “supermajority” provision in the articles that requires an 80 percent affirmative vote of all eligible votes of a voting group present at the meeting may not be removed from the articles or reduced in any way except by an 80 percent affirmative vote. If the 80 percent requirement is coupled with a quorum requirement for a voting group that members entitled to cast two-thirds of the total votes must be present in person or by proxy, both the 80 percent voting requirement and the two-thirds quorum requirement are immune from reduction except at a meeting of the voting group at which the two-thirds quorum requirement is met and the reduction is approved by an 80 percent affirmative vote.

If the proposal is to increase the 80% voting requirement to 90%, that proposal must be approved by a 90% affirmative vote at a meeting of the voting group at which the two-thirds quorum requirement is met; if the proposal is to increase the two-thirds quorum requirement to three-quarters without changing the 80% voting requirement, that proposal must be approved by an 80% affirmative vote at a meeting of the voting group at which a three-quarters quorum requirement is met.

§ 7.27. VOTING FOR DIRECTORS

(a) Except as provided in the articles of incorporation or bylaws, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.
(b) Members do not have a right to cumulate their votes for directors.

*Source Note:* Patterned after Model Nonprofit Corporation Act, 3rd Ed. (2008), § 7.27; Model Business Corporation Act, 3d Ed. (2002) § 7.28(a) and (b), except that the ability to provide for cumulative voting by appropriate provision in the articles of incorporation has been omitted. Derived from Revised Model Nonprofit Corporation Act (1987) § 7.25 specifying the mechanics of cumulative voting omitted. (2016 Revision), § 7.28.

**CROSS-REFERENCES**

“Membership corporation” defined, see § 1.40102.

Notice of meeting, see § 705.

Notices and other communications, see § 103.

Proxies, see § 7.22722.

Quorum of members, see § 7.24724.

“Voting group” defined, see § 1.40102.

**OFFICIAL COMMENT**

As used in Section 7.27727(a) provides that directors are elected by a plurality of the votes cast in an election of directors at a meeting at which a quorum is present of the voting group entitled to participate in the election. A, election by a “plurality” means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election. In elections in which several factions are competing within a voting group, the individuals an individual may be elected may have with votes of fewer than a majority of all the votes cast in the election. The articles of incorporation or bylaws of a membership corporation may, however, provide a different manner of election of directors.

The entire board of directors may be elected by a single voting group or the articles of incorporation may provide that different voting groups are entitled to elect a designated number or fraction of the board of directors. See Section 8.04804. Elections are contested only within specific voting groups.

The prior version This edition of the act continues the decision to eliminate cumulative voting. Because the act at one time permitted a nonprofit corporation to provide for cumulative voting, the purpose of cumulative voting in for-profit corporations is to increase the ability of minority shareholders to secure representation on the board of directors. The rights of minority members in a nonprofit corporation are less sensitive and Section 7.27(b) eliminates cumulative voting in nonprofit corporations as unnecessary and potentially disruptive. Existing, existing cumulative voting rights are preserved, however, by Section 17.031401(c).
§ 7.28728. INSPECTORS OF ELECTION

(a) A membership corporation may appoint one or more inspectors to act at a meeting of members and make a report in the form of a record of the inspectors’ determinations in connection with determining voting results. Each inspector shall agree in a record that the inspector will faithfully execute the duties of inspector impartially and according to the best of the inspector’s ability. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (b) and may rely on information provided by those persons and other persons, including those appointed to count votes, unless the inspectors believe reliance is unwarranted.

(b) The inspectors shall:

1. ascertain the number of members and their voting power;
2. determine the members present at a meeting;
3. determine the validity of proxies and ballots;
4. count all the votes; and
5. determine and report the results.

(c) In performing their duties, the inspectors may examine:

1. the proxy appointment forms and any other information provided in accordance with Section 722(b) (proxies);
2. any envelope or related writing submitted with those appointment forms;
3. any ballots;
4. any evidence or other information specified in Section 724 (quorum and voting requirements for voting groups); and
5. the relevant books and records of the membership corporation relating to its members and their entitlement to vote.

(d) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b).

(e) An inspector and any person appointed by an inspector to assist with the inspector’s duties may, but need not, be a director, member of a designated body, member.
officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting may not be an inspector or a person so appointed.


CROSS-REFERENCES

“Membership corporation” defined, see § 1.40102.
Officers of the corporation, see § 8.40840.
Proxies, see § 7.22722.

OFFICIAL COMMENT

Section 7.28(a) permits a membership corporation to appoint inspectors of election. It is contemplated that the selection of inspectors would usually be made by responsible officers or by the directors, as authorized either generally or specifically in the corporation’s bylaws. Alternate inspectors could also be designated to replace any inspector who fails to act. The requirement of a report in a record is to facilitate judicial review of determinations made by inspectors. The ability of inspectors to retain other persons to assist them does not limit the ability of the corporation also to appoint others, such as a vote tabulator to assist in the vote counting process.

