CHAPTER 14

Dissolution

ARTICLE 1

Voluntary Dissolution

**SECTION 33‑14‑101.** Dissolution by incorporators or initial directors.

 The board of directors or, if the corporation has no directors, a majority of the incorporators of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

 (1) the name of the corporation;

 (2) the date of its incorporation;

 (3) either (i) that none of the corporation’s shares has been issued or (ii) 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.

HISTORY: Derived from 1976 Code Section 33‑21‑10 [1962 Code Section 12‑22.1; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Section 14.01 (Section 33‑14‑101) provides a simple method of voluntary dissolution for a corporation that has not issued shares or commenced business. These provisions are alternative; a corporation may utilize section 14.01 (Section 33‑14‑101) if it has not issued shares (even though it has commenced business) or if it has issued shares but has not commenced business. Dissolution may be accomplished in either of these situations simply by a majority vote of the incorporators or initial directors. (See section 2.05 (Section 33‑2‑105) and its Official Comment for a discussion of the roles of “incorporators” or “initial directors” in the organization of a corporation.).

This simple method of dissolution is likely to be used by name‑holding corporations or by corporations formed for the initiation of a new venture when the reasons for the initial creation of the corporation have been completely realized or will never come to fruition.

The form of articles of dissolution provided in section 14.01 (Section 33‑14‑101) takes account of the fact that a corporation may utilize this section even though it has received capital from the issuance of shares or has incurred liabilities either from the commencement of business without issuing shares or from its organization; hence the articles must state that no debts remain unpaid, and that the net assets of the corporation remaining after winding up have been distributed to the shareholders.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 33‑21‑10 of the 1981 South Carolina Business Corporation Act provided for dissolution by the incorporators or initial directors if the corporation had neither issued shares nor commenced business. Section 14.01 of the 1984 Model Act authorizes the use of this dissolution procedure if the corporation either has not issued shares or has not commenced business. The new provision adopts the broader Model Act formula.

Prior South Carolina law specifically required that the amount paid for subscriptions, less any necessary expenses, be refunded to the subscribers. The new provision (and the Model Act section upon which it is based) does not contain this requirement but merely requires that the corporation’s debts be paid. This would require that the corporation refund the deposit if it has accepted the subscription. If it has not, then the subscriber’s right to a refund is not against the corporation but the promoter who received the deposit, and the making of the refund should not be a condition precedent to dissolution.

In other respects, the new provision makes no significant changes in prior South Carolina law. The new provision is identical to the Model Act except that it rewords the introductory language to specify that the incorporators only have the power to dissolve the corporation if the directors have not been named (or have all died or resigned). See new Section 33‑1‑105 and the South Carolina Reporters’ Comments thereto.

DERIVATION: 1984 Model Act Section 14.01.

CROSS REFERENCES

Claims against dissolved corporation, see Sections 33‑14‑106 and 33‑14‑107.

“Deliver” includes mail, see Section 33‑1‑400.

Dissolution by board of directors and shareholders, see Section 33‑14‑102.

Effect of dissolution, see Section 33‑14‑105.

Effective date of dissolution, see Section 33‑14‑103.

Filing fees, see Section 33‑1‑220.

Filing requirements, see Section 33‑1‑200.

Incorporators, see Section 33‑2‑101.

Initial directors, see Section 33‑2‑105.

Revocation of dissolution, see Section 33‑14‑104.

Library References

Corporations 592, 610.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 811, 813 to 816, 818, 821, 824, 830 to 831, 835 to 839.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 44, Merger or Consolidation of State Bank Into a National Bank.

S.C. Jur. Banks and Banking Section 122, Voluntary Dissolution Prior to Commencement of Business.

S.C. Jur. Mortgages Section 12, Capacity of Parties.

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

South Carolina Legal and Business Forms Section 1:64 , Dissolution‑Articles of Dissolution.

South Carolina Legal and Business Forms Section 1:365 , Shareholders’ Resolution‑Approval of Dissolution of Corporation.

**SECTION 33‑14‑102.** Dissolution by board of directors and shareholders.

 (a) A corporation’s board of directors may propose dissolution for submission to the shareholders.

 (b) For a board of directors’ proposal to dissolve to be adopted:

 (1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

 (2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (f).

