

**ARTICLE 14**

**DISSOLUTION**

607.1401 Dissolution by incorporators or directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the ~~D~~department of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation ~~filing of its articles of incorporation~~;

(3) Either:

(a) That none of the corporation's shares have been issued, or

(b) That the corporation has not commenced business;

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

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

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

18 **Commentary to Section 607.1401:**

19 Minor non-substantive changes have been made to conform this section to the current version of  
20 the corollary section of the Model Act.

21 Nearly all Model Act states, along with California and Delaware, have adopted very similar  
22 statutes regarding dissolution by incorporators or initial directors. California expressly allows  
23 dissolution where the corporation has not issued shares at the time of dissolution (Cal. Corp.  
24 Code. §1900.5(6) in a situation where: "the known assets of the corporation remaining after  
25 payment of, or adequately providing for, known debts and liabilities have been distributed to the  
26 persons entitled thereto or that the corporation acquired no known assets, as the case may be".)  
27 Other states, including Illinois and Maryland, permit dissolution by incorporators only where no  
28 shares have been issued, while Kansas and Pennsylvania permit dissolution only where the  
29 corporation has not commenced business. Eight states, including Nevada and Texas, require both  
30 that shares must not have been issued and business has not commenced.

31

32           607.1402 Dissolution by board of directors and shareholders; dissolution by written  
33 consent of shareholders.

34           (1) A corporation's board of directors may propose dissolution for submission to the  
35 shareholders by first adopting a resolution authorizing the dissolution.

36           (2) For a proposal to dissolve to be adopted: ~~(a) T, it shall then be approved by the~~  
37 shareholders as provided in subsection (5). In submitting the proposal to dissolve to the  
38 shareholders for approval, the board of directors must recommend ~~dissolution that to~~ the  
39 shareholders approve the dissolution, unless (a) the board of directors determines that because of  
40 conflict of interest or other special circumstances it should make no recommendation, or (b) s.  
41 607.0826 applies. If either (a) or (b) applies, the board shall inform the shareholders of the basis  
42 for its proceeding in such manner and communicates the basis for its determination to the  
43 shareholders; and (b) The shareholders entitled to vote must approve the proposal to dissolve as  
44 provided in subsection (5).

45           (3) The board of directors may set conditions for the approval of its submission of the  
46 proposal for dissolution ~~on any basis~~ by shareholders or for the effectiveness of the dissolution.

47           (4) If the approval of the shareholders is to be given at a meeting, Tthe corporation shall  
48 notify, in accordance with s. 607.0705, each shareholder of record, regardless of whether or not  
49 entitled to vote, of the ~~proposed shareholders'~~ meeting of shareholders at which the dissolution is  
50 to be submitted for approval in accordance with s. 607.0705. The notice must also state that the  
51 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

52           (5) Unless the articles of incorporation or the board of directors (acting pursuant to  
53 subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be  
54 adopted must be approved by a majority of all the votes entitled to be cast on ~~that~~ the proposal to  
55 dissolve.

56           (6) Alternatively, without action of the board of directors, action to dissolve a  
57 corporation may be taken by the written consent of the shareholders pursuant to s. 607.0704.

58

59 **Commentary for Section 607.1402:**

60 The language in subsections (1) through (4) has been modified to adopt many of the language  
61 changes in the Model Act in these provisions. None of these changes are substantive.

62 There are two substantive differences between this section of the FBCA and the corollary Model  
63 Act provision. First, the Florida only provision in subsection (6) that allows shareholders to  
64 approve dissolution of the corporation by written consent without action of the board of directors  
65 has been retained. This non-Model Act provision was specifically added to the FBCA in 1989.  
66 Second, the statute continues the requirement in subsection (5) that the shareholders approve a  
67 proposal for dissolution by a vote of a majority of the shares entitled to vote on the proposal,  
68 compared to the requirement in the corollary provision of the Model Act only requiring approval  
69 by a majority of the quorum in attendance at a meeting called to consider the proposal.

70

71           607.1403 Articles of dissolution.

72           (1)     At any time after dissolution is authorized, the corporation may dissolve by  
73 delivering to the ~~D~~Department of State for filing articles of dissolution which shall be executed in  
74 accordance with s. 607.0120 and which shall set forth:

75                   (a)    The name of the corporation;

76                   (b)    The date dissolution was authorized;

77                   (c)    If dissolution was approved by the shareholders, a statement that the  
78 proposal to dissolve was duly approved by the shareholders in the manner required by  
79 this chapter and by the articles of incorporation ~~the number east for dissolution by the~~  
80 ~~shareholders was sufficient for approval.~~

81                   ~~(d)    If dissolution was approved by the shareholders and if voting by voting~~  
82 ~~groups was required, a statement that the number east for dissolution by the shareholders~~  
83 ~~was sufficient for approval must be separately provided for each voting group entitled to~~  
84 ~~vote separately on the plan to dissolve.<sup>1</sup>~~

85           (2)     The articles of dissolution shall take effect at the effective date determined in  
86 accordance with s. 607.0123. A corporation is dissolved upon the effective date of its articles of  
87 dissolution.

88           (3)     For purposes of s. 607.1401 – s. 607.1409<sup>2</sup>, “dissolved corporation” means a  
89 corporation whose articles of dissolution have become effective and includes a successor entity,  
90 as defined in subsection (4).

91           (4)     As used in ss. 601.1401 – 607.1409, the term “successor entity” includes a trust,  
92 receivership, or other legal entity governed by the laws of this state to which the remaining assets  
93 and liabilities of a dissolved corporation are transferred and which exists solely for the purposes  
94 of prosecuting and defending suits by or against the dissolved corporation, thereby enabling the  
95 dissolved corporation to settle and close the business of the dissolved corporation, to dispose of  
96 and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved  
97 corporation, and to distribute to the dissolved corporation’s shareholders any remaining assets,  
98 but not for the purpose of continuing the activities and affairs for which the dissolved  
99 corporation was organized.

100

---

<sup>1</sup> A similar provision in Article 10 requiring notice where a vote of voting groups was required was also removed. The Subcommittee has determined this to be the general rule on this topic and intends to apply it in all places where this issue comes up.

<sup>2</sup> This is a reference to subchapter A on Voluntary Dissolution. Last section reference still to be determined.

101 **Commentary for Section 607.1403:**

102 The statute has been modified to make the clarifying language changes contained in the corollary  
103 version of the Model Act. These changes are not substantive.

104 Two issues were considered:

- 105 1. Subsection 1(c) of the FBCA was modified to conform to the Model Act. However, it  
106 removes the requirement that the vote of voting groups be noted in the articles of  
107 dissolution. This difference has existed in the FBCA since 1989.  
108
- 109 2. The language "in accordance with s. 607.0120" in the FBCA in subsection (1) has been  
110 retained, although not in the corollary section of the Model Act. It has been in the statute  
111 since 1989 and has been retained as a reminder to users of the FBCA that they need to  
112 comply with the FBCA section on filing requirements in filing articles of dissolution.

113 Thirty-four states, including most Model Act states, along with Delaware and New York follow  
114 the general process of Model Act s. 14.03. Some states additionally require certain statements as  
115 to the settlement of debts, distribution of property, and the status of any pending litigation  
116 against the company. These are not in the Model Act or the existing FBCA provision, and have  
117 not been included.

118 Following dissolution, the existence of the corporation continues as a "dissolved corporation"  
119 while the corporation is being liquidated under s. 607.1405. However, after the dissolution  
120 becomes effective, the corporation can conduct no business other than to wind down and  
121 liquidate. Dissolved corporation also includes a "successor entity," as that term is defined in s.  
122 607.1406(15).

123

124           607.1404 Revocation of dissolution.

125           (1) A corporation may revoke its dissolution at any time prior to the expiration of 120  
126 days following the effective date of the articles of dissolution.

127           (2) Revocation of dissolution must be authorized in the same manner as the dissolution  
128 was authorized unless that authorization permitted revocation by action of the board of directors  
129 alone, in which event the board of directors may revoke the dissolution without shareholder  
130 action.

131           (3) After the revocation of dissolution is authorized, the corporation may revoke the  
132 dissolution by delivering to the ~~D~~department of State, within the 120 day period following the  
133 effective date of the articles of dissolution, for filing articles of revocation of dissolution,  
134 together with a copy of its articles of dissolution, that set forth:

135                   (a) The name of the corporation;

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

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

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

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

143                   (f) If shareholder action was required to revoke the dissolution, ~~the information~~  
144 ~~required by s. 607.1403(1)(e) or (d)~~ a statement that the revocation was authorized by the  
145 shareholders in the manner required by this chapter and by the articles of incorporation.

146           (4) Revocation of dissolution is effective upon the effective date of the articles of  
147 revocation of dissolution.

148           (5) When the revocation of dissolution is effective, it relates back to and takes effect as  
149 of the effective date of the dissolution and the corporation resumes carrying on its business as if  
150 dissolution had never occurred.

151 **Commentary to Section 607.1404:**

152 The FBCA provision is identical to the Model Act.

153 Many states allow a corporation to revoke dissolution as long as the revocation occurs prior to  
154 120 days after the effective date of the articles of dissolution. Delaware allows it for three years,  
155 while California allows for revocation prior to the distribution of assets, with no time limit. Four  
156 states, including New York, do not allow for revocation of a voluntarily dissolution.

157



158           607.1405 Effect of dissolution.

159           (1) A ~~dissolved~~ corporation that has dissolved continues its corporate existence but the  
160 dissolved corporation may not carry on any business except that appropriate to wind up and  
161 liquidate its business and affairs, including:

162                   (a) Collecting its assets;

163                   (b) Disposing of its properties that will not be distributed in kind to its  
164 shareholders;

165                   (c) Discharging or making provision for discharging its liabilities;

166                   (d) Making distributions of ~~Distributing~~ its remaining assets ~~property~~ among its  
167 shareholders according to their interests; and

168                   (e) Doing every other act necessary to wind up and liquidate its business and  
169 affairs.

170           (2) Dissolution of a corporation does not:

171                   (a) Transfer title to the corporation's property;

172                   (b) Prevent transfer of its shares or securities, ~~although the authorization to~~  
173 ~~dissolve may provide for closing the corporation's share transfer records;~~

174                   (c) Subject its directors or officers to standards of conduct different from those  
175 prescribed in ss. 607.0801-607.08590 ~~except as provided in s. 607.1421(4);~~

176                   (d) Change quorum or voting requirements for its board of directors or  
177 shareholders, change provisions for selection, resignation, or removal of its directors  
178 or officers or both; or change provisions for amending its bylaws;

179                   (e) Prevent commencement of a proceeding by or against the corporation in its  
180 corporate name;

181                   (f) Abate or suspend a proceeding pending by or against the corporation on the  
182 effective date of dissolution; or

183                   (g) Terminate the authority of the registered agent of the corporation.

