Chapter 607

607.0701. Annual meeting

(1) A corporation shall hold a meeting of shareholders annually, for the election of directors and for the transaction of any proper business, at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold the annual meeting at the time stated in or fixed in accordance with a corporation's bylaws or pursuant to this act does not affect the validity of any corporate action and shall not work a forfeiture of or dissolution of the corporation.

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at an annual meeting of shareholders may, by means of remote communication:

(a) Participate in an annual meeting of shareholders.

(b) Be deemed present in person and vote at an annual meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the annual meeting by means of remote communication is a shareholder or proxy holder;

2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the annual meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the annual meeting substantially concurrently with such proceedings; and

3. If any shareholder or proxy holder votes or takes other action at the annual meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.


Historical and Statutory Notes

Amendment Notes:

Laws 2003, c. 2003-283, § 9, added subsec. (4), relating to the ability of shareholders and proxyholders to be present and vote at annual meetings by remote communication.

Author Commentary

The requirement for annual shareholder meetings cannot be modified by charter or by-law provisions, although failure to hold a meeting does not affect the validity of corporate actions and directors remain in office until successors are elected. If an annual meeting is not held within a 13-month period, shareholders may petition for a court-ordered meeting pursuant to § 607.0703. Annual or special meetings could be rendered unnecessary, however, if shareholder action is taken without a meeting under the consent provisions of § 607.0704.

The board of directors' power to set the annual meeting date, or to amend bylaws regarding such date, is subject to equitable limitations. Directors cannot, for example, alter the usual dates or amend bylaws in order to disadvantage insurgents or others planning to solicit votes in election contests or other matters. Moreover, after the meeting date has been set, directors cannot cancel or adjourn the meeting to avoid proxy contests or other challenges. Courts have used their equitable powers to enjoin such action, e.g., Schnell v. Chris-Craft Industries, Inc., 283 A. 2d 437 (Del. 1971) (advancing date of meeting to obstruct proxy efforts of dissidents).

Subsection (4) was added in 2003 to permit corporations to conduct annual meetings in which shareholders participate through remote communication by use of Internet, computer or video or similar capabilities. In these circumstances the shareholder is deemed present and capable of voting at the meeting. Subsection (4)(c)(2) requires that the remote communication procedures allow for two-way communication, giving the shareholder the opportunity to communicate and to read and hear the proceedings.

Revised Model Business Corporation Act

§ 7.01. ANNUAL MEETING

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by section 7.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to section 7.28, directors may not be elected by less than unanimous consent.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

OFFICIAL COMMENT

Section 7.01(a) requires every corporation to hold an annual meeting of shareholders entitled to participate in the election of directors unless directors are elected by written consent as provided for in section 7.04. The principal action to be taken at the annual meeting is the election of directors pursuant to section 8.03, but the purposes of the annual meeting are not limited and all matters appropriate for shareholder action may be considered at that meeting. An annual meeting is also an appropriate forum for a shareholder to raise any relevant question about the corporation's operations.

The requirement of section 7.01(a) that an annual meeting be held is phrased in mandatory terms to ensure that every shareholder entitled to participate in an annual meeting has the unqualified rights to (1) demand that an annual meeting be held and (2) compel the holding of the meeting under section 7.03 if the corporation does not promptly hold the meeting and if the shareholders have not elected directors by written consent.

Many corporations, such as nonpublic subsidiaries and closely held corporations, do not regularly hold annual meetings and, if no shareholder
objects or action has been taken by written consent, that practice creates no problem under section 7.01, since section 7.01(c) provides that failure to hold an annual meeting does not affect the validity of any corporate action. The shareholders may act by consent under section 7.04. Directors, once duly elected, remain in office until their successors are elected or they resign or are removed. See section 8.05. Where the articles of incorporation permit the election of directors by less than unanimous written consent, however, such action could result in the replacement of directors, through the election of new directors, even if the vote in favor of such election were less than the vote necessary to satisfy a provision in the corporation’s articles of incorporation or bylaws requiring a higher vote to remove directors.

Where a corporation’s articles of incorporation permit cumulative voting in the election of directors, directors may not be elected by less than unanimous written consent.