 (c) The board of directors may condition the submission of its proposal for dissolution on any basis.

 (d) If the holders of at least ten percent of any class of voting shares of the corporation propose dissolution, the board of directors shall submit the proposal to the shareholders at the next possible special or annual meeting.

 (e) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

 (f) Unless the articles of incorporation require a different vote or the board of directors (acting pursuant to subsection (c)) requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by two‑thirds of all the votes entitled to be cast on that proposal.

 (g) The articles of incorporation may require a lower or higher vote for approval than that specified in subsection (f), but the required vote must be at least a majority of all the votes entitled to be cast on the proposal.

HISTORY: Derived from 1976 Code Section 33‑21‑20 [1962 Code Section 12‑22.2; 1952 Code Sections 12‑641 to 12‑643; 1942 Code Sections 7707, 7708; 1932 Code Sections 7707, 7708; Civ. C. ‘22 Sections 4279, 4280; Civ. C. ‘12 Sections 2812, 2813; 1902 (23) 1036; 1919 (31) 56, 1925 (34) 244; 1960 (51) 1752; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

A corporation that has issued shares and commenced business may dissolve voluntarily only with the approval of its shareholders. Section 14.02 (Section 33‑14‑102) requires the board of directors to propose dissolution and then submit the proposal to the shareholders. The board of directors must make a recommendation to the shareholders that the proposal to dissolve be approved, unless it determines that because of conflict of interest or other special circumstances it should make no recommendation. If the board of directors so determines, it must describe the conflict or circumstances, and communicate the basis for its determination, to the shareholders when presenting the proposal to dissolve to the shareholders.

Dissolution, to be approved, must receive the vote of a majority of the outstanding votes entitled by the articles of incorporation to vote on the proposal. This is a greater vote than that required for ordinary matters under section 7.25 (Section 33‑7‑250). Non‑voting classes of shares are not given a statutory right to vote on proposals to dissolve (either as separate voting groups or together with voting shares) by the revised Model Act on the theory that, upon dissolution, the rights of all classes or series of shares are fixed by the articles of incorporation. The articles of incorporation, however, may stipulate that specified classes or series of shares are entitled to vote by separate voting groups. Thus, in the absence of specific provision in the articles of incorporation, only the shares of the corporation entitled to vote generally by the articles of incorporation are entitled to vote on dissolution. The articles of incorporation may also specify that a greater percentage of votes is required to approve the proposal than is required by section 14.02 (Section 33‑14‑102).

The board of directors may condition its submission of a proposal to the shareholders under subsection (c) on its receiving a specified percentage of the votes of shareholders of one or more classes or series, voting by separate voting groups, or on some other basis. See the discussion of conditional submissions in the Official Comment to section 10.03 (Section 33‑10‑103).

Section 14.04 (Section 33‑14‑104) permits the corporation to revoke the dissolution under the circumstances described.

SOUTH CAROLINA REPORTERS’ COMMENTS

The new provision differs from Section 14.02 of the 1984 Model Act in two major regards: it adds to the Model Act the 1981 South Carolina Business Corporation Act procedure for the holders of ten percent of the shares of a class to propose dissolution, but limits this to voting shares, and it follows the pattern of requiring all fundamental corporate changes to be approved by a two‑thirds vote unless the articles of incorporation permit majority approval. See, e.g., new Section 33‑10‑103 and the South Carolina Reporters’ Comments to the section. Prior South Carolina law permitted dissolution to be approved by a simple majority, but this anomaly inadvertently crept into the law during the 1981 drafting process; it was not intended by the General Assembly. See Adams, “The 1981 Revision of the South Carolina Business Corporation Act,” 33 S.C.L. REV. 405, 414‑15 (1982).

There is no parallel in the new provisions for Section 33‑21‑30 of the 1981 South Carolina Business Corporation Act allowing dissolution by written consent of all of the shareholders without board approval, although a similar result can be reached by virtue of the ability of the holders of ten percent of the shares of any voting class to propose dissolution and the use of written consents under new Section 33‑7‑104.

DERIVATION: 1984 Model Act Section 14.02.

CROSS REFERENCES

Dissolution by unanimous consent of shareholders, see Section 33‑7‑104.

Effect of dissolution, see Section 33‑14‑105.

“Notice” defined, see Section 33‑1‑410.