184           (3) A distribution in liquidation under this section may only be made by a dissolved  
185 corporation. For purposes of determining the shareholders entitled to receive a distribution in  
186 liquidation, the board of directors may fix a record date for determining shareholders entitled to a

187 distribution in liquidation, which date may not be retroactive. If the board of directors does not fix a  
188 record date for determining shareholders entitled to a distribution in liquidation, the record date is the  
189 date the board of directors authorizes the distribution in liquidation.

190 (34) The directors, officers, and agents of a corporation dissolved pursuant to s.  
191 607.1403 shall not incur any personal liability thereby by reason of their status as directors,  
192 officers, and agents of a dissolved corporation, as distinguished from a corporation which is not  
193 dissolved.

194 (45) The name of a dissolved corporation is not ~~shall not be~~ available for assumption or  
195 use by another business entity corporation until 1 year ~~120 days~~ after the effective date of  
196 dissolution unless the dissolved corporation provides the ~~D~~department of State with an affidavit,  
197 executed as required pursuant to s. 607.0120, permitting the immediate assumption or use of the  
198 name by another business entity corporation.

199 (56) For purposes of this section, the circuit court, upon application of a shareholder,  
200 may appoint a trustee, custodian or receiver for any property owned or acquired by the  
201 corporation who may engage in any act permitted under subsection (1) if any director or officer  
202 of the dissolved corporation is unwilling or unable to serve or cannot be located.<sup>3</sup>

---

<sup>3</sup> Reconsider the necessity of this section in connection with the Subcommittee's review of s. 607.1430(1)(d).

203 **Commentary to Section 607.1405:**

204 Subsections (1) and (2) of the FBCA follow subsections (a) and (b) of the corollary section of the  
205 Model Act. The reference to s. 607.1421(4) of the FBCA, which deals with possible personal  
206 liability of officers or directors in dissolution, has been removed because that provision was not  
207 retained in the FBCA.

208 Distributions in liquidation that occur after dissolution are distinct from the pre-dissolution  
209 distributions governed by s. 607.0640. As a result, new subsection (3) has been added to allow  
210 for setting a record date for determining shareholders entitled to receive a distribution in  
211 liquidation.

212 Subsections (3), (4), and (5) of the FBCA (renumbered as sections (4), (5) and (6) above) do not  
213 appear in the Model Act. Subsection (3) was added to the FBCA in 1989 to make clear that  
214 dissolution does not change the duty of care, fiduciary duty, limitations on liability or right to  
215 indemnification of officers, directors and agents of the dissolved corporation. Subsection (6)  
216 expressly allows a court to appoint a trustee, custodian or receiver to carry out the winding up  
217 process, presumably at the behest of creditors or shareholders who have a stake in the liquidation  
218 of the corporation if the directors or officers are unwilling to serve. Finally, subsection (5) deals  
219 with use of a corporate name following dissolution.

220

**PROCEDURES FOR DEALING WITH CLAIMS  
AGAINST A DISSOLVED CORPORATION**

**NOTE:** The current FBCA provisions dealing with claims against a dissolved corporation is largely a Florida only provision. The original s. 607.1406 was adopted in 1989 and, according to the commentary from the 1989 committee, was based on DGCL ss. 280, 281 and 282 as those statutes existed at that time. Later, in 2003, s. 607.1407 was added to the FBCA.

The Model Act provisions cover claims procedures in the following manner:

- Section 14.06 deals with known claims and s. 14.07 deals with unknown or subsequently arising claims. Known claims may be unliquidated, but a claim that is contingent or has not yet matured (or in certain cases has matured but has not yet been asserted), is not a claim under s. 14.06.
- The principles of ss. 14.06 and 14.07 do not lengthen the statute of limitations applicable under general state law and claims that are not barred under s. 14.06 or 14.07 may be made within the general statute of limitations.
- Sections 14.06 and 14.07 are voluntary. If the corporation does not follow those sections they don't get the protections of ss. 14.06 and 14.07.
- Section 14.07 addresses problems created by possible claims that might rise long after the dissolution process is completed and the corporate assets distributed to shareholders. The problems raised by these claims is difficult. On the one hand, the application of a mechanical limitation period of a claim for injury that occurs after the period has expired may involve injustice to the plaintiff. On the other hand, to permit these suits generally makes it impossible ever to complete the winding up of the corporation, make suitable provisions for creditors and distribute the balance of the corporate assets to the shareholders. The approach taken in s. 14.07 is to continue the liability of the dissolved corporation for an arbitrary period of time (three years in the Model Act provision; four years in the current corollary FBCA provision).
- Under s. 14.07, claimants have the ability within this arbitrary statute of limitations to have recourse to the remaining assets of the corporation or to recover from shareholders. However, the recovery is limited to the shareholders pro rata share of the claim or the total amount of assets received by the shareholder as a liquidating distribution.
- If s. 14.07 is not followed, the shareholder could be liable for its share of any claim not barred by the regular statute of limitation up to the amount of the distribution which it received in liquidation.
- Section 14.07 allows a dissolved corporation to initiate a court proceeding to establish the provision that should be made for contingent or unknown claims that are not reasonably expected to be barred after the limitations period in s. 14.07(c). This provision is designed to permit the court to adopt procedures appropriate to the circumstances. If the dissolved corporation provides for security for claims under s. 14.08(d) that section

260 protects shareholders who receive distributions against those claims and protects directors  
261 for a breach of their duty under s. 14.09(a) to discharge or make reasonable provision for  
262 payment of claims and thereby protects the directors from liability for those distributions.

263 The corollary sections of RULLCA (ss. 704 and 705) also cover this same topic in a  
264 substantively similar manner.

265 The following sets forth a proposed version of these two provisions based on wording derived  
266 from the corollary provisions of the Model Act and FRLCA, with some additions based on the  
267 existing FBCA provisions. If adopted these provisions would replace the current versions of ss.  
268 607.1406 and 607.1407 of the FBCA:

269  
270 s. 607.1406 Known claims against dissolved corporation  
271

272 (1) Except as otherwise provided in subsection (4), a dissolved corporation may  
273 dispose of the known claims against it by giving written notice under subsection (2) to its known  
274 claimants at any time after the effective date of the dissolution, which notification has the effect  
275 provided in subsection (3).

276 (2) The written notice must:

277 (a) State that the corporation is the subject of a dissolution;

278 (b) Specify the information that must be included in a claim;

279 (c) State that a claim must be in writing and provide a mailing address where  
280 a claim may be sent;

281 (d) State the deadline, which may not be fewer than 120 days after the written  
282 notice is effective, by which the dissolved corporation must receive the claim;

283 (e) State that the claim will be barred if not received by the deadline; and

284 (f) State that the dissolved corporation may make distributions thereafter to  
285 other claimants and to the dissolved corporation's shareholders or persons interested  
286 without further notice<sup>4</sup>.

287 (3) A claim against the dissolved corporation is barred if the requirements of  
288 subsection (2) are met and:

---

<sup>4</sup> Similar to existing s. 607.1406(3) should we add a provision addressing the right to reject a claim, in whole or in part?

- 289 (a) The claim is not received by the specified deadline; or
- 290 (b) If the claim is timely received but rejected by the dissolved corporation
- 291 and:
- 292 1. The dissolved corporation causes the claimant to receive a written
- 293 notice that the claim is rejected and will be barred unless the claimant commences
- 294 an action against the dissolved corporation to enforce the claim not later than [90]
- 295 days after the claimant receives the notice, and
- 296 2. The claimant does not commence the required action not later than
- 297 the [90] days after the claimant receives the rejection notice.
- 298 (4) This section does not apply to a claim based on an event occurring after the
- 299 effective date of dissolution or a liability that on the effective date of dissolution is contingent.

300

301 s. 607.1407 Other claims against dissolved corporations

302

303 (1) A dissolved corporation may file or publish notice of its dissolution and request

304 that persons with claims against the dissolved corporation present them in accordance with

305 the notice.

306 (2) The notice must:

307 (a) Either be filed with the department, on a form proscribed by the

308 department, or be published in a newspaper of general circulation once a week for 2

309 consecutive weeks in a newspaper of general circulation in the applicable county (as

310 defined in subsection (5)).

311 (b) Describe the information that must be included in a claim, state that the claim

312 must be submitted in writing, and provide a mailing address where the claim may be sent;

313 and

314 (c) State that a claim against the dissolved corporation will be barred unless a

315 proceeding to enforce the claim is commenced within four [three] years<sup>5</sup> after the filing of

316 the notice, if filed, or publication of the notice, if published.

317 (3) If the dissolved corporation files or publishes a notice in accordance with

318 subsection (2), the claim of each of the following claimants is barred unless the claimant

---

<sup>5</sup> The Committee that recommended adoption of s. 607.1407 in 2003 felt that a three-year statute of limitations (the period contained in the Model Act provision) was too short.

319 commences a proceeding to enforce the claim against the dissolved corporation within four [three]<sup>6</sup>  
320 years after the publication date of the notice:

321 (a) A claimant who was not given written notice under s. 607.1406;

322 (b) A claimant whose claim was timely sent to the dissolved corporation but not  
323 acted on by the corporation<sup>7</sup>; and

324 (c) A claimant whose claim is contingent or based on an event occurring after  
325 the effective date of dissolution.

326 (4) A claim that is not barred by s. 607.1406(c) or s. 607.1407(c) may be enforced:

327 (a) Against the dissolved corporation, to the extent of its undistributed assets; or

328 (b) Except as provided in s. 607.1408(4)<sup>8</sup>, if the assets have been distributed in  
329 liquidation, against a shareholder of the dissolved corporation to the extent of the  
330 shareholder's pro rata share of the claim or the corporate assets distributed to the  
331 shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims  
332 under this section may not exceed the total amount of assets distributed to the shareholder  
333 in liquidation.

334 (5) As used in this chapter, the term "applicable county" means the county in this  
335 state in which the corporation's principal office is located or was located at the effective date of  
336 dissolution; if the corporation has, and at the effective date of dissolution had, no principal office  
337 in this state, then in the county in which the corporation has, or at the effective date of  
338 dissolution had, an office in this state; or if none in this state, then in the county in which the  
339 corporation's registered office is or was last located.

340  
341

---

<sup>6</sup> See footnote 5.

