## 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.

**Commentary to Section 607.1401:**

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

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

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

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

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

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

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

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

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

**Commentary for Section 607.1402:**

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

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

607.1403Articles of dissolution.

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

(a) The name of the corporation;

(b) The date dissolution was authorized;

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

~~(d) If dissolution was approved by the shareholders and if voting by voting groups was required, a statement that the number cast for dissolution by the shareholders was sufficient for approval must be separately provided for each voting group entitled to vote separately on the plan to dissolve.~~[1]

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

(3) For purposes of s. 607.1401 – s. 607.1409[2], "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity, as defined in ~~s. 607.1406(15~~subsection (4)~~).~~

[1] 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.

[2] This is a reference to subchapter A on Voluntary Dissolution. Last section reference still to be determined.

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

**Commentary for Section 607.1403:**

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

Two issues were considered:

1. Subsection 1(c) of the FBCA was modified to conform to the Model Act. However, it removes the requirement that the vote of voting groups be noted in the articles of dissolution. This difference has existed in the FBCA since 1989.

2. The language "in accordance with s. 607.0120" in the FBCA in subsection (1) has been retained, although not in the corollary section of the Model Act. It has been in the statute since 1989 and has been retained as a reminder to users of the FBCA that they need to comply with the FBCA section on filing requirements in filing articles of dissolution.

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

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

607.1404Revocation of dissolution.

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

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

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

(a) The name of the corporation;

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

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

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

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

(f) If shareholder action was required to revoke the dissolution, ~~the information required by s. 607.1403(1)(c) or (d)~~ a statement that the revocation was authorized by the shareholders in the manner required by this chapter and by the articles of incorporation.[3]

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

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

[3] ~~This provision may need to be changed depending on how we handle the issue described in FN 1.~~

**Commentary to Section 607.1404:**

The FBCA provision is identical to the Model Act.

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

607.1405Effect of dissolution.

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

(a) Collecting its assets;

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

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

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

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

(2) Dissolution of a corporation does not:

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

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

(c) Subject its directors or officers to standards of conduct different from those prescribed in ss. 607.0801-607.0859~~0 except as provided in s. 607.1421(4)~~[4];

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

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

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

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

[4] ~~Review when get to that section. Correct reference (based on new changes to Administrative Dissolution section) is to s. 607.1420(8). Still to be determined whether we will retain that provision in the FBCA.~~

(3) A distribution in liquidation under this section may only be made by a dissolved corporation. For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board of directors may fix a record date for determining shareholders entitled to a distribution in liquidation, which date may not be retroactive. If the board of directors does not fix a record date for determining shareholders entitled to a distribution in liquidation, the record date is the date the board of directors authorizes the distribution in liquidation.

(~~3~~4) The directors, officers, and agents of a corporation dissolved pursuant to s. 607.1403 shall not incur any personal liability thereby by reason of their status as directors, officers, and agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.

(~~4~~5) The name of a dissolved corporation is not ~~shall not be~~ available for assumption or use by another business entity ~~corporation~~ until 1 year ~~120 days~~ after the effective date of dissolution unless the dissolved corporation provides the ~~D~~department ~~of State~~ with an affidavit, executed as required pursuant to s. 607.0120, permitting the immediate assumption or use of the name by another business entity ~~corporation~~.

(~~5~~6) For purposes of this section, the circuit court, upon application of a shareholder, may appoint a trustee, custodian or receiver for any property owned or acquired by the corporation who may engage in any act permitted under subsection (1) if any director or officer of the dissolved corporation is unwilling or unable to serve or cannot be located.[3]

[3] Reconsider the necessity of this section in connection with the Subcommittee's review of s. 607.1430(1)(d).

**Commentary to Section 607.1405:**

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

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

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

~~**Should these three non-Model Act provisions be retained? – The co-chairs think so, but want the Subcommittee to consider this issue.**~~

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

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

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

s. 607.1406 Known claims against dissolved corporation

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

(2) The written notice must:

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

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

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

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

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

(f) State that the dissolved corporation may make distributions thereafter to other claimants and to the dissolved corporation's shareholders or persons interested without further notice[4].