The time and place of the annual meeting may be “stated in or fixed in accordance with the bylaws.” If the bylaws do not themselves fix a time and place for the annual meeting, authority to fix them may be delegated to the board of directors or to a specified corporate officer. This section thus gives corporations the flexibility to hold annual meetings in varying places at varying times as convenience may dictate.

The annual meeting may be held either inside or outside the state or in a foreign country, but if the bylaws do not fix, or state the method of fixing, the place of the meeting, the meeting must be held at the “principal office” of the corporation. The principal office is defined in section 1.40 as the location of the principal executive office of the corporation and may or may not be its registered or official office under section 5.01. Section 16.21 requires that the address of the principal office be specified in the corporation’s annual report.

Authority granted to the board of directors or some individual to fix the time and place of the annual meeting must be exercised in good faith. See Schnell v. Chris-Craft Industries, Inc., 285 A.2d 437 (Del. 1971).

Model Act Derivation
1950 Act § 26, ¶ 1, 2
1960 Act § 26, ¶ 1, 2
1969 Act, § 28, ¶ 1, 2
with amendments


Chapter 607 Revised Model Business Corporation Act

§ 7.02. SPECIAL MEETING

(a) A corporation shall hold a special meeting of shareholders:

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

2. if the holders of not less than 10 percent, unless a greater percentage not to exceed 50 percent is required by the articles of incorporation, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) Special shareholders' meetings may be held in or out of the state at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, in the notice of the special meeting. If no place is stated in or fixed in accordance with the bylaws or in the notice of the special meeting, special meetings shall be held at the corporation's principal office.

(c) Only business within the purpose or purposes described in the special meeting notice required by s. 607.0705 may be conducted at a special shareholders' meeting.

(d) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at a special meeting of shareholders may, by means of remote communication:

1. Participate in a special meeting of shareholders.

2. Be deemed present in person and vote at a special meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:
   1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the special meeting by means of remote communication is a shareholder or proxy holder;
   2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the special meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the special meeting substantially concurrently with such proceedings; and
   3. If any shareholder or proxy holder votes or takes other action at the special meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Amendment Notes:

Laws 2003, c. 2003-283, § 9, added subsec. (4), relating to the ability of shareholders and proxy holders to be present and vote at special meetings by remote communication.

Author Commentary

The FBCA changed prior Florida law that allowed 10 percent of the shareholders to call a special shareholders' meeting by permitting the articles of incorporation to require a higher percentage up to 50 percent. A shareholders' call for a special meeting is not self-executing. The board or appropriate corporate officers must still take whatever action is necessary to set the time, place, and date, create shareholder lists and send out notices. Despite the statutory language mandating a meeting based on the shareholders' call, commentary to the Model Act suggests that the board or officers cannot refuse to set a meeting date where they believe the purpose of the meeting is unnecessary or inappropriate, such as the proposed action being repetitive with recent meetings or being a matter to be considered at a forthcoming annual meeting (RMBCA, s. 7.02, Official Comment, Note 1). No authority is cited to support that position. In any event, a decision not to abide by the shareholders' call could be challenged under s. 607.0703, the court-ordered meeting provision.

Subsection (4) was added in 2003 to permit corporations to conduct special meetings in which shareholders participate through remote communication by use of Internet, computer or video or similar capabilities. In those circumstances the shareholder is deemed present and capable of voting at the meeting. Subsection (4)(b)(2) requires that the remote communication procedures allow for two-way communication, giving the shareholder the opportunity to communicate and to read and hear the proceedings.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by section 7.05(c) may be conducted at a special shareholders' meeting.

CROSS-REFERENCES

“Principal office” defined, see § 1.40.

designated in annual report, see § 16.21.

“Voting group” defined, see § 1.40.
## Revised Model Business Corporation Act

### OFFICIAL COMMENT

Any meeting other than an annual meeting is a special meeting under section 7.02. The principal formal differences between an annual and a special meeting are that at an annual meeting directors are elected and, subject to the special notice requirements of section 7.05(b), any relevant issue pertaining to the corporation may be considered, while a special meeting must be called for specific purposes and may only consider matters within those purposes.