<sup>7</sup> What does "acted upon" mean?

<sup>8</sup> Whether the MBCA version of s. 14.07 is adopted or the current version of s. 607.1407 of the FBCA is retained, there will still be a requirement to add new s. 607.1408 to the FBCA (dealing with a procedure for the dissolved corporation to deal with unknown or contingent claims).

342 If the Model Act provisions are adopted, they would entirely replace existing ss. 607.1406 and  
343 607.1407.

344 For purposes of discussion, current ss. 607.1406 and 607.1407 follow. These versions reflect  
345 changes to the existing statutes based largely on changes made in the corollary sections in  
346 FRLICA when it was adopted in 2013. If a decision is made to replace these provisions  
347 following the Model Act and RULICA, consideration should be given to revising FRLICA  
348 consistent with these provisions.

349

350



351 607.1406 Known claims against dissolved corporation.

352 (1) A dissolved corporation<sup>9</sup> ~~or successor entity, as defined in subsection (15), may~~  
353 dispose of the known claims against it by following the procedures described in subsections (2) =  
354 ~~(7), (3), and (4).~~

355 (2) The dissolved corporation ~~or successor entity~~ shall deliver to each of its known  
356 claimants written notice of the dissolution at any time after its effective date. The written notice  
357 must do the following shall:

358 (a) Provide a reasonable description of the claim that the claimant may be  
359 entitled to assert;

360 (b) State whether the claim is admitted or not admitted, in whole or in part, and,  
361 if admitted:

362 1. The amount that is admitted, which may be as of a given date; and

363 2. Any interest obligation if fixed by an instrument of indebtedness;

364 (c) Provide a mailing address to which ~~where~~ a claim may be sent;

365 (d) State the deadline, which may not be less ~~fewer~~ than 120 days after the  
366 effective date of the written notice, by which confirmation of the claim must be delivered  
367 to the dissolved corporation ~~or successor entity~~; and

368 (e) State that the dissolved corporation ~~or successor entity~~ may make  
369 distributions thereafter to other claimants and to the corporation's shareholders or persons  
370 interested ~~as having been such~~ without further notice.

371 (3) A dissolved corporation ~~or successor entity~~ may reject, in whole or in part, a any  
372 claim made by a claimant pursuant to this subsection by mailing notice of the such rejection to  
373 the claimant within 90 days after receipt of the such claim and, in all events, at least 150 days  
374 before the expiration of the 3 years after following the effective date of dissolution. A notice sent  
375 by the dissolved corporation ~~or successor entity~~ pursuant to this subsection must shall be  
376 accompanied by a copy of this section.

377 (4) A dissolved corporation ~~or successor entity~~ electing to follow the procedures  
378 described in subsections (2) and (3) shall also give notice of the dissolution of the corporation to  
379 persons who have with known claims; that are contingent upon the occurrence or nonoccurrence  
380 of future events or otherwise conditional or unmatured; and request that the such persons present

---

<sup>9</sup> In s. 607.1403(3), dissolved corporation is defined as including a successor entity.

381 ~~the such~~ claims in accordance with the terms of ~~the such~~ notice. ~~The Such~~ notice ~~must shall~~ be in  
382 substantially the same form, and sent in the same manner, as described in subsection (2).

383 (5) A dissolved corporation ~~or successor entity~~ shall offer any claimant whose known  
384 claim is **contingent, conditional, or unmatured**<sup>10</sup> such security as the corporation ~~or such entity~~  
385 determines is sufficient to provide compensation to the claimant if the claim matures. The  
386 dissolved corporation ~~or successor entity~~ shall deliver such offer to the claimant within 90 days  
387 after receipt of such claim and, in all events, at least 150 days before expiration of 3 years ~~after~~  
388 ~~following~~ the effective date of dissolution. If the claimant ~~that is~~ offered ~~the such~~ security does  
389 not deliver in writing to the dissolved corporation ~~or successor entity~~ a notice rejecting the offer  
390 within 120 days after receipt of ~~the such~~ offer for security, the claimant is deemed to have  
391 accepted such security as the sole source from which to satisfy his or her claim against the  
392 corporation.

393 (6) A dissolved corporation ~~or successor entity~~ ~~that gives~~ ~~which has given~~ notice in  
394 accordance with subsections (2) and (4) shall petition the circuit court in the applicable county  
395 ~~where the corporation's principal office is located or was located at the effective date of~~  
396 ~~dissolution~~ to determine the amount and form of security that ~~is will be~~ sufficient to provide  
397 compensation to a any claimant ~~that who~~ has rejected the offer for security made pursuant to  
398 subsection (5).

399 (7) A dissolved corporation ~~or successor entity~~ ~~that which~~ has given notice in  
400 accordance with subsection (2) shall petition the circuit court in the applicable county ~~where the~~  
401 ~~corporation's principal office is located or was located at the effective date of dissolution~~ to  
402 determine the amount and form of security which will be sufficient to provide compensation to  
403 claimants whose claims are known to the dissolved corporation ~~or successor entity~~ but whose  
404 identities are unknown. The court shall appoint a guardian ad litem to represent all claimants  
405 whose identities are unknown in any proceeding brought under this subsection. The reasonable  
406 fees and expenses of ~~the such~~ guardian, including all reasonable expert witness fees, shall be  
407 paid by the petitioner in ~~the such~~ proceeding.

408 (8) The giving of ~~any~~ notice or making of an any offer pursuant to ~~the provisions of this~~  
409 section ~~does shall~~ not revive a any claim then barred, extend an otherwise applicable statute of  
410 limitations, or constitute acknowledgment by the dissolved corporation ~~or successor entity~~ that a  
411 ~~any~~ person to whom such notice is sent is a proper claimant, and ~~does shall~~ not operate as a  
412 waiver of a any defense or counterclaim in respect of a any claim asserted by a any person to  
413 whom such notice is sent.

414 (9) A dissolved corporation ~~or successor entity~~ ~~that which~~ has followed the procedures  
415 described in subsections (2)-(7) must:

---

<sup>10</sup> This section includes contingent claims that are also intended to be covered by s. 607.1407.

416 (a) ~~Shall p~~Pay the claims admitted or made and not rejected in accordance with  
417 subsection (3);

418 (b) ~~Shall p~~Post the security offered and not rejected pursuant to subsection (5);

419 (c) ~~Shall p~~Post any security ordered by the circuit court in any proceeding under  
420 subsections (6) and (7); and

421 (d) ~~Shall p~~Pay or make provision for all other known obligations of the  
422 dissolved corporation ~~or such successor entity~~.

423 If there are sufficient funds, sSuch claims or obligations must shall be paid in full, and a  
424 ~~any such~~ provision for payments must shall be made in full ~~if there are sufficient funds~~. If there  
425 are insufficient funds, the such claims and obligations shall be paid or provided for according to  
426 their priority and, among claims of equal priority, ratably to the extent of funds that are legally  
427 available therefor. ~~Any r~~Remaining funds shall be distributed to the shareholders of the dissolved  
428 corporation; however, the such distribution may not be made before the expiration of 150 days  
429 after from the date of the last notice of a rejections given pursuant to subsection (3). In the  
430 absence of actual fraud, the judgment of the directors of the dissolved corporation or the  
431 governing persons of the such successor entity, as to the provisions made for the payment of all  
432 obligations under paragraph (d), is conclusive.

433 (10) A dissolved corporation ~~or successor entity which that~~ has not followed the  
434 procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all  
435 known claims and obligations, including all contingent, conditional, or unmatured claims known  
436 to the dissolved corporation ~~or such successor entity~~ and all claims that which are known to the  
437 dissolved corporation ~~or such successor entity~~ but for which the identity of the claimant is  
438 unknown. If there are sufficient funds, the Such claims must shall be paid in full, and a ~~any such~~  
439 provision made for payment must be made ~~shall be made~~ in full ~~if there are sufficient funds~~. If  
440 there are insufficient funds, the such claims and obligations shall be paid or provided for  
441 according to their priority and, among claims of equal priority, ratably to the extent of funds that  
442 are legally available ~~therefor~~. ~~Any r~~Remaining funds shall be distributed to the shareholders of  
443 the dissolved corporation.

444 (11) Directors of a dissolved corporation or governing persons of a successor entity  
445 which has complied with subsection (9) or subsection (10) are not personally liable to the  
446 claimants of the dissolved corporation.<sup>11</sup>

447 (12) A shareholder of a dissolved corporation to which the assets ~~of which~~ were  
448 distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the

---

<sup>11</sup> There is no corollary provision in s. 605.0711 of FRLCA.

449 corporation in an amount in excess of ~~the such~~ shareholder's pro rata share of the claim or the  
450 amount distributed to the shareholder, whichever is less.

451 (13) A shareholder of a dissolved corporation; to whom the assets ~~of which~~ were  
452 distributed pursuant to subsection (9), is not liable for any claim against the corporation, which  
453 claim is known to the dissolved corporation and ~~or successor entity~~, on which a proceeding is not  
454 begun before ~~prior to~~ the expiration of 3 years after ~~following~~ the effective date of dissolution.

455 (14) The aggregate liability of any shareholder of a dissolved corporation for claims  
456 against the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not  
457 exceed the amount distributed to the shareholder in dissolution.

458 (15) As used in ss. 601.1401 – 607.1409 ~~this section, or s. 607.1407~~, the term  
459 "successor entity" includes a ~~any~~ trust, receivership, or other legal entity governed by the laws of  
460 this state to which the remaining assets and liabilities of a dissolved corporation are transferred  
461 and which exists solely for the purposes of prosecuting and defending suits by or against the  
462 dissolved corporation, thereby enabling the dissolved corporation to settle and close the business  
463 of the dissolved corporation, to dispose of and convey the property of the dissolved corporation,  
464 to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved  
465 corporation's shareholders any remaining assets, but not for the purpose of continuing the  
466 activities and affairs ~~business~~ for which the dissolved corporation was organized.

467 (16) As used in this section and s. 607.0707 and 607.0708, the term "applicable  
468 county" means the county in this state in which the corporation's principal office is located or  
469 was located at the effective date of dissolution; if the corporation has, and at the effective date of  
470 dissolution had, no principal office in this state, then in the county in which the corporation has,  
471 or at the effective date of dissolution had, an office in this state; or if none in this state, then in  
472 the county in which the corporation's registered office is or was last located.

473 (17) As used in this section, the term "known claim" or "claim" includes unliquidated  
474 claims, but does not include a contingent liability that has not matured so that there is no  
475 immediate right to bring suit or a claim based on an event occurring after the effective date of  
476 dissolution.