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

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

(a) The claim is not received by the specified deadline; or

(b) If the claim is timely received but rejected by the dissolved corporation and:

1. The dissolved corporation causes the claimant to receive a written notice that the claim is rejected and will be barred unless the claimant commences an action against the dissolved corporation to enforce the claim not later than [90] days after the claimant receives the notice, and

2. The claimant does not commence the required action not later than the [90] days after the claimant receives the rejection notice.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on the effective date of dissolution is contingent.

s. 607.1407 Other claims against dissolved corporations

(1) A dissolved corporation may file or publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

(a) Either be filed with the department, on a form proscribed by the department, or be published in a newspaper of general circulation once a week for 2 consecutive weeks in a newspaper of general circulation in the applicable county (as defined in subsection (5)).

(b) Describe the information that must be included in a claim, state that the claim must be submitted in writing, and provide a mailing address where the claim may be sent; and

(c) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within four [three] years[5] after the filing of the notice, if filed, or publication of the notice, if published.

(3) If the dissolved corporation files or publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a

[5] 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.

proceeding to enforce the claim against the dissolved corporation within four [three][6] years after the publication date of the notice:

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

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation[7]; and

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

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

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

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

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

[6] See footnote 5.
[7] What does "acted upon" mean?
[8] 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).

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

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

607.1406Known claims against dissolved corporation.[5]

(1) A dissolved corporation[69] ~~or successor entity, as defined in subsection (15)~~, may dispose of the known claims against it by following the procedures described in subsections (2) – (7)~~, (3), and (4)~~.

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

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

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

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

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

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

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

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

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

(4) A dissolved corporation ~~or successor entity~~ electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons who have ~~with~~ known claims~~,~~ that are contingent upon the occurrence or nonoccurrence

[5] ~~Changes were made to FRLLCA ss. 605.0711 and 605.0712 that probably should be considered here.~~

[69] In s. 607.1403(3), dissolved corporation is defined as including a successor entity.

of future events or otherwise conditional or unmatured~~,~~ and request that the ~~such~~ persons present the ~~such~~ claims in accordance with the terms of the ~~such~~ notice. The ~~Such~~ notice must ~~shall~~ be in substantially the same form, and sent in the same manner, as described in subsection (2).

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

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

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

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

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

[10] This section includes contingent claims that are also intended to be covered by s. 607.1407.

(a)~~Shall pay~~pPay the claims admitted or made and not rejected in accordance with subsection (3);

(b)~~Shall post~~pPost the security offered and not rejected pursuant to subsection (5);

(c)~~Shall post~~pPost any security ordered by the circuit court in any proceeding under subsections (6) and (7); and

(d)~~Shall pay~~pPay or make provision for all other known obligations of the dissolved corporation ~~or such successor entity~~.

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

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

(11) Directors of a dissolved corporation or governing persons of a successor entity which has complied with subsection (9) or subsection (10) are not personally liable to the claimants of the dissolved corporation.[11]

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

[11] There is no corollary provision in s. 605.0711 of FRLLCA.

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

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

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

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

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

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

**Commentary to Section 607.1406:**

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

- While the deadline cannot be less than 120 days from the date of the notice under subsection (2)(c) of the FBCA, the DGCL allows such deadlines no less than 60 days from the date of the notice.
- The notice under subsection (2), under the DGCL but not the FBCA, must contain the aggregate amount, on an annual basis, of all distributions made by the corporation to its 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 general circulation.
- Changes were made to the DGCL in 2010 to add provisions for nonstock corporations and nonprofit nonstock corporations.

~~Since Florida is a Model Act state, the Committee should discuss whether to follow the much more compact s. 14.06 of the Model Act rather than continuing to follow the DGCL provisions.~~

~~The Model Act provision reads as follows:~~

~~§ 14.06. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION~~

~~(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.~~

~~(b) The written notice must:~~
~~(1) describe information that must be included in a claim;~~
~~(2) provide a mailing address where a claim may be sent;~~

~~(3) state the deadline, which may not be fewer than 120 days after the written notice is effective, by which the dissolved corporation shall receive the claim; and~~

~~(4) state that the claim will be barred if not received by the deadline.~~

~~(c) A claim against the dissolved corporation is barred:~~

~~(1) if a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or~~

~~(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the rejection notice is effective.~~

~~(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.~~

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

607.1407**Other** ~~Unknown~~ claims against dissolved corporation.

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

(~~1~~a) A dissolved corporation ~~or successor entity~~ may file notice of its dissolution with the ~~D~~department ~~of State~~ on the form prescribed by the ~~D~~department ~~of State~~[12] and request that persons with claims against the corporation which are not known to the corporation ~~or successor entity~~ present them in accordance with the notice. ~~The dissolved corporation shall also post the notice conspicuously for at least 30 days on the dissolved corporation's website, if any[7].~~ The notice shall:

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

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

~~(c)~~3. State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4[8][13] years after the filing of the notice.