### 1. **Who May Call a Special Meeting**

A special meeting may be called under section 7.02(a) by the board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws. Typically, the person or persons holding certain designated offices within the corporation, e.g., the president, chairman of the board of directors, or chief executive officer, are given authority to call special meetings of the shareholders. In addition, the holders of at least 10% of the votes entitled to be cast on a proposed issue at the special meeting may require the corporation to hold a special meeting by signing, dating, and delivering one or more writings that demand a special meeting and set forth the purpose or purposes of the desired meeting. That percentage may be decreased or increased (but to not more than 25%) by a provision in the articles of incorporation fixing a different percentage. Shareholders demanding a special meeting do not have to sign a single document, but the writings signed must all describe essentially the same purpose or purposes. Revocations of written demands will be effective if delivered to the corporation in the manner contemplated by section 1.41 and received before the corporation receives the requisite number of demands requiring that a special meeting be called. However, revocations received after that time will be a nullity and will have no effect. Upon receipt of demands from holders with the requisite number of votes, the corporation (through an appropriate officer) must call the special meeting at a reasonable time and place. The shareholders’ demand may suggest a time and place but the final decision on such matters is the corporation’s. If no meeting is held within the time periods specified in section 7.03, the shareholders may obtain a summary court order under that section requiring that the meeting be held.

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

2. **Discretion as to Calls of Special Meeting**

   Under section 7.02(a)(2) it is possible that more than one faction of shareholders may demand meetings at roughly the same time or that a single (or changing) faction of shareholders may request consecutive, overlapping, or repetitive meetings. The responsible corporate officers have some discretion as to the call and purposes of a meeting, and where demands are repetitious or overlapping, they may refuse to call a meeting for a purpose identical or similar to a purpose for which a previous special meeting was held in the recent past. Similarly, they may decline to call a special meeting when an annual meeting will be held in the near future. This limited discretion of the corporation to deny repetitive or overlapping demands may ultimately be tested under section 7.03, which itself gives the court discretion whether or not to compel the holding of a special meeting under these circumstances. See the Official Comment to section 7.03.

3. **The Business That May Be Conducted at a Special Meeting**

   Section 7.05(c) provides that a notice of a special meeting must include a "description of the purpose or purposes for which the meeting is called." Section 7.02(d) states that only business that is within that purpose or those purposes may be conducted at the special meeting. The word "within" was chosen, rather than a broader phrase like "reasonably related to," to describe the relationship between the notice and the authorized business to assure a shareholder who does not attend a special meeting that new or unexpected matters will not be considered in the shareholder's absence.

**HISTORY**

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<tr>
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<tr>
<td>1950 Act</td>
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<tr>
<td>1969 Act</td>
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§ 7.03. COURT-ORDERED MEETING

(a) The [name or describe] court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of 6 months after the end of the corporation’s fiscal year or 15 months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under section 7.02, if:

   (i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation’s secretary; or

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

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

CROSS-REFERENCES

“Principal office”: defined, see § 1.40.
designated in annual report, see § 16.21.

OFFICIAL COMMENT

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

1. The Court with Jurisdiction to Administer Section 7.03

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

2. The Discretion of the Court to Order a Meeting

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

3. Burden of Proof

In any event, a shareholder applying for a summary order to hold a meeting has the burden of showing entitlement to such an order. In the case of a special meeting, the shareholder has the burden of showing that the demand
was signed by the holders of at least 10% of the votes entitled to be cast on the record date and that the demand was duly delivered to the corporation’s secretary.

4. **Notice, Time, Place, and Quorum and Other Requirements**

If the court orders that a meeting be held, it may fix the time and place of the meeting, determine the voting groups entitled to participate in the meeting, set the record date, order notice to be given as required by section 7.05, and enter such other orders as may be appropriate for the holding of the meeting. In addition to the authority granted to the board of directors under section 7.07(e), the court may in its discretion set different record dates for notice and voting. The court may also establish the quorum requirements for specific matters to be considered at the meeting or direct that the votes represented at the meeting automatically constitute a quorum for the taking of any action without regard to section 7.25 or any provision to the contrary in the corporation’s articles of incorporation or bylaws. The latter alternative prevents a holder of the majority of the votes (who may not desire that a meeting be held) from frustrating the court-ordered meeting by not attending to prevent the existence of a quorum. In order to prevent misunderstanding about a special quorum requirement, if one is imposed, it is appropriate for the court to order that the notice of the meeting state specifically and conspicuously that a special quorum requirement is applicable to the court-ordered meeting. The court may also enter orders overriding the articles of incorporation or bylaws relating to matters such as notice (including advance notice requirements), and time and place of the meeting.