477 **Commentary to Section 607.1406:**

478 Section 607.1406 does not follow the equivalent section of the Model Act. Instead, it follows as  
479 a model ss. 280, 281 and 282 of the DGCL. While the DGCL and Model Act sections are in most  
480 respects the same, there are some material differences:

- 481
- While the deadline cannot be less than 120 days from the date of the notice under  
482 subsection (2)(c) of the FBCA, the DGCL allows such deadlines no less than 60 days  
483 from the date of the notice.
  - The notice under subsection (2), under the DGCL but not the FBCA, must contain the  
484 aggregate amount, on an annual basis, of all distributions made by the corporation to its  
485 shareholders for each of the 3 years prior to the date the corporation dissolved.
  - Under the DGCL but not the FBCA, the notice must also be published in a newspaper of  
487 general circulation.
  - Changes were made to the DGCL in 2010 to add provisions for nonstock corporations  
488 and nonprofit nonstock corporations.  
489  
490

491 The words “or successor entity” are no longer contained in the statute because the definition of  
492 “dissolved corporation” under s. 607.1403(3) now includes a successor entity

493

494 607.1407 Other Unknown claims against dissolved corporation.

495 (1) A dissolved corporation ~~or successor entity~~, as defined in s. 607.1406(15), may  
496 choose to execute one of the following procedures to resolve payment of unknown claims:-

497 (1a) A dissolved corporation ~~or successor entity~~ may file notice of its  
498 dissolution with the ~~D~~department of State on the form prescribed by the ~~D~~department of  
499 State<sup>12</sup> and request that persons with claims against the corporation which are not known  
500 to the corporation ~~or successor entity~~ present them in accordance with the notice. The  
501 notice shall:

502 (a)1. State the name of the corporation and the date of dissolution;

503 (b)2. Describe the information that must be included in a claim and  
504 provide a mailing address to which the claim may be sent; and

505 (c)3. State that a claim against the corporation under this subsection will  
506 be barred unless a proceeding to enforce the claim is commenced within 4<sup>13</sup> years  
507 after the filing of the notice.

508 (2b) A dissolved corporation ~~or successor entity~~ may, within 10 days after  
509 filing articles of dissolution with the ~~D~~department of State<sup>14</sup> publish a "Notice of  
510 Corporate Dissolution." The notice shall appear once a week for 2 consecutive weeks<sup>15</sup> in  
511 a newspaper of general circulation in the applicable county a county in the state in which  
512 the corporation has its principal office, if any, or, if none, in a county in the state in which  
513 the corporation owns real or personal property.<sup>16</sup> Such newspaper shall meet the  
514 requirements as are prescribed by law for such purposes.<sup>17</sup> The notice shall:

515 (a)1. State the name of the corporation and the date of dissolution;

516 (b)2. Describe the information that must be included in a claim and  
517 provide a mailing address to which the claim may be sent; and

---

<sup>12</sup> This wording is not in s. 605.0712(1)(a).

<sup>13</sup> When this provision was added to the FBCA in 2003, the subcommittee that proposed the change concluded that 3 years was too short a time frame for the disposition of claims that are unknown at the time of dissolution. Their commentary also stated that there was a lack of uniformity among states, with time frames ranging from 1 to 5 years. The Model Act provision contemplates a three-year statute of limitations.

<sup>14</sup> This wording is not in s. 605.0712(1)(b).

<sup>15</sup> This wording is not in s. 605.0712(1)(b).

<sup>16</sup> Section 605.0712(1)(b)1. provides: "Be published in a newspaper of general circulation in the county in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the county in which the office of the company's registered agent is or was last located."

<sup>17</sup> This language is not in s. 605.0712.

518 (c) State that a claim against the corporation under this subsection will  
519 be barred unless a proceeding to enforce the claim is commenced within 4<sup>18</sup> years  
520 after the ~~date of the second consecutive weekly~~ publication of the notice  
521 ~~authorized by this section.~~

522 (32) If the dissolved corporation ~~or successor entity~~ complies with ~~paragraph subsection~~  
523 ~~(1)(a) or paragraph 1(b) or subsection (2), unless sooner barred by another statute limiting~~  
524 ~~actions,~~ the claim of each of the following claimants is barred unless the claimant commences an  
525 action ~~a proceeding~~ to enforce the claim against the dissolved corporation within 4<sup>19</sup> years after  
526 the date of filing the notice with the ~~D~~Department of State or the date of the ~~second consecutive~~  
527 ~~weekly~~ publication, as applicable:

528 (a) A claimant that ~~who~~ did not receive written notice under s. 607.1406(9), or  
529 whose claim was not provided for under s. 607.1406(10), whether such claim is based on  
530 an event occurring before or after the effective date of dissolution<sup>20</sup>.

531 (b) A claimant whose claim was timely sent to the dissolved corporation but on  
532 which no action was taken.

533 (34) A claim that is not barred by this section or another statute limiting actions may be  
534 enforced ~~entered under this section:~~

535 (a) Against the dissolved corporation, to the extent of its undistributed assets; or

536 (b) If the assets have been distributed in liquidation, against a shareholder of the  
537 dissolved corporation to the extent of such shareholder's pro rata share of the claim or the  
538 corporate assets distributed to such shareholder in liquidation, whichever is less, provided  
539 that the aggregate liability of any shareholder of a dissolved corporation arising under  
540 this section, s. 607.1406, or otherwise may not exceed the amount distributed to the  
541 shareholder after ~~in~~ dissolution.

542 (4) Nothing in this section shall preclude or relieve the corporation from its  
543 notification to claimants otherwise set forth in this chapter.

---

<sup>18</sup> See footnote 7.  
<sup>19</sup> See footnote 7.  
<sup>20</sup> This language is not in s. 605.0712(2)

544 **Commentary to Section 607.1407:**

545 The FBCA follows the general concept in the Model Act with regard to contingent claims, with  
546 some differences. The FBCA allows for judicial procedure for handling contingent claims  
547 similar to Model Act s. 14.08. The FBCA also specifies that the notice must include the name of  
548 the corporation and date of dissolution, which is not specified in the Model Act (but likely  
549 subsumed under "the information that must be included in a claim").

550 The FBCA is one of two state corporate statutes (along with California) with a four year statute  
551 of limitations. Most jurisdictions use either three years (the statute of limitations under the Model  
552 Act) or five years (the statute of limitations in Delaware), while seven jurisdictions, including  
553 New York, provide no statute of limitations (instead, the statute of limitations is dictated by the  
554 underlying cause of action).

555 The Model Act allows for posting on the dissolved corporation's website as an alternative to  
556 newspaper publication. This alternative was not added to the FBCA.

557



558           607.1408     Court Proceedings.  
559

560           (1) A dissolved corporation that has filed or published a notice under s.  
561 607.1407(1)(a) or (1)(b) file an application with the circuit court in the applicable county, as  
562 defined in s. 607.1406(16) for a determination of the amount and form of security to be provided  
563 for payment of claims that are contingent or have not been made known to the dissolved  
564 corporation or that are based on an event occurring after the effective date of dissolution but  
565 that, based on the facts known to the dissolved corporation, are reasonably estimated to arise  
566 after the effective date of dissolution. Provision need not be made for any claim that is or is  
567 reasonably anticipated to be barred under s. 607.1407.  
568

569           (2) Within 10 days after the filing of the application under subsection (1), notice of the  
570 proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim  
571 whose contingent claim is known to the dissolved corporation.  
572

573           (3) In a proceeding under this section, the court may appoint a guardian ad litem to  
574 represent all claimants whose identities are unknown. The reasonable fees and expenses of such  
575 guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.  
576

577           (4) Provision by the dissolved corporation for security in the amount and the form  
578 ordered by the court under s. 607.1408(1) shall satisfy the dissolved corporation's obligations  
579 with respect to claims that are contingent, have not been made known to the dissolved  
580 corporation or are based on an event occurring after the effective date of dissolution, and such  
581 claims may not be enforced against a shareholder who received assets in liquidation.  
582

583 **Commentary to Section 607.1408.**

584 This section was added to the Model Act in 2000 to provide a procedure for handling unknown  
585 and contingent claims against the dissolved corporation. It has been added to the FBCA.

586

587           607.1409 Director Duties

588

589           (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision  
590 for the payment of claims and make distributions in liquidation of assets to shareholders after  
591 payment or provision for claims.

592           (2) Directors of a dissolved corporation which has disposed of claims under ss. 607.1406,  
593 607.1407, or 14.08 shall not be liable for breach of section 607.1409(1) with respect to claims  
594 against the dissolved corporation that are barred or satisfied under ss. 607.1406, 607.1407, or  
595 607.1408.<sup>21</sup>

596

---

<sup>21</sup> Is there any overlap between this provision and s. 607.1405(4)?

597 **Commentary to Section 607.1409:**

598 This section is identical to s. 14.09 of the Model Act. It was added to the Model Act in 2000 and  
599 establishes the terms under which a director could be relieved of liability for unlawful  
600 distributions in liquidation under s. 607.1401 et seq., and thus avoid the general distribution  
601 liability under s. 607.0640.

602

603           607.1420 Grounds for Administrative dissolution.

604           (1) ~~The Department of State may commence a proceeding under s. 607.1421 to~~  
605 ~~administratively dissolve a corporation administratively if the corporation does not:~~

606                   (a) Deliver its annual report to the department ~~The corporation has failed to file~~  
607 ~~its annual report and pay the annual report filing fee by 5:00 p.m. Eastern Time on the~~  
608 ~~third Friday in September of each year;~~

609                   (b) Pay a fee or penalty due to the department under this chapter;

610                   (c) Appoint and maintain ~~The corporation is without a registered agent and or~~  
611 ~~registered office as required by s. 607.0501 in this state for 30 days or more;~~

612                   (d) Deliver for filing a statement of change under s. 607.0502 ~~The corporation~~  
613 ~~does not notify the department of State within 30 days after a change has occurred in the~~  
614 ~~name or address of the agent unless, within 30 days after the change occurred: that its the~~  
615 ~~corporation's registered agent or registered office has been changed, that its registered~~  
616 ~~agent has resigned, or that its registered office has been discontinued;~~

617                               1. The agent filed a statement of change under s. 607.05031; or

618                               2. The change was made in accordance with s. 607.0502(4);

619                   (d) ~~The corporation has failed to answer truthfully and fully, within the time~~  
620 ~~prescribed by this act, interrogatories propounded by the Department of State; or~~

621                   (e) ~~The corporation's period of duration stated in its articles of incorporation~~  
622 ~~expires has expired.~~

623           (2) ~~The foregoing enumeration in subsection (1) of grounds for administrative~~  
624 ~~dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs~~  
625 ~~or any state officials for the annulment or dissolution of a corporation for other causes as~~  
626 ~~provided in any other statute of this state.~~

627           (3) Administrative dissolution of a corporation for failure to file an annual report  
628 must occur on the fourth Friday in September of each year. The department shall issue a notice in  
629 a record of administrative dissolution to the corporation dissolved for failure to file an annual  
630 report. Issuance of the notice may be by electronic transmission to a corporation that has  
631 provided the department with an e-mail address.