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

[12] This wording is not in s. 605.0712(1)(a).

~~[7] As included in s. 14.07(b)(1)(ii) of the Model Act, should posting conspicuously on the dissolved corporation's website be sufficient to provide notice as a stand-alone third alternative and not be added as an additional requirement to subsection (1)?~~

[8][13] 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. ~~Notwithstanding, should the~~The Model Act provision contemplates a three-year statute of limitations~~be reduced to three years following the Model Act provision~~.

[14] This wording is not in s. 605.0712(1)(b).

[15] This wording is not in s. 605.0712(1)(b).

[16] 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."

~~also post the notice conspicuously for at least 30 days on the dissolved corporation's website, if any~~[9]~~.~~[17] The notice shall:

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

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

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4~~10~~[18] years after the ~~date of the second consecutive weekly~~ publication of the notice ~~authorized by this section~~.

(~~3~~3[2]) If the dissolved corporation ~~or successor entity~~ complies with paragraph ~~subsection~~ (1)(a) or paragraph 1(b) ~~or subsection (2)~~, unless sooner barred by another statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences an action ~~a proceeding~~ ~~in accordance with s. 607.1408~~ to enforce the claim against the dissolved corporation within 4~~11~~[19] years after the date of filing the notice with the ~~D~~department ~~of State~~ or the date of the ~~second consecutive weekly~~ publication, as applicable:

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

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

(4~~3~~4) A claim ~~may be~~that is not barred by this section or another statute limiting actions may be enforced ~~entered under this section~~:

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

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of such shareholder's pro rata share of the claim or the corporate assets distributed to such shareholder in liquidation, whichever is less, provided that the aggregate liability of any shareholder of a dissolved corporation arising under

[9] ~~As included in s. 14.07(b)(1)(ii) of the Model Act, should posting conspicuously on the dissolved corporation's website be sufficient to provide notice as a stand-alone third alternative and not be added as an additional requirement to subsection (2)?~~

[17] This language is not in s. 605.0712.

~~10~~[18] See footnote ~~9.~~7.

~~11~~[19] See footnote ~~9.~~7.

[20] This language is not in s. 605.0712(2)

this section, s. 607.1406, or otherwise may not exceed the amount distributed to the shareholder after ~~in~~ dissolution.

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

**Commentary to Section 607.1407:**

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

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

~~Changes were made in the Model Act in 2000 to allow for posting on the dissolved corporation's website as an alternative to newspaper publication. With the decline in newspaper circulation and the rise of the web, it seems logical to add that to the FBCA as well, and changes to that end have been suggested above in both subsection (1) and subsection (2). [TO BE DISCUSSED — SHOULD THIS BE A STAND-ALONE NOTIFICATION TO POTENTIAL CLAIMANTS.]~~

~~Section 14.07 of the Model Act reads as follows:~~

~~§ 14.07. OTHER CLAIMS AGAINST DISSOLVED CORPORATION~~

~~(a) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.~~

~~(b) The notice must:~~

~~(1) be published (i) one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located or (ii) be posted conspicuously for at least 30 days on the dissolved corporation's website;~~

~~(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and~~

~~(3) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.~~

~~(c) If the dissolved corporation publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after the publication date of the notice:~~

~~(1) a claimant who was not given written notice under section 14.06;~~

~~(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation;~~

~~(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.~~

~~(d) A claim that is not barred by section 14.06(c) or section 14.07(c) may be enforced:~~

~~(1) against the dissolved corporation, to the extent of its undistributed assets; or~~

~~(2) except as provided in section 14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.~~

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

607.1408 Court Proceedings.

(1) A dissolved corporation that has filed or published a notice under s. 607.1407(1) ~~or (2) shall petition~~(a) or (1)(b) file an application with the circuit court in the applicable county ~~where the corporation's principal office is located or was located at the effective date of dissolution to determine~~, as defined in s. 607.1406(16) for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under s. ~~607.1407(3).~~607.1407.

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

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

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

**Commentary to Section 607.1408.**

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

607.1409 Director Duties

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

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

[21] Is there any overlap between this provision and s. 607.1405(4)?

**Commentary to Section 607.1409:**

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

607.1420~~Grounds for~~ Administrative dissolution.