Notice of shareholders’ meeting, see Section 33‑7‑105.

Quorum at shareholder’s meeting, see Section 33‑7‑250.

Revocation of dissolution, see Section 33‑14‑104.

Standards of conduct for directors, see Sections 33‑8‑300 through 33‑8‑320.

Supermajority quorum and voting requirements, see Section 33‑7‑270.

Voting by voting group, see Section 33‑7‑250 and 33‑7‑260.

Voting entitlement of shareholders generally, see Section 33‑7‑210.

“Voting group” defined, see Section 33‑1‑400.

Library References

Corporations 592, 610.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 811, 813 to 816, 818, 821, 824, 830 to 831, 835 to 839.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 123, Voluntary Dissolution After Commencement of Business.

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

South Carolina Legal and Business Forms Section 1:34 , Official Forms.

South Carolina Legal and Business Forms Section 1:64 , Dissolution‑Articles of Dissolution.

South Carolina Legal and Business Forms Section 1:165 , Dissolution‑Vote of Shareholders.

South Carolina Legal and Business Forms Section 1:365 , Shareholders’ Resolution‑Approval of Dissolution of Corporation.

NOTES OF DECISIONS

In general 1

1. In general

Former law did not contemplate a dissolution until the affairs of the corporation had been liquidated. Henry Mercantile Co. v. Georgetown & W.R. Co. (S.C. 1916) 104 S.C. 478, 89 S.E. 480. Corporations And Business Organizations 3040

**SECTION 33‑14‑103.** Articles of dissolution.

 (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

 (1) the name of the corporation;

 (2) the names and addresses of its directors;

 (3) the names and addresses of its officers;

 (4) the date dissolution was authorized;

 (5) if dissolution was approved by the shareholders:

 (i) the number of votes entitled to be cast on the proposal to dissolve; and

 (ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

 (6) If voting by voting groups was required, the information required by item (5) must be provided separately for each voting group entitled to vote separately on the plan to dissolve.

 (b) A corporation is dissolved upon the effective date of its articles of dissolution.

HISTORY: Derived from 1976 Code Section 33‑21‑20 [1962 Code Section 12‑22.2; 1952 Code Sections 12‑641 to 12‑643; 1942 Code Sections 7707, 7708; 1932 Code Sections 7707, 7708; Civ. C. ‘22 Sections 4279, 4280; Civ. C. ‘12 Sections 2812, 2813; 1902(23) 1036; 1919 (31) 56, 1925 (34) 244; 1960 (51) 1752; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], and Section 33‑21‑100 [1962 Code Section 12‑22.10; 1962 (52) 1996; 1981 Act No. 146, Section 2; 1985 Act No. 72 Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

The act of filing the articles of dissolution makes the decision to dissolve a matter of public record and establishes the time when the corporation must begin the process of winding up and cease carrying on its business except to the extent necessary for winding‑up. The articles of dissolution must describe the manner in which the proposal to dissolve was submitted to the shareholders and describe the vote taken.

Under the Model Act, articles of dissolution may be filed at the commencement of winding‑up or at any time thereafter. This is the only filing required for voluntary dissolution; no filing is required to mark the completion of winding‑up since the existence of the corporation continues for certain purposes even after the business is wound up and the assets remaining after satisfaction of all creditors are distributed to the shareholders. No time limit for filing the articles is specified, and it often may be desirable to postpone filing until winding up is far along or even complete.

A corporation is dissolved on the date the articles of dissolution are effective. After this date, the corporation is referred to as a “dissolved corporation,” although its existence continues under section 14.05 (Section 33‑14‑105) for the purposes of winding up.