5. **Status as Annual Meeting**

The court may provide that a meeting it has ordered is to be the annual meeting. If so provided, the meeting should be viewed as compliance with section 7.01, precluding all other shareholder requests for an annual meeting for that year.

**Model Act Derivation**

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<thead>
<tr>
<th>Year</th>
<th>Section</th>
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<tbody>
<tr>
<td>1950 Act</td>
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<td>1960 Act</td>
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<td>1969 Act</td>
<td>§ 28, ¶ 2, sent. 2</td>
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### Chapter 607

#### Revised Model Business Corporation Act

<table>
<thead>
<tr>
<th>§ 7.04.</th>
<th>ACTION WITHOUT MEETING</th>
</tr>
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<tbody>
<tr>
<td>(a)</td>
<td>Action required or permitted by this Act to be taken at a shareholders’ meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.</td>
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<tr>
<td>(b)</td>
<td>The articles of incorporation may provide that any action required or permitted by this Act to be taken at a shareholders’ meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.</td>
</tr>
<tr>
<td>(c)</td>
<td>If not otherwise fixed under section 7.07 and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 7.07 and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest date on which a consent has been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.</td>
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<tr>
<td>(d)</td>
<td>A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws or a resolution</td>
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**Amendment Notes:**


**Historical and Statutory Notes:**

- Laws 1993, c. 93–281, § 14, eff. May 15, 1993, in subsec. (1), made “consent” plural before “signed by the number” and substituted “are” for “is” in the last sentence; and, in subsec. (2), deleted “in this state or its principal place of business” after “principal office”.

**Author Commentary:**

- Although every state permits shareholder action without a meeting, Florida follows, states such as Delaware in permitting shareholder action through majority consent unless the articles of incorporation prohibit such action or require a different percentage. It is not necessary that every shareholder of the class entitled to vote on a matter be notified or solicited for such action. Thus, a control shareholder or group can eliminate the need for a shareholders’ meeting and a general solicitation through written consents duly signed, dated, and delivered to the corporation. Each consent must be specific as to the proposed action. Upon the requisite consents being sent to the corporation, the action is deemed authorized, and within 10 days all non-consenting shareholders, as well as those not entitled to vote on the matter, must be given summary notice of the action and advised of dissenters’ rights, if any. Where votes are taken by consent, the record date for shareholders eligible to vote is determined to accordance with a. 607.0707(3).
of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If this Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

**CROSS-REFERENCES**

"Deliver," see § 1.40.
OFFICIAL COMMENT

Section 7.04 permits shareholders to act by written consent without holding a meeting. Section 7.04(a) permits shareholders to take action by unanimous written consent and is applicable to all corporations. As a practical matter, unanimous written consent is obtainable only for matters on which there are relatively few shareholders entitled to vote, and is thus generally not used by public corporations. Under section 7.04(b) a corporation may include in its articles of incorporation a provision that permits shareholder action by less than unanimous written consent. For closely held corporations, this provision provides an opportunity to eliminate formalities that the owners may consider unnecessary. In considering whether to include this provision, one should take into account that some shareholders may oppose the elimination of the annual meeting because of their desire to meet with the corporation’s management and directors at that meeting. The availability of shareholder action by less than unanimous consent may also facilitate a sudden change in control.

The unanimous written consent permitted in section 7.04(a) is applicable to any shareholder action, including, without limitation, election of directors, approval of mergers or sales of substantially all the corporate property not in the ordinary course of business, amendments of articles of incorporation, and dissolution. If the articles of incorporation permit action by less than unanimous written consent, they may also limit or otherwise specify the shareholder actions that may be approved by less than unanimous consent. If a corporation has determined to elect directors by cumulative voting, such directors may not be elected by less than unanimous written consent. See sections 7.01(a) and 7.28. Action by written consent has the same effect as a meeting vote and may be described as such in any document, including documents delivered to the secretary of state for filing.

I. Form of Written Consent

To be effective, consents must be in writing, dated and sent to the corporation in any manner authorized by section 1.41, including electronic transmission if the applicable conditions of section 1.41 are met.

A shareholder or proxy may use an electronic transmission to consent to
an action. If an electronic transmission is used to consent to an action, the corporation must be able to determine from the transmission the date of the signature and that the consent was authorized by the shareholder or a person authorized to act for the shareholder. See sections 1.40(7A), 1.40(22A) and 1.41(d).