632           (4) If the department determines that one or more grounds exist for administratively  
633 dissolving a corporation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the

634 department shall serve notice in a record to the corporation of its intent to administratively  
635 dissolve the corporation. Issuance of the notice may be by electronic transmission to a  
636 corporation that has provided the department with an e-mail address.

637 (5) If, within 60 days after sending the notice of intent to administratively dissolve  
638 pursuant to subsection (3), a corporation does not correct each ground for dissolution under  
639 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable  
640 satisfaction of the department that each ground determined by the department does not exist, the  
641 department shall dissolve the corporation administratively and issue to the corporation a notice in  
642 a record of administrative dissolution that states the grounds for dissolution. Issuance of the  
643 notice of administrative dissolution may be by electronic transmission to a corporation that has  
644 provided the department with an e-mail address.

645 (6) A corporation that has been administratively dissolved continues in existence but  
646 may only carry on activities necessary to wind up its activities and affairs, liquidate and  
647 distribute its assets, and notify claimants under ss. 607.1405, 607.1406 and 607.1407.<sup>22</sup>

648 (7) The administrative dissolution of a corporation does not terminate the authority of  
649 its registered agent for service of process.

650

---

<sup>22</sup> This is the same as s. 605.1420(6).

651 **Commentary to Section 607.1420:**

652 This provision has been updated and modernized to follow the substance of FRLUCA s.  
653 605.0714.

654 The FBCA contains provisions allowing for administrative dissolution in other situations  
655 (paragraphs (1)(e) and (f), and subsection (2)). Neither of these grounds for administrative  
656 dissolution was included in the corollary provision of FRLUCA, although both grounds were in  
657 the corollary section of Chapter 608 (in s. 608.448). In both cases, the Subcommittee believes  
658 that these provisions are almost never used, and the Division of Corporations has advised the  
659 Subcommittee that they have no objection to removing these provisions from the FBCA.<sup>23</sup>

660

---

<sup>23</sup> The Subcommittee will reconsider this issue if another Florida government agency has a concern with this change.

661           ~~607.1421—Procedure for and effect of administrative dissolution.~~

662           ~~(1) If the Department of State determines that one or more grounds exist under s.~~  
663 ~~607.1420 for dissolving a corporation, it shall serve the corporation with notice of its intention to~~  
664 ~~administratively dissolve the corporation. If the corporation has provided the Department with an~~  
665 ~~electronic mail address, such notice shall be by electronic transmission. Administrative~~  
666 ~~dissolution for failure to file an annual report shall occur on the fourth Friday in September of~~  
667 ~~each year. The Department of State shall issue a certificate of dissolution to each dissolved~~  
668 ~~corporation. Issuance of the certificate of dissolution may be by electronic transmission to any~~  
669 ~~corporation that has provided the department with an electronic mail address.~~

670           ~~(2) If the corporation does not correct each ground for dissolution under s.~~  
671 ~~607.1420(1)(b), (c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of~~  
672 ~~State that each ground determined by the department does not exist within 60 days of issuance of~~  
673 ~~the notice, the department shall administratively dissolve the corporation by issuing a certificate~~  
674 ~~of dissolution that recites the ground or grounds for dissolution and its effective date. Issuance of~~  
675 ~~the certificate of dissolution may be by electronic transmission to any corporation that has~~  
676 ~~provided the department with an electronic mail address.~~

677           ~~(3) A corporation administratively dissolved continues its corporate existence but may~~  
678 ~~not carry on any business except that necessary to wind up and liquidate its business and affairs~~  
679 ~~under s. 607.1405 and notify claimants under ss. 607.1406 and 607.1407.~~

680           ~~(4) A director, officer, or agent of a corporation dissolved pursuant to this section,~~  
681 ~~purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and~~  
682 ~~liabilities of the corporation arising from such action and incurred subsequent to the~~  
683 ~~corporation's administrative dissolution only if he or she has actual notice of the administrative~~  
684 ~~dissolution at the time such action is taken; but such liability shall be terminated upon the~~  
685 ~~ratification of such action by the corporation's board of directors or shareholders subsequent to~~  
686 ~~the reinstatement of the corporation under ss. 607.1401-607.14401.~~

687           ~~(5) The administrative dissolution of a corporation does not terminate the authority of~~  
688 ~~its registered agent.~~

689

690



691 **Commentary to Section 607.1421:**

692 The substance of this section has been added to s. 607.1420 to follow the corollary FRLUCA  
693 model. As a result, this section has been eliminated.

694 One of the subsections eliminated was subsection (4), which previously provided that:

695 (4) A director, officer, or agent of a corporation dissolved pursuant to this  
696 section, purporting to act on behalf of the corporation, is personally liable for the debts,  
697 obligations, and liabilities of the corporation arising from such action and incurred  
698 subsequent to the corporation's administrative dissolution only if he or she has actual  
699 notice of the administrative dissolution at the time such action is taken; but such liability  
700 shall be terminated upon the ratification of such action by the corporation's board of  
701 directors or shareholders subsequent to the reinstatement of the corporation under ss.  
702 607.1401-607.14401.

703 This subsection was not added to the corollary provisions of FRLUCA and is not in the Model  
704 Act. Its exclusion is not intended to say that a director or agent cannot be personally liable for the  
705 debts of a corporation that has been administratively dissolved, but rather to leave that topic to  
706 agency law and courts to make the determination under the particular circumstances.

707

708           607.1422 Reinstatement following administrative dissolution.

709           (1) A corporation that is administratively dissolved under s. 607.1420~~4~~ or former s.  
710 607.1421 may apply to the ~~D~~department of State for reinstatement at any time after the effective  
711 date of dissolution. The corporation must submit all fees and penalties then owed by the  
712 corporation at the rates provided by laws at the time the corporation applies for reinstatement,  
713 together with an application for a reinstatement form prescribed and furnished by the  
714 Ddepartment of State, which is or a current uniform business report signed by both the registered  
715 agent and an officer or director of and all fees then owed by the corporation, and states:  
716 computed at the rate provided by law at the time the corporation applies for reinstatement.

717                   (a) The name of the corporation.

718                   (b) The street address of the corporation's principal office and mailing address.

719                   (c) The date of the corporation's organization.

720                   (d) The corporation's federal employer identification number or, if none, whether  
721 one has been applied for.

722                   (e) The name, title or capacity, and address of at least one officer or director of  
723 the corporation.

724                   (f) Additional information that is necessary or appropriate to enable the  
725 department to carry out this chapter.

726           (2) In lieu of the requirement to file an application for reinstatement as described in  
727 subsection (1), an administratively dissolved corporation may submit all fees and penalties owed  
728 by the corporation at the rates provided by law at the time the corporation applies for  
729 reinstatement, together with a current annual report, signed by both the registered agent and an  
730 officer or director of the corporation, which contains the information described in subsection (1).

731           (3) If the department determines that an application for reinstatement contains the  
732 information required under subsection (1) or subsection (2) and that the information is correct,  
733 upon payment of all required fees and penalties, the department shall reinstate the corporation.

734           (4) When reinstatement under this section becomes effective:

735                   (a) The reinstatement relates back to and takes effect as of the effective date of  
736 the administrative dissolution.

737                   (b) The corporation may resume its activities and affairs as if the administrative  
738 dissolution had not occurred.

739                   (c) The rights of a person arising out of an act or omission in reliance on the  
740 dissolution before the person knew or had notice of the reinstatement are not affected.

741                   ~~(2) If the Department of State determines that the application contains the information~~  
742 ~~required by subsection (1) and that the information is correct, it shall reinstate the corporation.~~

743                   ~~(3) When the reinstatement is effective, it relates back to and takes effect as of the~~  
744 ~~effective date of the administrative dissolution and the corporation resumes carrying on its~~  
745 ~~business as if the administrative dissolution had never occurred.~~

746                   (54) The name of the dissolved corporation is shall not be available for assumption or  
747 use by another business entity corporation until 1 year after the effective date of dissolution  
748 unless the dissolved corporation provides the ~~Department of State~~ with an affidavit executed as  
749 required pursuant to ~~by~~ s. 607.0120 permitting the immediate assumption or use of the name by  
750 another business entity corporation.<sup>24</sup>

751                   ~~(65)~~ If the name of the dissolved corporation has been lawfully assumed in this state by  
752 another business entity corporation, the ~~Department of State~~ shall require the dissolved  
753 corporation to amend its articles of incorporation to change its name before accepting its  
754 application for reinstatement.<sup>25</sup>

---

<sup>24</sup> Similar to this change, the last words of s. 605.0715(5) should be changed from "limited liability company" to "business entity."

<sup>25</sup> This subsection is not in FRLCA, and needs to be added into FRLCA.

755 **Commentary to Section 607.1422:**

756 This section has been modified to make it consistent with the corollary section of FRLUCA.

757 The corollary provision of the Model Act limits administrative dissolution to a two-year period  
758 following the administrative dissolution. Florida is one of twenty-four jurisdictions, including  
759 Delaware, that do not expressly limit the period for reinstatement. Another twenty-four  
760 jurisdictions permit reinstatement for time periods between two and ten years after dissolution.  
761 This section retains the ability to reinstate a corporation at any time after dissolution.

762 **Corollary provisions to this section need to be added to FRUPA and FRULPA.**

763

764 607.1423 Judicial review of ~~appeal from~~ denial of reinstatement.

765 (1) If the ~~D~~department of ~~State~~ denies a corporation's application for reinstatement  
766 after following administrative dissolution, the department ~~it~~ shall serve the corporation under s.  
767 607.0504(2) with a written notice that explains the reason or reasons for denial.