SOUTH CAROLINA REPORTERS’ COMMENTS

The new provision follows Section 14.03 of the 1984 Model Act, rather than the 1981 South Carolina Business Corporation Act, pattern of filings with the Secretary of State. Prior law required two filings. The statement of intent to dissolve was filed as soon as the dissolution had been approved by the shareholders; it began the winding up and liquidation period. See Section 33‑21‑20(a)(5) of the 1981 South Carolina Business Corporation Act. When winding up and liquidation had been completed, articles of dissolution were filed, ending the legal existence of the corporation. See Section 33‑21‑100 of the 1981 South Carolina Business Corporation Act. Under the new provision, only one filing is required. Although the document is called “articles of dissolution,” it bears a closer resemblance to the old notice of intent to dissolve than to the old articles of dissolution. However, it need not be filed as soon as the dissolution is authorized, but may be filed at any time after authorization; its filing does not begin the winding up and liquidation process. As the Official Comment notes, frequently it will be filed when “winding up is far along or even complete.” On the effective date of the articles of dissolution (the filing date or later effective date specified in them) the corporation is dissolved but its legal existence continues. Dissolution, under the new provisions, merely means that the corporation may no longer carry on its business but must wind up and liquidate. See new Section 33‑14‑105.

The new provision continues the prior South Carolina requirement, not found in the Official Text of the Model Act, that the names and addresses of the corporation’s officers and directors be listed in the articles of dissolution to give creditors public notice of who was in charge of the corporation when it was dissolved. See Section 33‑21‑20(a)(5)(B) and (C) of the 1981 South Carolina Business Corporation Act.

DERIVATION: 1984 Model Act Section 14.03.

CROSS REFERENCES

“Deliver” includes mail, see Section 33‑1‑400.

Dissolution by board of directors and shareholders, see Section 33‑14‑102.

Dissolution by unanimous consent of shareholders, see Section 33‑7‑104.

Effect of dissolution, see Section 33‑14‑105.

Effective time and date of filing, see Section 33‑1‑230.

Filing fees, see Section 33‑1‑220.

Filing requirements, see Section 33‑1‑200.

Revocation of dissolution, see Section 33‑14‑104.

Shareholder option to dissolve statutory close corporation, see Section 33‑18‑330.

Voting by voting group, see Sections 33‑7‑250 and 33‑7‑260.

“Voting group” defined, see Section 33‑1‑400.

Library References

Corporations 610(1).

Westlaw Topic No. 101.

C.J.S. Corporations Sections 835 to 837.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 124, Procedure for Dissolution.

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

South Carolina Legal and Business Forms Section 1:64 , Dissolution‑Articles of Dissolution.

South Carolina Legal and Business Forms Section 1:362 , Director’s Resolution‑Recommending Dissolution.

NOTES OF DECISIONS

In general 1

1. In general

A corporation voluntarily dissolves after its shareholders or board of directors approve dissolution and the corporation delivers articles of dissolution to the Secretary of State. The corporation need not publish notice of dissolution for the dissolution to be effective. Chatham Steel Corp. v. Brown, N.D.Fla.1994, 858 F.Supp. 1130.

**SECTION 33‑14‑104.** Revocation of dissolution.

 (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

 (b) 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.

 (c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

 (1) the name of the corporation;

 (2) the effective date of the dissolution that was revoked;

 (3) the date that the revocation of dissolution was authorized;

 (4) if the corporation’s board of directors (or incorporators) revoked the dissolution, a statement to that effect;

 (5) 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

 (6) if shareholder action was required to revoke the dissolution:

 (i) the number of votes entitled to be case on the proposal to revoke the dissolution; and

 (ii) either the total number of votes cast for and against revocation or the total number of undisputed votes cast for revocation and a statement that the number cast for revocation was sufficient for approval.

 (7) If voting by voting groups was required, the information required by item (6) must be separately provided for each voting group entitled to vote separately on the proposal to revoke the dissolution.

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

 (e) 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.

HISTORY: Derived from 1976 Code Section 33‑21‑70 [1962 Code Section 12‑22.7; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑80 [1962 Code Section 12‑22.8; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], and Section 33‑21‑90 [1962 Code Section 12‑22.9; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Voluntary dissolution may be revoked within 120 days of the effective date of the dissolution. Because of the importance and finality of dissolution, the decision to revoke dissolution generally requires shareholder authorization (unless the dissolution was approved solely by the initial directors or incorporators under section 14.01(Section 33‑14‑101)). Section 14.04(b) (Section 33‑14‑104(b)), however, contemplates that the board of directors may revoke dissolution if it is granted that authority in advance by the shareholders when approving the dissolution. Such authorization is often included in proposals to dissolve that are contingent upon the effectuation of another transaction, such as a sale of corporate assets not in the ordinary course of business.

