

PROPOSED MODIFICATIONS TO CHAPTER 607

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607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1301-607.1340:

(1) “Accrued interest” means interest ~~from the date the corporate action becomes effective until the date of payment,~~ (i) at the rate of interest agreed to by the corporation and the shareholder demanding appraisal, or (ii) at the rate of interest that is determined by the court to be equitable, but in no event at a rate greater than the rate of interest determined for judgments pursuant to s. 55.03, the determined as of the effective date of the corporate action; however, if the court finds that the shareholder demanding appraisal acted arbitrarily or otherwise not in good faith, no interest shall be allowed by the court.

14 607.1302 Right of shareholders to appraisal.

15 (1) A shareholder of a domestic corporation is entitled to appraisal rights, and to
16 obtain payment of the fair value of that shareholder's shares, in the event of any of the following
17 corporate actions:

18 (a) Consummation of a domestication or a conversion of such corporation
19 pursuant to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is
20 required for the domestication or the conversion;

21 (b) Consummation of a merger to which such corporation is a party:

22 1. If shareholder approval is required for the merger under s.
23 607.1103 or would be required, but for s. 607.11035, except that appraisal rights
24 shall not be available to any shareholder of the corporation with respect to shares
25 of any class or series that remains outstanding after consummation of the merger
26 where the terms of such class or series have not been materially altered; or

27 2. If such corporation is a subsidiary and the merger is governed by s.
28 607.1104;

29 (c) Consummation of a share exchange to which the corporation is a party as
30 the corporation whose shares will be acquired, except that appraisal rights ~~shall not be~~ ~~are~~
31 ~~not~~ available to any shareholder of the corporation with respect to any class or series of
32 shares of the corporation that is not acquired in the share exchange;

33 (d) Consummation of a disposition of assets pursuant to s. 607.1202 if the
34 shareholder is entitled to vote on the disposition, ~~including a sale in dissolution~~, except
35 that appraisal rights shall not be available to any shareholder of the corporation with
36 respect to shares of any class or series if:

37 1. Under the terms of the corporate action approved by the
38 shareholders there is to be distributed to shareholders in cash the corporation's net
39 assets, in excess of a reasonable amount reserved to meet claims of the type
40 described in ss. 607.1406 and 607.1407, within 1 year after the shareholders'
41 approval of the action and in accordance with their respective interests determined
42 at the time of distribution; and

43 2. The disposition of assets is not an interested transaction;

44 (e) An amendment of the articles of incorporation with respect to a class or
45 series of shares which reduces the number of shares of a class or series owned by the

46 shareholder to a fraction of a share if the corporation has the obligation or the right to
47 repurchase the fractional share so created;

48 (f) Any other merger, share exchange, disposition of assets, or amendment to
49 the articles of incorporation, in each case to the extent provided as of the record date by
50 the articles of incorporation, bylaws, or a resolution of the board of directors providing
51 for appraisal rights, except that no bylaw or board resolution providing for appraisal
52 rights may be amended or otherwise altered except by shareholder approval;

53 ~~(g) An amendment to the articles of incorporation or bylaws of the~~
54 ~~corporation, the effect of which is to alter or abolish voting or other rights with respect to~~
55 ~~such interest in a manner that is adverse to the interest of such shareholder, except as the~~
56 ~~right may be affected by the voting or other rights of new shares then being authorized of~~
57 ~~a new class or series of shares;~~

58 (gh) An amendment to the articles of incorporation or bylaws of a corporation
59 the effect of which is to adversely affect the interest of the shareholder by altering or
60 abolishing appraisal rights under this section;

61 (hi) With regard to a class of shares prescribed in the articles of
62 incorporation ~~prior to October 1, 2003, including any shares within that class~~
63 ~~subsequently authorized by amendment, in any corporation as to which a particular class~~
64 of shares was in existence prior to October 1, 2003 and, for classes of shares authorized
65 on or after October 1, 2003, in any corporation with 100 or fewer shareholders, any
66 amendment of the articles of incorporation if the shareholder is entitled to vote on the
67 amendment and if such amendment would adversely affect such shareholder by:

68 1. Altering or abolishing any preemptive rights attached to any of his,
69 her, or its shares;

70 2. Altering or abolishing the voting rights pertaining to any of his,
71 her, or its shares, except as such rights may be affected by the voting rights of
72 new shares then being authorized of any existing or new class or series of shares;

73 3. Effecting an exchange, cancellation, or reclassification of any of
74 his, her, or its shares, when such exchange, cancellation, or reclassification would
75 alter or abolish the shareholder's voting rights or alter his, her, or its percentage of
76 equity in the corporation, or effecting a reduction or cancellation of accrued
77 dividends or other arrearages in respect to such shares;

78 4. Reducing the stated redemption price of any of the shareholder's
79 redeemable shares, altering or abolishing any provision relating to any sinking

80 fund for the redemption or purchase of any of his, her, or its shares, or making
81 any of his, her, or its shares subject to redemption when they are not otherwise
82 redeemable;

83 5. Making noncumulative, in whole or in part, dividends of any of the
84 shareholder's preferred shares which had theretofore been cumulative;

85 6. Reducing the stated dividend preference of any of the
86 shareholder's preferred shares; or

87 7. Reducing any stated preferential amount payable on any of the
88 shareholder's preferred shares upon voluntary or involuntary liquidation;

89 (i) An amendment of the articles of incorporation of a social purpose
90 corporation to which s. 607.504 or s. 607.505 applies;

91 (j) An amendment of the articles of incorporation of a benefit
92 corporation to which s. 607.604 or s. 607.605 applies;

93 (k) A merger, domestication, conversion, or share exchange of a social
94 purpose corporation to which s. 607.504 applies; or

95 (l) A merger, domestication, conversion, or share exchange of a benefit
96 corporation to which s. 607.604 applies.

97 (2) Notwithstanding subsection (1), the availability of appraisal rights under
98 paragraphs (1)(a), (b), (c), (d), ~~and (e)~~, (f) and (h) shall be limited in accordance with the
99 following provisions:

100 (a) Appraisal rights shall not be available for the holders of shares of any
101 class or series of shares which is:

102 1. A covered security under s. 18(b)(1)(A) or (B) of the Securities
103 Act of 1933;

104 2. Not a covered security, but traded in an organized market (or
105 subject to a comparable trading process) and has at least 2,000 shareholders and
106 the outstanding shares of such class or series have a market value of at least \$20
107 million, exclusive of the value of outstanding shares held by the corporation's
108 subsidiaries, by the corporation's senior executives, by the corporation's directors,
109 and by the corporation's beneficial shareholders and voting trust beneficial owners
110 owning more than 10 percent of the outstanding shares; or

111 3. Issued by an open end management investment company registered
112 with the Securities and Exchange Commission under the Investment Company
113 Act of 1940 and which may be redeemed at the option of the holder at net asset
114 value.

115 (b) The applicability of paragraph (a) shall be determined as of:

116 1. The record date fixed to determine the shareholders entitled to
117 receive notice of the meeting of shareholders to act upon the corporate action
118 requiring appraisal rights, the record date fixed to determine the shareholders
119 entitled to sign a written consent approving the corporate action requiring
120 appraisal rights, or, in the case of an offer made pursuant to s. 607.11035, the date
121 of such offer; or

122 2. If there will be no meeting of shareholders, no written consent
123 approving the corporate action, and no offer is made pursuant to s. 607.11035, the
124 close of business on the day before the consummation of the corporate action or
125 the effective date of the amendment of the articles, as applicable.

126 (c) Paragraph (a) is not applicable and appraisal rights shall be available
127 pursuant to subsection (1) for the holders of any class or series of shares where the
128 corporate action is an interested transaction.