768 (2) Within 30 days after service of a notice of denial of reinstatement, a ~~After~~  
769 ~~exhaustion of administrative remedies, the corporation may appeal the denial of reinstatement to~~  
770 by petitioning the circuit court in the county where the corporation's principal office is located or  
771 was located at the effective date of dissolution<sup>26</sup> to set aside the dissolution ~~the appropriate court~~  
772 ~~as provided in s. 120.68 within 30 days after service of the notice of denial is perfected effected.~~  
773 The petition must be served on the department and contain a copy of the department's notice of  
774 administrative ~~corporation appeals by petitioning the court to set aside the dissolution and~~  
775 ~~attaching to the petition copies of the Ddepartment's of State's certificate of dissolution, the~~  
776 corporation's application for reinstatement, and the department's notice of denial.

777 (3) The court may ~~summarily~~ order the ~~D~~department of ~~State~~ to reinstate the dissolved  
778 corporation or ~~may~~ take other action the court considers appropriate.

779 ~~(4) The court's final decision may be appealed as in other civil proceedings.~~

780

781

---

<sup>26</sup> Section 605.0716(2) uses the term "applicable county" as defined in s. 605.0711(14). There is no comparable provision in s. 607.1406. Should there be? **Cover topic when the subcommittee reviews s. 607.1406.**

782 **Commentary to Section 607.1423:**

783 This section is revised to follow the wording of the corollary section of FRLICA.

784 Subsection (4) was deleted. It is a rule of court that is believed to be the applicable rule whether  
785 or not expressly stated in the statute. This subsection was not added to FRLICA when FRLICA  
786 was adopted. The Subcommittee is seeking input from the Business Litigation Committee  
787 regarding its decision to eliminate subsection (4) from the FBCA.

788

789           607.1430 Grounds for judicial dissolution.<sup>27</sup>

790           (1)     A circuit court may dissolve a corporation or order such other remedy as provided  
791 in s. 607.1434:

792           (a)     In a proceeding by the Department of Legal Affairs if it is established that:

793                     1.     The corporation obtained its articles of incorporation through fraud; or

794                     2.     The corporation has continued to exceed or abuse the authority  
795 conferred upon it by law.

796           ~~(b)~~The enumeration in subparagraphs 1. and 2. above paragraph (a) of grounds for  
797 involuntary dissolution does not exclude actions or special proceedings by the  
798 Department of Legal Affairs or any state official for the annulment or dissolution  
799 of a corporation for other causes as provided in any other statute of this state<sup>28</sup>;

800           ~~(b)(2)~~ In a proceeding by a shareholder if it is established that:

801                     ~~(a)~~ 1.     The directors are deadlocked in the management of the corporate  
802 affairs, the shareholders are unable to break the deadlock, and irreparable injury to  
803 the corporation is threatened or being suffered, or the business and affairs of the  
804 corporation can no longer be conducted to the advantage of the shareholders  
805 generally because of the deadlock<sup>29</sup>; or

806                     ~~(b)~~ 2.     The shareholders are deadlocked<sup>30</sup> in voting power and have failed  
807 to elect successors to directors whose terms have expired<sup>31</sup> or would have expired  
808 upon qualification of their successors;

809           ~~(3) — In a proceeding by a shareholder or group of shareholders in a corporation~~  
810 ~~having 35 or fewer shareholders if it is established that:~~<sup>32</sup>

811                     ~~(a)~~ 3.     The corporate assets are being misapplied or wasted, causing  
812 material injury to the corporation; or

---

<sup>27</sup> The Subcommittee is seeking comments on the sections of the FBCA dealing with judicial dissolution from the Business Litigation Committee of the BLS.

<sup>28</sup> This is not a Model Act provision.

<sup>29</sup> This addition follows s. 14.30(a)(2)(i) of the 2016 version of the Model Act.

<sup>30</sup> Should we add a provision to the FBCA similar to s. 605.0702(2) for situations where the shareholders of the corporation have unanimously adopted a dispute resolution mechanism for breaking a deadlock?

<sup>31</sup> Model Act provision requires failure to elect successors for a period of at least two consecutive annual meeting dates.

<sup>32</sup> The 1994 revisions limited the grounds for dissolution in (1)(b)3. and 4. to closely held companies, with the view that derivative proceedings were available for larger corporations. This is not a Model Act construct, which only excludes public companies from these provisions.

813                    ~~(b)~~ 4. The directors or those in control of the corporation have acted, are  
814 acting, or are reasonably expected to act<sup>33</sup> in a manner that is illegal or fraudulent;

815                    5.        The directors or those in control of the corporation have acted, are  
816 acting, or are reasonable expected to act in a manner that is oppressive<sup>34</sup>, so long  
817 as the shareholder or shareholders seeking judicial dissolution own more than  
818 [10%] of the outstanding shares.<sup>35</sup>

819                    ~~(4)~~(c) In a proceeding by a creditor if it is established that:

820                    ~~(a)~~ 1. The creditor’s claim has been reduced to judgment, the execution  
821 on the judgment returned unsatisfied, and the corporation is insolvent; or

822                    ~~(b)~~ 2. The corporation has admitted in writing that the creditor’s claim is  
823 due and owing and the corporation is insolvent; or

824                    ~~(5)~~d) In a proceeding by the corporation to have its voluntary dissolution  
825 continued under court supervision; or

826                    (e)        In a proceeding by a shareholder if the corporation has abandoned its  
827 business and has failed within a reasonable period of time to liquidate and distribute its  
828 assets and dissolve.

829                    (2)        Subsection (1)(b) shall not apply in the case of a corporation that, on the date of the  
830 filing of the proceeding, has shares which are:

831                    (a)        A covered security under section 18(b)(1)(A) or (B) of the  
832 Securities Act of 1933; or

833                    (b)        Not a covered security, but are held by at least 300 shareholders and  
834 the shares outstanding have a market value of at least \$20 million (exclusive of the  
835 value of such shares held by the corporation’s subsidiaries, senior executives, directors  
836 and beneficial shareholders and voting trust beneficial owners owning more than 10%  
837 of such shares).

---

<sup>33</sup> Model Act language is “will act” rather than “reasonably expected to act”.

<sup>34</sup> In 1994 there was a view that the concept was too vague and would raise the possibility of vexatious litigation based on an uncertain standard. Advocates for including the oppression provision argued that oppression is capable of reasonable definition and that minority shareholders might not otherwise have an adequate basis for relief in freeze-out situations, such as loss of office, salary or dividends. Over 35 states have adopted the oppression or an analogous provision (a summary memo on this topic prepared by Andrew Schwartz has been provided to the subcommittee). Florida courts have often gotten around the failure to include “oppression” as a grounds for dissolution using fiduciary principles. However, it is argued that the failure to include “oppression” as a grounds for dissolution has a definite chilling effect on the rights of minority shareholders in Florida.

<sup>35</sup> Arbitrary number – to be discussed.



838 (3) In subsections (1) and (2), “shareholder” means a record shareholder, a beneficial  
839 shareholder, and an unrestricted voting trust beneficial owner.

840 (4) For purposes of subsection (1)(b)5., the term “oppressive” means a continuing  
841 course of conduct or a significant action or series of actions that substantially interferes with the  
842 interests of the shareholder as a shareholder. Oppressive conduct may include the termination of  
843 employment or limitations on employment benefits to the extent that the actions interfere with  
844 distributions or other shareholder interests disproportionately as to the affected shareholder. The  
845 term does not include conduct or actions that are permitted by an agreement, the articles of  
846 incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

847

848 **Commentary to Section 607.1430:**

849 Florida largely follows the Model Act, with a few notable exceptions.

850 First, certain rights of shareholders to petition the circuit court to seek judicial dissolution are  
851 limited in Florida to smaller corporations with 35 or fewer shareholders in Florida (see  
852 subsections (1)(b) 3. and 4.). In the Model Act, the limitation is generally that these provisions  
853 cannot be used in what are essentially public companies.

854 Second, Florida does not include “oppression” of minority holders as a grounds for dissolution.  
855 Advocates for including the oppression provision argued that oppression is capable of reasonable  
856 definition and that minority shareholders might not otherwise have an adequate basis for relief in  
857 freeze-out situations, such as loss of office, salary or dividends. Over 35 states have adopted the  
858 oppression or an analogous provision. Florida courts have often gotten around the failure to  
859 include “oppression” as a grounds for dissolution using fiduciary principles. However, the failure  
860 to include “oppression” as a grounds for dissolution has a definite chilling effect on the rights of  
861 minority shareholders and causes an unequal playing field between minority holders and  
862 majority holders. A memorandum on this topic describing how each state has dealt with this  
863 question (prepared by Andrew Schwartz) will be provided to the Subcommittee under separate  
864 cover when this section is reviewed by the Subcommittee.

865 It should be noted that, for purposes of subsection (1)(b) and (1)(c), many states, including other  
866 prominent Model Act states, limit this right to shareholders who meet a minimum holding  
867 requirement. Maryland, Massachusetts and Georgia, all Model Act states, have such  
868 requirements, requiring the ownership of 25%, 40%, and 20% of the outstanding shares,  
869 respectively. Amongst other large states, California requires the ownership of 1/3<sup>rd</sup> of the  
870 outstanding shares and New York sets a 20% ownership requirement.

871

872 607.1431 Procedure for judicial dissolution.<sup>36</sup>

873 (1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court of the  
874 county where the corporation's principal office is or was last located, as shown by the records of  
875 the ~~D~~Department of State, or, if none in this state, where its registered office is or was last  
876 located.

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

879 (3) A court in a proceeding brought to dissolve a corporation may issue injunctions,  
880 appoint a receiver or custodian ~~pendent lite~~ during the proceeding with all powers and duties the  
881 court directs, take other action required to preserve the corporate assets wherever located, and  
882 carry on the business of the corporation until a full hearing can be held.

883 (4)<sup>37</sup> Within 10<sup>38</sup> days of the commencement of a proceeding to dissolve a corporation  
884 under s. 607.1430(1)(b), the corporation shall deliver to all shareholders, other than the  
885 petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the  
886 corporation by electing to purchase the petitioner's shares under section 607.1436 and  
887 accompanied by a copy of section 607.1436.

888 (4~~5~~) If the court determines that any party has commenced, continued, or participated in  
889 an action under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not in good  
890 faith, the court may, in its discretion, award attorney's fees and other reasonable expenses to the  
891 other parties to the action who have been affected adversely by such actions.

892

---

<sup>36</sup> We need litigator input for this section.

<sup>37</sup> Should we add this subsection to the FBCA? Subsection (4) is derived from s. 14.31(d) of the Model Act. It was added to the Model Act in 1990, but was not adopted into the FBCA when the Judicial Dissolution provisions of the FBCA were substantially rewritten in 1993. This subsection puts shareholders on notice of their rights to purchase the petitioning shareholder's shares under s. 607.1436 in a manner somewhat akin to the required notice to shareholders under the appraisal rights statutes.