Certain other action requiring shareholder approval may be revoked by the board of directors without express shareholder approval. (See Section 11.03 and 12.02 (Sections 33‑11‑103 and 33‑12‑102). By contrast, dissolution under section 14.04 (Section 33‑14‑104) may not be revoked by the board of directors without approval of the shareholders.

Articles of revocation of dissolution must be filed to reflect the decision to resume the business of the corporation. The information required in these articles parallels the information required in the original articles of dissolution.

The effect of articles of revocation of dissolution is to eliminate the requirement that the corporation cease to conduct its business except as part of the winding‑up process and permit it to resume its business without limitation and as if dissolution had never occurred.

SOUTH CAROLINA REPORTERS’ COMMENTS

The new provision is identical in substance to Section 14.04 of the 1984 Model Act section. The new provision limits revocation to a one hundred twenty‑day period after dissolution. This limitation was not contained in the 1981 South Carolina Business Corporation Act but is necessary under the new provisions because only one filing with the Secretary of State is required. The other change in South Carolina law that the new provision makes is to permit the board of directors to revoke dissolution without shareholder approval if permitted by the shareholder resolution authorizing dissolution. Thus, the board, if it had proposed dissolution under Section 33‑14‑102(a), could under Section 33‑14‑102(c) obtain shareholder authorization for it to revoke the dissolution. Dissolution by shareholder proposal under Section 33‑14‑102(d) could not be revoked in this way.

DERIVATION: 1984 Model Act Section 14.04.

CROSS REFERENCES

Articles of dissolution, see Section 33‑14‑103.

“Deliver” includes mail, see Section 33‑1‑400.

Dissolution by board of directors and shareholders, see Section 33‑14‑102.

Dissolution by incorporators or initial directors, see Section 33‑14‑101.

Dissolution by unanimous consent of shareholders, see Section 33‑7‑104.

Effective date of dissolution, see Section 33‑14‑103.

Effective time and date of filing, see Section 33‑1‑230.

Filing fees, see Section 33‑1‑220.

Filing requirements, see Section 33‑1‑200.

Library References

Corporations 610(5), 615.5.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 835, 837, 839.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

**SECTION 33‑14‑105.** Effect of dissolution.

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

 (1) collecting its assets;

 (2) disposing of its properties that will not be distributed in kind to its shareholders;

 (3) discharging or making provision for discharging its liabilities;

 (4) distributing its remaining property among its shareholders according to their interests; and

 (5) doing every other act necessary to wind up and liquidate its business and affairs.

 (b) A dissolved corporation shall wind up and liquidate its business and affairs as expeditiously as practicable.

 (c) Dissolution of a corporation does not:

 (1) transfer title to the corporation’s property;

 (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation’s share transfer records;

 (3) subject its directors or officers to standards of conduct different from those prescribed in Chapter 8;

 (4) 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;

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

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

 (7) terminate the authority of the registered agent of the corporation.

HISTORY: Derived from 1976 Code Section 33‑21‑50 [1962 Code Section 12‑22.5; 1952 Code Section 12‑601; 1942 Code Section 7709; 1932 Code Section 7709; Civ. C. ‘22 Section 4281; Civ. C. ‘12 Section 2814; Civ. C. ‘02 Section 1866; 1898 (22) 774; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑60 [1962 Code Section 12‑22.6; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑100 [1962 Code Section 12‑22.10; 1972 (52) 1996; 1981 Act No. 146, Section 2; 1985 Act No. 72 Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑180 [1962 Code Section 12‑22.18; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], and Section 33‑21‑220 [1962 Code Section 12‑22.22; 1952 Code Section 12‑602; 1942 Code Section 7710; 1932 Code Section 7710; Civ. C. ‘22 Section 4282; Civ. C. ‘12 Section 2815; Civ. C. ‘02 Section 1867; 1898 (22) 774; 1944 (43) 1224; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Section 14.05(a) (Section 33‑14‑105(a)) provides that dissolution does not terminate the corporate existence but simply requires the corporation thereafter to devote itself to winding up its affairs and liquidating its assets; after dissolution, the corporation may not carry on its business except as may be appropriate for winding‑up.