129 (d) For purposes of paragraph (2)(a)2., a “comparable trading process” shall
130 exist if:

131 1. The market price of the corporation’s shares is determined at least
132 quarterly based on an independent valuation and by following a formalized
133 process that is designed to determine a value for the corporation’s shares that is
134 comparable to the value of comparable publicly traded companies; and

135 2. The corporation repurchases the shares at pricing set by its board
136 of directors based on the independent valuation and subject to certain terms and
137 conditions established by the corporation and provides the corporation's
138 stockholders with a trading market comparable to what would typically be
139 available if the corporation's shares were traded in an organized market.

140 (3) Notwithstanding any other provision of this section, the articles of incorporation
141 as originally filed or any amendment to the articles of incorporation may limit or eliminate
142 appraisal rights for any class or series of preferred shares, except that:

143 (a) No such limitation or elimination shall be effective if the class or series
144 does not have the right to vote separately as a voting group, alone or as part of a group,

145 on the action or if the action is a domestication under s. 607.11920 or a conversion under
146 s. 607. 11930, or a merger having a similar effect as a domestication or conversion in
147 which the domesticated eligible entity or the converted eligible entity, as applicable, is an
148 eligible entity, and

149 (b) Any such limitation or elimination contained in an amendment to the
150 articles of incorporation that limits or eliminates appraisal rights for any of such shares
151 that are outstanding immediately before the effective date of such amendment or that the
152 corporation is or may be required to issue or sell thereafter pursuant to any conversion,
153 exchange, or other right existing immediately before the effective date of such
154 amendment shall not apply to any corporate action that becomes effective within 1 year
155 after the effective date of such amendment if such action would otherwise afford
156 appraisal rights.

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159 607.1303 Assertion of rights by nominees and beneficial owners.

160
161 (1) A record shareholder may assert appraisal rights as to fewer than all the shares
162 registered in the record shareholder's name but owned by a beneficial shareholder or a voting
163 trust beneficial owner only if (i) the record shareholder objects with respect to all shares of the
164 class or series owned by the beneficial shareholder or a voting trust beneficial owner, (ii) the
165 particular beneficial shareholder or voting trust beneficial owner acquired all such shares before
166 the record date established under s. 607.1321 in connection with the applicable corporate action,
167 and (iii) the record shareholder notifies the corporation in writing of its ~~the~~ name and address (if
168 the record shareholder beneficially owns the shares as to which appraisal rights are being
169 asserted) or notifies the corporation in writing of the name and address of each the particular
170 beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being
171 asserted. The rights of a record shareholder who asserts appraisal rights for only part of the
172 shares held of record in the record shareholder's name under this subsection shall be determined
173 as if the shares as to which the record shareholder objects and the record shareholder's other
174 shares were registered in the names of different record shareholders.

175 (2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal
176 rights as to shares of any class or series held on behalf of the shareholder only if such
177 shareholder:

178 (a) Submits to the corporation the record shareholder's written consent to the
179 assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

180 (b) Does so with respect to all shares of the class or series that are beneficially
181 owned by the beneficial shareholder or the voting trust beneficial owner.

182 (c) Acquired all shares of the class or series before the record date established
183 under s. 607.1321 in connection with the applicable corporate action.

184

185 607.1321 Notice of intent to demand payment.

186

187 (1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is
188 submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal
189 rights with respect to any class or series of shares:

190 (a) Must have beneficially owned the shares of such class or series as of the
191 record date for the shareholders' meeting at which the proposed corporate action is to be
192 submitted to a vote;

193 (b) Must deliver to the corporation before the vote is taken written notice of
194 the shareholder's intent to demand payment if the proposed corporate action is
195 effectuated, for all shares of such class or series beneficially owned by the shareholder as
196 of the record date for the shareholders' meeting at which the proposed corporate action is
197 to be submitted to a vote; and

198 (c) Must not vote, or cause or permit to be voted, any shares of such class or
199 series in favor of the proposed corporate action.