A unanimous written consent must be signed by all the shareholders entitled to vote on the action. A less than unanimous written consent must be signed by those shareholders entitled to cast not less than the minimum number of votes necessary to take the action if all shares entitled to vote on the action were present and voted at a meeting of shareholders. In some cases, more votes may be required to approve an action by less than unanimous written consent than would be required to approve the same action at a meeting that is not attended by all shareholders. For example, if an action requires the approval of a majority of shares represented at a meeting where a quorum (a majority of the votes entitled to be cast) is present, a corporation with 1,000 shares eligible to vote on the action will need 501 votes to approve the action by less than unanimous written consent; at a meeting at which only a quorum is present the same action will be approved if the votes cast in favor of the proposed action exceed the votes cast opposing the action, resulting in approval by as few as 251 votes (assuming no abstentions). Where the Model Act or a corporation's articles of incorporation provide for a greater voting requirement, however, the number of shares required to consent to an action may be the same as the number of shares required to approve the action at a meeting of shareholders.

The phrase “one or more written consents” is included in section 7.04 to make it clear that shareholders do not need to sign the same document. For actions that do not require prior board action, the record date for determining who is entitled to vote, if not otherwise fixed by or in accordance with the bylaws, is the date the first signed consent is delivered to the corporation. For actions that require prior board action, if not otherwise fixed by the board, the record date is the date the board’s prior action is adopted. To minimize the possibility that action by written consent will be authorized by action of persons who may no longer be shareholders at the time the action is taken, section 7.04(c) requires that all consents be signed within 60 days of the earliest signature date of the consents delivered to the corporation.

2. **Notice to Nonconsenting Shareholders**

When action is taken by less than unanimous written consent, the Model Act requires that notice be given to nonconsenting shareholders not more
less than 10 days after the later of the date (a) written consents sufficient for the action to be valid are delivered to the corporation and (b) tabulation of consents is completed. The notice must describe the action that was taken and be accompanied by any materials required to be given to shareholders in a notice of a meeting at which the action was to be considered. The failure to give notice within the required time period will not invalidate or delay the effectiveness of a shareholder action, although a shareholder may seek other remedies. By requiring notice only after shareholder action has been taken, the Model Act preserves the practical utility of the less than unanimous written consent when action needs to be taken quickly, without the delay that would result from a mandatory prior notice requirement. Of course a corporation may provide for advance notice in its articles of incorporation.

3. **Effectiveness and Revocation of Consent**

Shareholder approval in the form of action by written consent is effective only when the last shareholder required to validly take action by written consent has signed the written consent and all consents have been delivered to the corporation. Before that time, a shareholder may withdraw a consent simply by delivering a written revocation of the consent to the corporation. Cf. *Calumet Industries, Inc. v. McClure*, 464 F. Supp. 19 (N.D. Ill. 1978). The withdrawal of a single consent, of course, destroys the unanimous written consent but may not impact a less than unanimous written consent. If a shareholder seeks to withdraw a consent after the requisite number of shareholders to validly take an action by written consent have signed written consents and filed them with the corporation, such withdrawal will be a nullity and shall be given no effect.

4. **Consent to Fundamental Corporate Changes**

Section 7.04(a) is applicable to all shareholder actions, including the approval of fundamental corporate changes described in chapters 10, 11, 12, and 14. If permitted by a corporation’s articles of incorporation, shareholders may also approve fundamental corporate changes by less than unanimous written consent. If action approving fundamental corporate changes were taken at an annual or special meeting, shareholders who were not entitled to vote on the matter would nevertheless be entitled to receive notice of the meeting, including a description of the transaction proposed to be considered at the meeting. See, e.g., sections 10.03 (notice of proposed amendment), 11.04 (notice of proposed merger). If action is taken by written consent rather than at a meeting, section 7.04(e) provides that nonvoting shareholders must be given the same written notice of
the action not more than 10 days after the later of the date (a) written consents sufficient for the action to be valid are delivered to the corporation and (b) tabulation of consents is completed. The notice must be accompanied by the same materials required by the Model Act to be given to nonvoting shareholders in a notice of meeting at which the action was to be considered.