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

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

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

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

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

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

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

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

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

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

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

(4) If the department determines that one or more grounds exist for administratively dissolving a corporation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the department shall serve notice in a record to the corporation of its intent to administratively dissolve the corporation. Issuance of the notice may be by electronic transmission to a corporation that has provided the department with an e-mail address.

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

(6) A corporation that has been administratively dissolved continues in existence but may only carry on activities necessary to wind up its activities and affairs, liquidate and distribute its assets, and notify claimants under ss. 607.1405, 607.1406 and 607.1407. ~~12~~22

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

~~12~~22 This is the same as s. 605.1420(6).

**Commentary to Section 607.1420:**

This provision has been updated and modernized to follow the substance of FRLLCA s. 605.0714.

The FBCA contains provisions allowing for administrative dissolution in other situations (paragraphs (1)(e) and (f), and subsection (2)). Neither of these grounds for administrative dissolution was included in the corollary provision of FRLLCA, although both grounds were in the corollary section of Chapter 608 (in s. 608.448). In both cases, the Subcommittee believes that these provisions are almost never used, and the Division of Corporations has advised the Subcommittee that they have no objection to removing these provisions from the FBCA.[~~13~~23]

[~~13~~23] The Subcommittee will reconsider this issue if another Florida government agency has a concern with this change.

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

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

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

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

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

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

**Commentary to Section 607.1421:**

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

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

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

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

607.1422Reinstatement following administrative dissolution.

(1) A corporation that is administratively dissolved under s. 607.14201 or former s. 607.1421 may apply to the Ddepartment ~~of State~~ for reinstatement at any time after the effective date of dissolution. The corporation must submit all fees and penalties then owned by the corporation at the rates provided by laws at the time the corporation applies for reinstatement, together with an application for ~~a~~ reinstatement ~~form~~ prescribed and furnished by the Ddepartment ~~of State~~, which is ~~or a current uniform business report~~ signed by both the registered agent and an officer or director of ~~and all fees then owed by~~ the corporation~~,~~ and states: ~~computed at the rate provided by law at the time the corporation applies for reinstatement.~~

(a) The name of the corporation.

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

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

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

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

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

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

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

(4) When reinstatement under this section becomes effective:

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

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

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

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

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

(54) The name of the dissolved corporation is ~~shall~~ not ~~be~~ available for assumption or use by another business entity ~~corporation~~ until 1 year after the effective date of dissolution unless the dissolved corporation provides the ~~D~~department ~~of State~~ with an affidavit executed as required pursuant to ~~by~~ s. 607.0120 permitting the immediate assumption or use of the name by another business entity ~~corporation~~.[~~14~~24]

(6~~5~~) If the name of the dissolved corporation has been lawfully assumed in this state by another business entity ~~corporation~~, the ~~D~~department ~~of State~~ shall require the dissolved corporation to amend its articles of incorporation to change its name before accepting its application for reinstatement.[~~15~~25]

[~~14~~24] Similar to this change, the last words of s. 605.0715(5) should be changed from "limited liability company" to "business entity."

[~~15~~25] This subsection is not in FRLLCA, and needs to be added into FRLLCA.

**Commentary to Section 607.1422:**

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

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

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

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

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

(2)Within 30 days after service of a notice of denial of reinstatement, a ~~After exhaustion of administrative remedies, the~~ corporation may appeal the denial ~~of reinstatement to~~ by petitioning the circuit court in the county where the corporation's principal office is located or was located at the effective date of dissolution~~16~~[26] to set aside the dissolution ~~the appropriate court as provided in s. 120.68 within 30 days after service of the notice of denial is perfected effected~~. The petition must be served on the department and contain a copy of the department's notice of administrative ~~corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the D~~department~~'s of State's certificate of~~ dissolution, the corporation's application for reinstatement, and the department's notice of denial.

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

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

~~16~~[26] 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.

**Commentary to Section 607.1423:**

This section is revised to follow the wording of the corollary section of FRLLCA.

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

607.1430Grounds for judicial dissolution.[17][27]

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

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

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

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

~~(b)~~The enumeration in subparagraphs 1. and 2. above ~~paragraph (a)~~ of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state[18][28];

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

~~(a)~~ 1. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock[19][29]; or

~~(b)~~ 2. The shareholders are deadlocked[20][30] in voting power and have failed to elect successors to directors whose terms have expired[21][31] or would have expired upon qualification of their successors;

~~(3) In a proceeding by a shareholder or group of shareholders in a corporation having 35 or fewer shareholders if it is established that:~~[22][32]

[17][27] The Subcommittee is seeking comments on the sections of the FBCA dealing with judicial dissolution from the Business Litigation Committee of the BLS.