Section 7.28(b) specifies the duties of inspectors of election. If no challenge of a determination by the inspectors within the authority given them under this section is timely made, such determination shall be conclusive. To determine the validity of proxy appointments and ballots, depending on the issues presented, the inspectors of election may be required to determine whether appointment forms have been validly executed by the member, to identify the latest executed appointment form and to determine whether the proxy cast more votes than the member was entitled to cast. The inspectors are expected to apply the provisions of Chapter 7 regarding acceptance of proxy appointments and voting, including those in Sections 708(d), 722(h), and 724. In the event of a challenge of any determination by the inspectors in a court of competent jurisdiction, the court should give such weight to determinations of fact by the inspectors, as it shall deem appropriate, taking into account the relationship of the inspectors, if any, to the management of the nonprofit corporation and other persons interested in the outcome of the vote, the evidence available to inspectors, whether their determinations appear to be consistent and reasonable, and such other circumstances as the court shall regard as relevant. The court should review de novo all determinations of law made implicitly or explicitly by the inspectors.

Normally, in making the determinations contemplated by Section 7.28(b), the only facts before the inspectors should be appointment forms and electronic transmissions (or written evidence thereof), envelopes submitted with appointment forms, ballots, and the regular books and records of the corporation. However, inspectors may consider other reliable information for the limited purpose of reconciling appointment forms, electronic transmissions, and ballots. If
the inspectors do consider such other information, it should be specifically referred to in their
report, including the person or persons from whom they obtained the information, when the
information was obtained, the means by which the information was obtained, and the basis for
the inspectors’ belief that such information is accurate and reliable.

Section 728(d) gives the inspectors broad discretion with respect to the information they
may consider but does not require that they take any specific action with respect to such
information other than to specify in their report the information they considered and the other
details listed in section 728(d).

Section 7.28(c) permits an inspector to be a director, member of a designated body,
member, officer, or employee of the nonprofit corporation, so long as the person is not a
candidate for office at the meeting. However, good corporate practice suggests that such
inspectors should be independent persons who are neither employees nor officers if there is a
contested matter or a member proposal to be considered. Not only will the issue of independent
inspectors enhance the members’ perception as to the fairness of the voting process, but also the
report of independent inspectors can be expected to be given greater evidentiary weight by any
court reviewing a contested vote.

[Subchapter] C
VOTING AGREEMENTS


§ 7.30. VOTING AGREEMENTS

(a) Except as provided in the articles of incorporation or bylaws, two or more
members may provide for the manner in which they will vote by signing an agreement in the
form of a record for that purpose. A voting agreement may be valid for a period of up to ten
years provided in the agreement.

(b) A voting agreement created under this section is specifically
enforceable, except that a voting agreement is not enforceable to the extent that enforcement of
the agreement would violate the purposes of the membership corporation.

Source Note: Patterned in part after Model Nonprofit
Business Corporation Act, 3d Ed. (2002) § 7.31,
Substantially a reenactment of Revised Model
Nonprofit Corporation Act (1987) § 7.30, except
that the first clause of subsection (a) is new and
the last sentence of subsection (a) has been
made the last clause of subsection (b). (2016
Revision), § 7.31.

CROSS-REFERENCES

Corporate purposes, see § 3.01.
“Member” defined, see § 1.40102.

“Membership corporation” defined, see § 1.40102.

OFFICIAL COMMENT

Section 7.30730(a) explicitly recognizes agreements among two or more members as to voting, except as provided in the articles of incorporation or bylaws. The only formal requirements are that they be in the form of a record and signed by all the participating members; in In other respects their validity is to be judged aslike any other contract.

Section 7.30(b) provides that voting agreements may be specifically enforceable. This section recognizes that damages are not likely to be an appropriate remedy for breach of a voting agreement, and also avoids the result reached in Ringling Bros. Barnum & Bailey Combined Shows v. Ringling, 53 A.2d 441 (Del. 1947), where the court held that the appropriate remedy to enforce a vote pooling agreement was to refuse to permit any voting by the breaching party. A voting agreement is not enforceable, however, to the extent that its enforcement would violate the nonprofit corporation’s purposes.

A voting agreement may provide its own enforcement mechanism, such as by the appointment of a proxy to vote for the members that are parties to the agreement. If no enforcement mechanism is provided, a court may order specific enforcement of the agreement and order the votes cast as the agreement contemplates. A voting agreement is not enforceable, however, to the extent that its enforcement would violate the nonprofit corporation’s purposes.

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