### HISTORY

**Model Act Derivation**

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<tr>
<th>Act/Year</th>
<th>Section</th>
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<tr>
<td>1950 Act</td>
<td>§ 138</td>
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<td>with amendments</td>
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### Revised Model Business Corporation Act

#### § 7.05. NOTICE OF MEETING

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders’ meeting no fewer than 10 nor more than 60 days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication pursuant to section 7.09 for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless this Act or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

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

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

(d) If not otherwise fixed under section 7.03 or 7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders’ meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders’ meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under s. 607.0707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date who are entitled to notice of the meeting. 

### Historical and Statutory Notes

**Amendment Notes:**


**Author Commentary**

As indicated in this provision, notice is generally required only to shareholders entitled to vote on the proposed matters. However, other statutory provisions regarding mergers, share exchanges, sale of assets, and dissolution require notice even to non-voting shareholders. Provisions regarding amendments to articles of incorporation might also require notice to, and voting by, shareholders who are otherwise non-voting.

The 10-day notice requirement for shareholder meetings must be read in light of the notice provisions of s. 607.0141. Written notice by mail is effective when mailed if mailed to the shareholder's address as shown in the current record of shareholders. In Hilligoss v. Associated Companies, Inc., 589 N.E. 2d 1202 (Ind. Ct. App. 1992), the court interpreted a 10-day provision identical to Florida's to mean that the 10 days is counted backwards from the meeting date to the date notice is effective. Thus, if a meeting is called for June 15, the first day to be counted backwards is June 14 and the tenth day is June 5. A notice given on June 5 would therefore be effective.
Chapter 607

The minimum 10-day notice provision may, in some circumstances, raise equitable concerns. In a Delaware case interpreting Florida law with regard to a cash-out merger, Berger v. Intelident Solutions, Inc., 911 A. 2d 1164 (Del. Ch. 2006), the court held that the majority shareholder may have breached its fiduciary duty to minority shareholders even though the 10-day minimum notice period was technically met. The proxy materials were sent out on July 1 for a vote on July 11. Because of the July 4 holiday, shareholders had only 4 business days to decide whether to vote for the merger or assert appraisal rights. The defendant's motion to dismiss based on statutory compliance was denied by the court. Although the court noted that no Florida case was on point, it held that Florida courts were likely to adopt the reasoning of Weinberger v. UOP, Inc., 457 A. 2d 701 (Del. 1983), imposing upon majority shareholders in a freeze-out merger duties of fair dealing and fair price. Fair dealing includes matters of timing and candor. The court noted that although ordinarily compliance with the minimum time period would be sufficient, "if the defendants chose the absolute minimum notice period available aware that it would not only prevent the minority stockholders from fully and fairly examining the proxy materials but also prevent them from exercising their appraisal rights, this court cannot say that a breach of the disclosure obligation did not occur." 911 A. 2d at 1174.

Advance notice to shareholders of matters to be voted upon is required for special but not annual shareholder meetings. Notice of such items is generally given as a matter of course by the corporation and is required for all public reporting companies under the 1934 Securities Exchange Act proxy rules. For non-reporting companies, shareholders may nominate directors and propose action at the annual meeting without prior notice to the corporation or other shareholders. In order to protect against surprise nominations or proposals, some corporations have adopted "advance notice" bylaws that require shareholders to advise the corporation in advance, e.g., 90 days prior to the meeting, of any nominees or proposals intended for shareholder action. Such bylaws could also impose minimum share ownership requirements for those intending to submit nominations or proposals. Limitations on shareholders cannot be too strict, however, as it is regarded as a fundamental right of shareholders to nominate directors and to propose appropriate matters for shareholder consideration.

For publicly traded companies registered under the 1934 Securities Exchange Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandates that proxy materials contain a non-binding shareholder vote on the compensation of executives as disclosed pursuant to SEC rules. This "say-on-pay" vote will occur annually, biennially or triennially depending on a shareholder vote taken at least every six years. Also mandated for these companies is a non-binding shareholder vote on any "golden parachutes" that involve payments to executive officers based on or related to a merger or acquisition involving a shareholder vote.

Revised Model Business Corporation Act

CROSS-REFERENCES

"Deliver," see § 1.40.

"Notice" defined, see § 1.41.