[18][28] This is not a Model Act provision.

[19][29] This addition follows s. 14.30(a)(2)(i) of the 2016 version of the Model Act.

[20][30] 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?

[21][31] Model Act provision requires failure to elect successors for a period of at least two consecutive annual meeting dates.

[22][32] 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.

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

~~(b)~~ 4. The directors or those in control of the corporation have acted, are acting, or are reasonably expected to act[2333] in a manner that is illegal or fraudulent;

5. The directors or those in control of the corporation have acted, are acting, or are reasonable expected to act in a manner that is oppressive[2434], so long as the shareholder or shareholders seeking judicial dissolution own more than [10%] of the outstanding shares.[2535]

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

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

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

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

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

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

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

(b) Not a covered security, but are held by at least 300 shareholders and the shares outstanding have a market value of at least $20 million (exclusive of the

[2333] Model Act language is "will act" rather than "reasonably expected to act".

[2434] 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.

[2535] Arbitrary number – to be discussed.

value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders and voting trust beneficial owners owning more than 10% of such shares).

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

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

**Commentary to Section 607.1430:**

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

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

Second, Florida does not include "oppression" of minority holders as a grounds for dissolution. 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. Florida courts have often gotten around the failure to include "oppression" as a grounds for dissolution using fiduciary principles. However, the failure to include "oppression" as a grounds for dissolution has a definite chilling effect on the rights of minority shareholders and causes an unequal playing field between minority holders and majority holders. A memorandum on this topic describing how each state has dealt with this question (prepared by Andrew Schwartz) will be provided to the Subcommittee under separate cover when this section is reviewed by the Subcommittee.

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

607.1431Procedure for judicial dissolution.[2636]

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

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

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

(4)[2737] Within 10[2838] days of the commencement of a proceeding to dissolve a corporation under s. 607.1430(1)(b), the corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 607.1436 and accompanied by a copy of section 607.1436.

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

[2636] We need litigator input for this section.

[2737] 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.

[2838] If we include this subsection in the FBCA, is 10 days too short a period?

**Commentary to Section 607.1431:**

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

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

607.1432Receivership or custodianship.

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

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

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

(a) The receiver:

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

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

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

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

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

(6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state, whenever the court deems that circumstances exist requiring the appointment of such a receiver. The court may appoint such an ancillary receiver for a foreign corporation even though no receiver has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership when an order entered by a court of competent jurisdiction in the other state provides for a receivership of the corporation.

**Commentary to Section 607.1432:**

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

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

607.1433Judgment of dissolution.

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

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

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

**Commentary to Section 607.1433:**

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

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

607.1434Alternative remedies to judicial dissolution.

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

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

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

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

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

**Commentary to s. 607.1434**:

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

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

607.1435Provisional director.

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

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

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

**Commentary to s. 607.1435:**

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

607.1436Election to purchase instead of dissolution.

(1) In a proceeding under s. 607.1430(1)(b) ~~(2) or (3)~~ to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares[2939]. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

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

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

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

[2939] 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.

which the petition under s. 607.1430 was filed or as of such other date as the court deems appropriate under the circumstances.[3040]

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, when necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among such shareholders. In allocating the petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(1)(b)~~(3)~~, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by petitioner.[3141]

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

(7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the date the order becomes final[3242] unless, before that time, the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 607.1433(2) and (3)[3343] ~~corporation shall be dissolved in accordance with the provisions of ss. 607.1405 and 607.1406,~~ and the order entered pursuant

[3040] 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.

[3141] Model Act language – ", it may award expenses to the petitioning shareholder."

[3242] Model Act language – (g) the purchase ordered pursuant to subsection (e) shall be made within 10 days after the date the order becomes final."

[3343] 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.3rd 884 (2nd DCA, Florida, 2012), decision.

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

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

**Comments to Section 607.1436:**

Florida generally follows the Model Act.

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

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

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

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

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

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

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

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

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

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

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

607.14401 Deposit with Department of Financial Services.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be deposited, within 6 months from the date fixed for the payment of the final liquidating distribution[3444], with the Department of Financial Services, where such assets shall be held as abandoned property. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount or assets deposited, the Department of Financial Services shall pay the creditor, claimant, or shareholder or his or her representative that amount or those assets.

[3444] 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?

**Commentary to s. 607.14401:**

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

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

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