<sup>38</sup> If we include this subsection in the FBCA, is 10 days too short a period?

893 **Commentary to Section 607.1431:**

894 With some non-material differences, subsections (1)-(3) of the FBCA match their corresponding  
895 subsections in the Model Act. Subsection (5) of the FBCA is unique to the FBCA.

896 The FBCA did not previously include subsection (d) of the corollary provision of the Model Act,  
897 which relates to notification to shareholders of their rights to purchase the holdings of the  
898 petitioning shareholders under s. 607.1436 of the FBCA. [This section has been added to the  
899 FBCA in new subsection (4).]

900

901           607.1432 Receivership or custodianship.

902           (1) ~~A~~Unless an election to purchase has been filed under s. 607.1436, a court in a  
903 judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind  
904 up and liquidate, or one or more custodians to manage, the business and affairs of the  
905 corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any  
906 interested persons designated by the court, before appointing a receiver or custodian. The court  
907 appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its  
908 property wherever located.

909           (2) The court may appoint a natural person or a business entity ~~corporation~~ authorized  
910 to act as a receiver or custodian. The business entity ~~corporation~~ may be a domestic business  
911 entity ~~corporation~~ or a foreign business entity ~~corporation~~ authorized to transact business in this  
912 state. The court may require the receiver or custodian to post bond, with or without sureties, in an  
913 amount the court directs.

914           (3) The court shall describe the powers and duties of the receiver or custodian in its  
915 appointing order, which may be amended from time to time. Among other powers:

916           (a) The receiver:

917                       1. May dispose of all or any part of the assets of the corporation  
918                       wherever located, at a public or private sale, if authorized by the court; and

919                       2. May sue and defend in his, ~~or her,~~ or its own name as receiver of the  
920                       corporation in all courts of this state.

921           (b) The custodian may exercise all of the powers of the corporation, through or  
922           in place of its board of directors or officers, to the extent necessary to manage the affairs  
923           of the corporation in the best interests of its shareholders and creditors.

924           (4) The court during a receivership may redesignate the receiver a custodian, and  
925           during a custodianship may redesignate the custodian a receiver, if doing so is determined by the  
926           court to be in the best interests of the corporation and its shareholders and creditors.

927           (5) The court from time to time during the receivership or custodianship may order  
928           compensation paid and expense disbursements or reimbursements made to the receiver or  
929           custodian and his, ~~or her,~~ or its counsel from the assets of the corporation or proceeds from the  
930           sale of the assets.

931           (6) The court has jurisdiction to appoint an ancillary receiver for the assets and business  
932           of a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other  
933           state, whenever the court deems that circumstances exist requiring the appointment of such a

934 receiver. The court may appoint such an ancillary receiver for a foreign corporation even though  
935 no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary  
936 receivership when an order entered by a court of competent jurisdiction in the other state  
937 provides for a receivership of the corporation.

938

939 **Commentary to Section 607.1432:**

940 Subsections (1)-(5) of this section of the FBCA are materially the same as their counterpart  
941 subsections in the Model Act. The only difference appears in subsection (1), which provides that  
942 a receiver or custodian cannot be appointed during the 90-day period in which the corporation  
943 and other shareholders are given the right in s. 607.1436 to purchase the shares of the  
944 complaining shareholder. However, under s. 607.1431(3), the court can appoint a temporary  
945 receiver during this period for good cause shown.

946 Subsection (6) of the FBCA has been retained in the statute even though it is not in the Model  
947 Act.

948

949           607.1433 Judgment of dissolution.

950           (1) If after a hearing the court determines that one or more grounds for judicial  
951 dissolution described in s. 607.1430 exist, it may enter a judgment dissolving the corporation and  
952 specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified  
953 copy of the judgment to the ~~D~~department of State, which shall file it.

954           (2) After entering the judgment of dissolution, the court shall direct the winding up and  
955 liquidation of the corporation's business and affairs in accordance with s. 607.1405 and the  
956 notification of claimants in accordance with ss. 607.1406 and 607.1407, subject to the provisions  
957 of subsection (3).

958           (3) In a proceeding for judicial dissolution, the court may require all creditors of the  
959 corporation to file with the clerk of the court or with the receiver, in such form as the court may  
960 prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it  
961 shall fix a date, which shall be not less than 4 months from the date of the order, as the last day  
962 for filing of claims. The court shall prescribe the method by which such notice of the deadline for  
963 filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may  
964 extend the time for the filing of claims by court order. Creditors and claimants failing to file  
965 proofs of claim on or before the date so fixed may be barred, by order of court, from  
966 participating in the distribution of the assets of the corporation. Nothing in this section affects the  
967 enforceability of any recorded mortgage or lien, any ~~or the~~ perfected security interest, or any  
968 rights of a person in possession of real or personal property.



969 **Commentary to Section 607.1433:**

970 Subsections (1) and (2) of s. 607.1433 generally follow the Model Act. One minor clean-up  
971 change was made in subsection (2) to require notice to potential claimants in accordance with s.  
972 607.1407, consistent with the Model Act language.

973 Florida is one of nine jurisdictions (including California) that limits the claims to four months (or  
974 120 days) after the date of the order. Some other jurisdictions (including New York) provide for  
975 a six month period. The Model Act does not have a comparable subsection.

976           607.1434 Alternative remedies to judicial dissolution.

977           In an action for dissolution pursuant to s. 607.1430, the court may, upon a showing of  
978 sufficient merit to warrant such remedy:

979           (1) Appoint a receiver or custodian ~~pendent lite~~ during the proceeding as provided in s.  
980 607.1432;

981           (2) Appoint a provisional director as provided in s. 607.1435;

982           (3) Order a purchase of the complaining shareholder's shares pursuant to s. 607.1436;  
983 or

984           (4) Upon proof of good cause, make any order or grant any equitable relief other than  
985 dissolution or liquidation as in its discretion it may deem appropriate.

986

987

988 **Commentary to s. 607.1434:**

989 Section 607.1434 was added to the FBCA in 1994 to enumerate and clarify the alternative  
990 remedies available for actions brought under s. 607.1430. The “sufficient merit” phrase in the  
991 opening clause is intended to require that none of these remedies be imposed unless the  
992 petitioner meets the burden of proving the necessity of such relief. This section is intended to  
993 explicitly recognize the existing equity powers of courts to fashion a remedy other than  
994 dissolution in circumstances where the grounds for judicial dissolution are present.

995 A minor change was included in subsection (1) to match a similar change made in Section  
996 607.1431(3).

997

998           607.1435 Provisional director.

999           (1) A provisional director may be appointed in the discretion of the court if it appears  
1000 that such action by the court will remedy the grounds alleged by the complaining shareholder to  
1001 support the jurisdiction of the court under s. 607.1430. A provisional director may be appointed  
1002 notwithstanding the absence of a vacancy on the board of directors, and such director shall have  
1003 all the rights and powers of a duly elected director, including the right to notice of and to vote at  
1004 meetings of directors, until such time as the provisional director is removed by order of the court  
1005 or, unless otherwise ordered by a court, removed by a vote of the shareholders sufficient either to  
1006 elect a majority of the board of directors or, if greater than majority voting is required by the  
1007 articles of incorporation or the bylaws, to elect the requisite number of directors needed to take  
1008 action. A provisional director shall be an impartial person who is neither a shareholder nor a  
1009 creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further  
1010 qualifications, if any, may be determined by the court.

1011           (2) A provisional director shall report from time to time to the court concerning the  
1012 matter complained of, or the status of the deadlock, if any, and of the status of the corporation's  
1013 business, as the court shall direct. No provisional director shall be liable for any action taken or  
1014 decision made, except as directors may be liable under s. 607.0831. In addition, the provisional  
1015 director shall submit to the court, if so directed, recommendations as to the appropriate  
1016 disposition of the action. Whenever a provisional director is appointed, any officer or director of  
1017 the corporation may, from time to time, petition the court for instructions clarifying the duties  
1018 and responsibilities of such officer or director.

1019           (3) In any proceeding under this section, the court shall allow reasonable compensation  
1020 to the provisional director for services rendered and reimbursement or direct payment of  
1021 reasonable costs and expenses, which amounts shall be paid by the corporation.

1022

1023

1024 **Commentary to s. 607.1435:**

1025 This section was added to the FBCA in 1994. It allows a court, on its own or at the request of  
1026 one of the parties, under circumstances where the court by such an action can remedy a situation  
1027 under s. 607.1430, to appoint a provisional director to act with full power and authority along  
1028 with the corporation's other directors. The remedy, which could be used to break a deadlock on  
1029 the board of directors, is considered less intrusive on corporate management than the  
1030 appointment of a receiver or custodian.

1031

1032           607.1436 Election to purchase instead of dissolution.

1033           (1) In a proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ to dissolve a corporation, the  
1034 corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all  
1035 shares owned by the petitioning shareholder at the fair value of the shares<sup>39</sup>. An election pursuant  
1036 to this section shall be irrevocable unless the court determines that it is equitable to set aside or  
1037 modify the election.

1038           (2) An election to purchase pursuant to this section may be filed with the court at any  
1039 time within 90 days after the filing of the petition under s. 607.1430(1)(b) ~~(2) or (3)~~ or at such  
1040 later time as the court in its discretion may allow. If the election to purchase is filed by one or  
1041 more shareholders, the corporation shall, within 10 days thereafter, give written notice to all  
1042 shareholders, other than the petitioner. The notice must state the name and number of shares  
1043 owned by the petitioner and the name and number of shares owned by each electing shareholder  
1044 and must advise the recipients of their right to join in the election to purchase shares in  
1045 accordance with this section. Shareholders who wish to participate must file notice of their  
1046 intention to join in the purchase no later than 30 days after the effective date of the notice to  
1047 them. All shareholders who have filed an election or notice of their intention to participate in the  
1048 election to purchase thereby become parties to the proceeding and shall participate in the  
1049 purchase in proportion to their ownership of shares as of the date the first election was filed,  
1050 unless they otherwise agree or the court otherwise directs. After an election has been filed by the  
1051 corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ may  
1052 not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of  
1053 his or her shares, unless the court determines that it would be equitable to the corporation and the  
1054 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other  
1055 disposition.

1056           (3) If, within 60 days after the filing of the first election, the parties reach agreement as  
1057 to the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order  
1058 directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the  
1059 parties.