OFFICIAL COMMENT

Generally, only shareholders who are entitled to vote at a meeting determined on the record date for notice are entitled to the notice required by section 7.05. Shareholders entitled to notice must be given notice of annual and special meetings pursuant to section 7.05 unless the notice is waived pursuant to section 7.06. Notice must be given at least 10 but not more than 60 days before the meeting date. If the board of directors authorizes shareholders to participate in any meeting by means of remote communication pursuant to section 7.09, the notice also must include notification of such authorization and the means of remote communication to be used. The corporation may limit such notice to the class or series of shareholders authorized to participate by means of remote communication. In order to give corporations the flexibility to choose the most efficient means of remote communication, the board may require that shareholders communicate their desire to participate by a certain date and condition the provision of remote communication or the form of communication to be used on the affirmative response of a certain number or proportion of shareholders eligible to participate.

I. Shareholders Entitled to Notice

Shareholders entitled to notice must be given notice of annual and special meetings pursuant to section 7.05 unless the notice is waived pursuant to section 7.06. Notice must be given at least 10 but not more than 60 days before the meeting date. If the board of directors authorizes shareholders to participate in any meeting by means of remote communication pursuant to section 7.09, the notice also must include notification of such authorization and the means of remote communication to be used. The corporation may limit such notice to the class or series of shareholders authorized to participate by means of remote communication. In order to give corporations the flexibility to choose the most efficient means of remote communication, the board may require that shareholders communicate their desire to participate by a certain date and condition the provision of remote communication or the form of communication to be used on the affirmative response of a certain number or
proportion of shareholders eligible to participate.

2. **Statement of Matters to Be Considered at an Annual Meeting**

Notice of all special meetings must include a description of the purpose or purposes for which the meeting is called and the matters acted upon at the meeting are limited to those within the notice of meeting. By contrast, the Model Act does not require that the notice of an annual meeting refer to any specific purpose or purposes, and any matter appropriate for shareholder action may be considered. As recognized in subsection (b), however, other provisions of the Model Act provide that certain types of fundamental corporate changes may be considered at an annual meeting only if specific reference to the proposed action appears in the notice of meeting. See sections 10.03, 11.04, 12.02, and 14.02. In addition, as a condition to relying upon shareholder action to establish the safe harbor protection of section 8.61(b), section 8.63 requires notice to shareholders providing information regarding any director’s conflict of interest in a transaction. If the board of directors chooses, a notice of an annual meeting may contain references to purposes or proposals not required by statute. In the event that management intends to present nonroutine proposals for a shareholder vote and shareholders have not otherwise been informed of such proposals, good corporate practice suggests that references to such proposals be made in the notice. In any event, if a notice of an annual meeting refers specifically to one or more purposes, the meeting is not limited to those purposes.

3. **Record Date**

Section 7.05(d) is a catch-all record date provision for both annual and special meetings. If the record date for notice and for voting entitlement is not otherwise fixed pursuant to sections 7.03 or 7.07, the record date for purposes of determining who is entitled to notice and to vote at the meeting is the day before the notice is delivered to the voting groups of shareholders. If notice is delivered to shareholders over a period of more than one day, the day before the notice is delivered to the first shareholders is the record date.

The selection of the day before the notice is delivered as the catch-all record date is intended to permit the corporation to deliver notices to shareholders on a given day without regard to any requests for transfer that may have been received during that day. For this reason, this section is not inconsistent with the general principle set forth in the last sentence of section...
7.07(a) that the board of directors may not fix a retroactive record date.

4. **Notice of Adjourned Meetings**

   Section 7.05(e) provides rules for adjourned meetings and determines whether new notice must be given to shareholders. Under this subsection a meeting may be adjourned to a different date, time, or place without additional notice to the shareholders (unless the bylaws require otherwise) if the new date, time, or place is announced before adjournment. But new notice is required if a new record date is or must be fixed under section 7.07(c). If a new record date is or must be fixed, the 10-to-60-day notice requirement and all other requirements of section 7.05 must be complied with as notice is given to the persons who are shareholders as of the new record date. A new quorum for the adjourned meeting must also be established. See section 7.25.

Section 7.25 provides that if a quorum exists for a meeting, it is deemed to continue to exist automatically for an adjourned meeting unless a new record date is or must be set for the adjourned meeting.

**HISTORY**

**Model Act Derivation**

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