200 (2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be
201 approved by written consent, a shareholder who wishes to assert appraisal rights with respect to
202 any class or series of shares ~~must not sign a consent in favor of the proposed corporate action~~
203 ~~with respect to that class or series of shares.;~~

204 (a) Must have beneficially owned the shares of such class or series as of the
205 record date established for determining who is entitled to sign a written consent;

206 (b) Must assert such appraisal rights for all shares of such class or series
207 beneficially owned by the shareholder as of the record date for determining who is
208 entitled to sign the written consent; and

209 (c) Must not sign a consent in favor of the proposed corporate action with
210 respect to that class or series of shares.

211 (3) If a proposed corporate action specified in s. 607.1302(1) does not require
212 shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal
213 rights with respect to any class or series of shares:

214 (a) Must have beneficially owned the shares of such class or series as of the date
215 the offer to purchase is made pursuant to s. 607.11035;

216 (b) Must deliver to the corporation before the shares are purchased pursuant to
217 the offer a written notice of the shareholder's intent to demand payment if the proposed

218 action is effected for all shares of such class or series beneficially owned by the
219 shareholder as of the date the offer to purchase is made pursuant to s. 607.11035; and

220 (b) Must not tender, or cause or permit to be tendered, any shares of such class
221 or series in response to such offer.

222 (4) A shareholder who may otherwise be entitled to appraisal rights but does not satisfy
223 the requirements of subsection (1), subsection (2), or subsection (3) is not entitled to payment
224 under this chapter.

225

226 607.1322 Appraisal notice and form.

227 (1) If a proposed corporate action requiring appraisal rights under s. 607.1302(1)
228 becomes effective, the corporation must deliver a written appraisal notice and form required by
229 paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321(1), (2), or (3).
230 In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and
231 form to all record shareholders who may be entitled to assert appraisal rights.

232 (2) The appraisal notice must be delivered no earlier than the date the corporate action
233 became effective, and no later than 10 days after such date, and must:

234 (a) Supply a form that specifies the date that the corporate action became
235 effective and that provides for the shareholder to state:

236 1. The shareholder's name and address.

237 2. The number, classes, and series of shares as to which the shareholder
238 asserts appraisal rights.

239 3. That the shareholder did not vote for or consent to the transaction.

240 4. Whether the shareholder accepts the corporation's offer as stated in
241 subparagraph (b)4.

242 5. If the offer is not accepted, the shareholder's estimated fair value of
243 the shares and a demand for payment of the shareholder's estimated value plus
244 accrued interest, if and to the extent applicable.

245 (b) State:

246 1. Where the form must be sent and where certificates for certificated
247 shares must be deposited and the date by which those certificates must be
248 deposited, which date may not be earlier than the date by which the corporation
249 must receive the required form under subparagraph 2.

250 2. A date by which the corporation must receive the form, which date
251 may not be fewer than 40 nor more than 60 days after the date the subsection (1)
252 appraisal notice and form are sent, and state that the shareholder shall have
253 waived the right to demand appraisal with respect to the shares unless the form is
254 received by the corporation by such specified date.

255 3. The corporation's estimate of the fair value of the shares.

256 4. An offer to each shareholder who is entitled to appraisal rights to pay
257 the corporation's estimate of fair value set forth in subparagraph 3.

258 5. That, if requested in writing, the corporation will provide to the
259 shareholder so requesting, within 10 days after the date specified in subparagraph
260 2., the number of shareholders who return the forms by the specified date and the
261 total number of shares owned by them.

262 6. The date by which the notice to withdraw under s. 607.1323 must be
263 received, which date must be within 20 days after the date specified in
264 subparagraph 2.

265 (c) If not previously provided, be accompanied by a copy of ss. 607.1301-
266 607.1340.

267

268 607.1326 Procedure if shareholder is dissatisfied with offer.

269 (1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant
270 to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s.
271 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of
272 that estimate plus accrued interest, if and to the extent applicable.