1060           (4) If the parties are unable to reach an agreement as provided for in subsection (3), the  
1061 court, upon application of any party, shall stay the proceeding under s. 607.1430(1)(b)  
1062 ~~proceeding~~ and determine the fair value of the petitioner's shares as of the day before the date on

---

<sup>39</sup> Should the corporation be obligated to post a bond that could be drawn upon to pay the estimated reasonable expenses of the petitioning party in the event that the corporation did not complete the purchase as elected or if the corporation instead chose to liquidate and dissolve the corporation under subsection (7)? See proposal to modify this section received from Richard Robles and Nicholas Rossoletti that is included below for an alternative that includes this concept.

1063 which the petition under s. 607.1430 was filed or as of such other date as the court deems  
1064 appropriate under the circumstances.<sup>40</sup>

1065 (5) Upon determining the fair value of the shares, the court shall enter an order  
1066 directing the purchase upon such terms and conditions as the court deems appropriate, which  
1067 may include payment of the purchase price in installments, when necessary in the interests of  
1068 equity, provision for security to assure payment of the purchase price and any additional costs,  
1069 fees, and expenses as may have been awarded, and, if the shares are to be purchased by  
1070 shareholders, the allocation of shares among such shareholders. In allocating the petitioner's  
1071 shares among holders of different classes of shares, the court shall attempt to preserve the  
1072 existing distribution of voting rights among holders of different classes insofar as practicable and  
1073 may direct that holders of a specific class or classes shall not participate in the purchase. Interest  
1074 may be allowed at the rate and from the date determined by the court to be equitable; however, if  
1075 the court finds that the refusal of the petitioning shareholder to accept an offer of payment was  
1076 arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the  
1077 petitioning shareholder had probable grounds for relief under s. 607.1430(1)(b)(3), **it may award**  
1078 **to the petitioning shareholder reasonable fees and expenses of counsel and of any experts**  
1079 **employed by petitioner.**<sup>41</sup>

1080 (6) Upon entry of an order under subsection (3) or subsection (5), the court shall  
1081 dismiss the petition to dissolve the corporation under s. 607.1430(1)(b) and the petitioning  
1082 shareholder shall no longer have any rights or status as a shareholder of the corporation, except  
1083 the right to receive the amounts awarded by the order of the court, which shall be enforceable in  
1084 the same manner as any other judgment.

1085 (7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after  
1086 the date the order becomes final<sup>42</sup> unless, before that time, the corporation files with the court a  
1087 notice of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403,  
1088 which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such  
1089 articles of dissolution, the court shall direct the winding up and liquidation of the corporation's  
1090 business and affairs in accordance with s. 607.1433(2) and (3)<sup>43</sup> ~~corporation shall be dissolved in~~  
1091 ~~accordance with the provisions of ss. 607.1405 and 607.1406,~~ and the order entered pursuant to

---

<sup>40</sup> The corollary statute in California (CA Corp §2000), in subsection (c), requires the court to appoint three disinterested appraisers to appraise the fair value of the shares, and contemplates that the award of the appraisers, or a majority of the appraisers, if confirmed by the court, shall be binding and conclusive on the parties. See proposal to modify this section received from Richard Robles and Nicholas Rossoletti that is included below for an alternative that includes this concept.

<sup>41</sup> Model Act language – “, it may award expenses to the petitioning shareholder.”

<sup>42</sup> Model Act language – (g) the purchase ordered pursuant to subsection (e) shall be made within 10 days after the date the order becomes final.”

<sup>43</sup> Modification has been made so as to be clear that, if the corporation elects not to complete its purchase of the petitioning shareholders' shares under s. 607.1436, but rather elects to wind up and liquidate, such liquidation shall remain under the jurisdiction and oversight of the Court. This is intended to address the concerns raised by the Jones v. Pfaff, 77 So.3<sup>rd</sup> 884 (2<sup>nd</sup> DCA, Florida, 2012), decision.

1092 subsection (5) shall no longer be of any force or effect, except that the court may award the  
1093 petitioning shareholder reasonable fees and expenses of counsel and any experts in accordance  
1094 with the provisions of subsection (5) and the petitioner may continue to pursue any claims  
1095 previously asserted on behalf of the corporation.

1096 (8) Any payment by the corporation pursuant to an order under subsection (3) or  
1097 subsection (5), other than an award of fees and expenses pursuant to subsection (5), is subject to  
1098 the provisions of s. 607.06401.

1099



1100 **Comments to Section 607.1436:**

1101 Florida generally follows the Model Act.

1102 Section 14.36(g) of the Model Act no longer includes the right to dissolve the corporation in lieu  
1103 of completing the purchase based on the purchase price determined by the court. This change  
1104 was made because the Corporate Laws Committee determined that giving the corporation the  
1105 option to purchase and then reversing its course and dissolving would be unfair to petitioning  
1106 shareholders and discourage them from making such petitions.

1107 The Co-Chairs have received a proposal to modify s. 607.1436 from two members of the  
1108 Subcommittee, Richard Robles and Nicholas Rossoletti (thank you Richard and Nicholas).  
1109 Richard and Nicholas were the lawyers who litigated the Jones v. Pfaff case. They believe that in  
1110 addition to solving the issue of court jurisdiction if the corporation elects not to proceed forward  
1111 with the buyout under subsection (7), that we should also require the corporation making the  
1112 election to have skin in the game (such as a bond). They base that view on a California statute on  
1113 the same topic. A copy of their proposal to modify s. 607.1436 follows, and a copy of the  
1114 corollary California statute on which their proposal is based will be circulated to the  
1115 Subcommittee under separate cover prior to the meeting at which the Subcommittee will  
1116 consider this section of the FBCA. Further, the issues raised by their proposal have been added to  
1117 footnotes on this section above so that the topics raised by Richard and Nicholas are on the table  
1118 for discussion by the Subcommittee when the Subcommittee considers this section of the FBCA.

1119 **Section 607.1436 as proposed by Richard Robles and Nicholas Rossoletti**

1120

1121 **607.1436 Election to purchase instead of dissolution.—**

1122 (1) In a proceeding under s. 607.1430(2) or (3) to dissolve a corporation, the corporation  
1123 may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned  
1124 by the petitioning shareholder at the fair value of the shares. An election pursuant to this section  
1125 shall be irrevocable unless the court determines that it is equitable to set aside or modify the  
1126 election.

1127 (2) An election to purchase pursuant to this section may be filed with the court at any time  
1128 within 90 days after the filing of the petition under s. 607.1430(2) or (3) or at such later time as  
1129 the court in its discretion may allow. If the election to purchase is filed by one or more  
1130 shareholders, the corporation shall, within 10 days thereafter, give written notice to all  
1131 shareholders, other than the petitioner. The notice must state the name and number of shares  
1132 owned by the petitioner and the name and number of shares owned by each electing shareholder  
1133 and must advise the recipients of their right to join in the election to purchase shares in  
1134 accordance with this section. Shareholders who wish to participate must file notice of their

1135 intention to join in the purchase no later than 30 days after the effective date of the notice to  
1136 them. All shareholders who have filed an election or notice of their intention to participate in the  
1137 election to purchase thereby become parties to the proceeding and shall participate in the  
1138 purchase in proportion to their ownership of shares as of the date the first election was filed,  
1139 unless they otherwise agree or the court otherwise directs. After an election has been filed by the  
1140 corporation or one or more shareholders, the proceeding under s. 607.1430(2) or (3) may not be  
1141 discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or  
1142 her shares, unless the court determines that it would be equitable to the corporation and the  
1143 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other  
1144 disposition.

1145 (3) If, within 60 days after the filing of the first election, the parties reach agreement as to  
1146 the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order  
1147 directing the purchase of petitioner's shares upon the terms and conditions agreed to by the  
1148 parties.

1149 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the  
1150 electing party shall provide a bond with sufficient security to pay the estimated reasonable  
1151 expenses (including attorney's fees) of the petitioning party if such expenses are recoverable  
1152 under subsection (6). Should the electing party fail to post the bond pursuant to this subsection,  
1153 the court shall continue with the judicial dissolution process pursuant to 607.1430. Upon the  
1154 posting of the bond and application of either party, the court shall stay the 607.1430 proceeding  
1155 and determine the fair value of the petitioner's shares as of the day before the date on which the  
1156 petition under 607.1430 was filed or as of such other date as the court deems appropriate under  
1157 the circumstances.

1158 (5) The court shall appoint three disinterested appraisers to appraise the fair value of the  
1159 shares owned by the petitioning party, and shall make an order referring the matter to the  
1160 appraisers so appointed for the purpose of ascertaining such value. The order shall prescribe the  
1161 time and manner of producing evidence, if evidence is required. The award of the appraisers or  
1162 of a majority of them, when confirmed by the court shall be final and conclusive upon all parties.  
1163 The court shall enter an order which shall provide in the alternative for the dissolution of the  
1164 corporation pursuant to 607.1433 unless payment is made for the shares within the time specified  
1165 by the order. If the electing party does not make payment for the shares within the time  
1166 specified, judgment shall be entered against them and the surety or sureties on the bond for the  
1167 amount of expenses (including attorney's fees) of the petitioning party, which would be subject  
1168 to execution. Any shareholder aggrieved by the action of the court may appeal therefrom.

1169 (6) If the court finds that the petitioning shareholder had probable grounds for relief under  
1170 s. 607.1430(3), it may award to the petitioning shareholder reasonable fees and expenses of  
1171 counsel and of any experts employed by petitioner.  
1172

1173           607.14401   Deposit with Department of Financial Services.

1174           Assets of a dissolved corporation that should be transferred to a creditor, claimant, or  
1175 shareholder of the corporation who cannot be found or who is not competent to receive them  
1176 shall be deposited, **within 6 months from the date fixed for the payment of the final liquidating**  
1177 **distribution**<sup>44</sup>, with the Department of Financial Services, where such assets shall be held as  
1178 abandoned property. When the creditor, claimant, or shareholder furnishes satisfactory proof of  
1179 entitlement to the amount or assets deposited, the Department of Financial Services shall pay the  
1180 creditor, claimant, or shareholder or his or her representative that amount or those assets.

1181

1182

---

<sup>44</sup> **To be discussed by the Subcommittee** - It is likely that most practitioners follow the timetable for deposits of abandoned property rather than this section. Should this section be modified as a result?

1183 **Commentary to s. 607.14401:**

1184 With some language differences, this section generally matches the corresponding section in the  
1185 Model Act, the biggest difference being that Florida mandates that the deposit occur within a six  
1186 month time frame. Additionally, the Model Act requires that the deposit be reduced to cash  
1187 before it is deposited.

1188 All but nine jurisdictions have similar provisions of their corporate statutes. Delaware is among  
1189 those which does not have a similar provision.

1190