Changes in the Model Business Corporation Act—Amendments to Incorporate Electronic Technology Amendments in Section 1.41 and to Adopt Related Amendments*

By the Committee on Corporate Laws, ABA Section of Business Law**

The Committee on Corporate Laws of the ABA Section of Business Law from time to time makes changes in the Model Business Corporation Act.

By publication after second reading in the August 20091 issue of The Business Lawyer, the Committee proposed to add to the Model Act amendments to incorporate electronic technology provisions, primarily in section 1.41, together with amendments to related provisions of the Act.

At its meeting on December 12, 2009, the Committee approved the amendments upon third and final reading with, however, minor language changes in section 1.41 from the form previously published.

The changes to section 1.41 are set forth below.

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(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of communication are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

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(d) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j), (k), and if the electronic transmission contains or is accompanied by information from which the recipient can determine the date of the transmission, and that the transmission was authorized by the sender or the sender’s agent or attorney in fact.

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* Editor’s Note: This Report is published in the form approved by the Committee on Corporate Laws on December 12, 2009.

** Herbert S. Wander, Chair.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

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(i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

   (1) if in physical form, the earliest of when it is actually received, or when it is left at:

      (A) a shareholder’s address shown on the corporation’s record of shareholders maintained by the corporation under section 16.01(c);
      (B) a director’s residence or usual place of business; or
      (C) the corporation’s principal place of business;

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   (3) if mailed by United States Mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

      (A) if sent by registered or certified mail, return receipt requested, date shown on the return receipt signed by or on behalf of the addressee; or
      (B) five days after it is deposited in the United States Mail;

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A corresponding change, restoring to section 7.22 the text that is deleted from section 1.41(d) above, was also approved.

All of the amendments became part of the Model Act on December 12, 2009.