273 (2) A shareholder who fails to notify the corporation in writing of that shareholder's
274 demand to be paid the shareholder's stated estimate of the fair value plus accrued interest, if and
275 to the extent applicable under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2.
276 waives the right to demand payment under this section and shall be entitled only to the payment
277 offered by the corporation pursuant to s. 607.1322(2)(b)4.

278 (3) With respect to a shareholder who properly makes demand for payment under s.
279 607.1326(1), at any time after the shareholder so makes demand for payment under s.
280 607.1326(1), including during a court proceeding pursuant to s. 607.1330, the corporation shall
281 have the right to prepay to the shareholder (and the shareholder shall be obligated to accept such
282 prepayment) all or any portion of the amount that the corporation has determined to be due under
283 s. 607.1322(2)(b)3.

284 (a) If such prepayment is made within 90 days after the earlier of the date on
285 which the appraisal notice is provided by the corporation under s. 607.1322(1) or the
286 deadline date by which the appraisal notice is required to be provided by the corporation
287 under s. 607.1322(2), accrued interest will only be payable, if at all, computed from the
288 date that the corporate action became effective, to the shareholder entitled to appraisal
289 rights on amounts determined to be due to the shareholder above the amount so prepaid,
290 and no accrued interest will be payable to the shareholder entitled to appraisal rights on
291 the prepaid amount.

292 (b) If such prepayment is made more than 90 days after the earlier of the date
293 on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the
294 deadline date by which the appraisal notice is required to be provided by the corporation
295 under s. 607.1322(2) the prepayment must include applicable accrued interest on the
296 amount that the corporation has determined to be due under s. 607.1322(2)(b)3.,
297 computed from the date that the corporate action became effective through the date of the
298 prepayment and, in addition, accrued interest, if and to the extent applicable, computed
299 from the date the corporate action became effective, on amounts determined to be due to
300 the shareholder above the amount so prepaid.

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302

303 607.1330 Court action.

304 (1) If a shareholder makes demand for payment under s. 607.1326 which remains
305 unsettled, the corporation shall commence a proceeding within 60 days after receiving the
306 payment demand and petition the court to determine the fair value of the shares and accrued
307 interest, if and to the extent applicable, computed from the date the corporate action became
308 effective, taking into account for these purposes the amount of any prepayment that has been
309 made to the shareholder by the corporation under s. 607.1326(3) ~~from the date of the corporate~~
310 action. If the corporation does not commence the proceeding within the 60-day period, any
311 shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in
312 the name of the corporation.

313 * * * *

314 (5) Each shareholder entitled to appraisal rights who is made a party to the proceeding
315 is entitled to judgment for the amount of the fair value of such shareholder's shares as found by
316 the court, plus accrued interest, if and to the extent applicable, as found by the court, taking into
317 account for these purposes the amount of any prepayment that has been made to the shareholder
318 by the corporation under s. 607.1326(3).

319

320 617.0825 Board committees and advisory committees.

321 (9) This section does not apply to a committee established under chapter 718, chapter
322 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s.
323 720.305(2) 720.303(2), or s. 720.3035(1), or 720.405, respectively.

324 **Potential change to s. 617.1703 currently being discussed with members of the RPPTL**
325 **Section.**

326 617.1703 Application of chapter.

327 The provisions of this chapter shall be applicable to a corporation that is an association as
328 defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding
329 cooperatives, chapter 720 regarding homeowners associations, chapter 721 regarding timeshares,
330 and chapter 723 regarding mobile homeowners' associations except to the extent:

331 1. Of ~~In the event of~~ any conflict between the provisions of this chapter and
332 the respective chapter 718 regarding condominiums, chapter 719 regarding cooperatives,
333 chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or
334 chapter 723 regarding mobile home owners' associations, or

335 2. Otherwise provided for in any of chapter 718, chapter 719, chapter 720,
336 chapter 721, or chapter 723;

337 in which case the applicable provisions of such other respective chapters shall apply. The
338 provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the
339 foregoing chapters or to any other corporation where membership in the corporation is required
340 pursuant to a document recorded in the county property records.

341