The Model Act uses the term “dissolution” in the specialized sense described above and not to describe the final step in the liquidation of the corporate business. This is made clear by section 14.05(b) (Section 33‑14‑105(b)), which provides that chapter 14 dissolution does not have any of the characteristics of common law dissolution, which treated corporate dissolution as analogous to the death of a natural person and abated lawsuits, vested equitable title to corporate property in the shareholders, imposed the fiduciary duty of trustees on directors who had custody of corporate assets, and revoked the authority of the registered agent. Section 14.05(b) (Section 33‑14‑105(b)) expressly reverses all of these common law attributes of dissolution and makes clear that the rights, powers, and duties of shareholders, the directors, and the registered agent are not affected by dissolution and that suits by or against the corporation are not affected in any way.

SOUTH CAROLINA REPORTERS’ COMMENTS

This provision lists the things a dissolved corporation may do and things that dissolution does not accomplish. The first of these lists is merely a stylistic revision. The second is new, although it chiefly makes explicit what was inherent in prior South Carolina law. One noteworthy change is item (7) of subsection (c), which provides that dissolution does not terminate the authority of the registered agent. New Section 33‑14‑105(c)(5) provides, as did Sections 33‑21‑100(c) and 33‑21‑220(a) of the 1981 South Carolina Business Corporation Act, that dissolution does not prevent commencement of a proceeding against a corporation in its corporate name. Therefore, a suit may be brought against a dissolved corporation by serving its registered agent. If the registered agent cannot be served, new Section 15‑9‑210(b) allows service by certified or registered mail addressed to the corporate secretary at the principal office listed in the last annual report filed by the corporation. Section 15‑9‑210(b)(3) provides that this service is effective five days after deposit in the United States mail; this provision requires that the mail be postpaid and correctly addressed but does not require that it be actually delivered or accepted. See the South Carolina Reporters’ Comments to Sections 33‑5‑104 and 15‑9‑210 and the Official Comment to Sections 33‑5‑104 and 33‑14‑105. Rule 4(d)(3) of the South Carolina Rules of Civil Procedure provides another method of service.

The new provision adds to Section 14.05 of the 1984 Model Act the requirement of prior South Carolina law that the dissolved corporation wind up and liquidate as expeditiously as practicable, thus making explicit what is implicit in the Model Act.

DERIVATION: 1984 Model Act Section 14.05.

CROSS REFERENCES

Administrative dissolution, see Sections 33‑14‑200 to 33‑14‑230.

Amendment of bylaws, see Sections 33‑10‑200 et seq.

Claims against dissolved corporation, see Sections 33‑14‑106 and 33‑14‑107.

Deposit with Director of Department of Revenue and Taxation, see Section 33‑14‑400.

Directors: election, see Section 33‑8‑103.

Directors: removal, see Sections 33‑8‑108 and 33‑8‑109.

Directors: resignation, see Section 33‑8‑107.

Directors: standards of conduct, see Sections 33‑8‑300 through 33‑8‑320.

Directors: terms, see Section 33‑8‑105.

Dissolution by board of directors and shareholders, see Section 33‑14‑102.

Dissolution by incorporators or initial directors, see Section 33‑14‑101.

Distribution, see Section 33‑6‑400.

Effective date of dissolution, see Section 33‑14‑103.

Judicial dissolution, see Sections 33‑14‑300 through 33‑14‑330.

Officers: appointment, see Section 33‑8‑400.

Officers: removal, see Section 33‑8‑430.

Officers: resignation, see Section 33‑8‑430.

Officers: standards of conduct, see Section 33‑8‑420.

“Proceeding” defined, see Section 33‑1‑400.

Quorum requirements: board of directors, see Section 33‑8‑240.

Quorum requirements: shareholders, see Sections 33‑7‑250 and 33‑7‑260.

Revocation of dissolution, see Section 33‑14‑104.

Service of process on registered agent, see Sections 15‑9‑210 et seq. and 33‑5‑104.

Shareholder option to dissolve statutory close corporation, see Section 33‑18‑330.

Voting requirements: directors, see Section 33‑8‑240.

Voting requirements: shareholders, see Sections 33‑7‑250 and 33‑7‑260.

Library References

Corporations 617, 618, 630.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 852 to 859, 861 to 862, 879 to 881.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 75, Extent of Liability.

S.C. Jur. Banks and Banking Section 124, Procedure for Dissolution.

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

Attorney General’s Opinions

Taxes due on merchants’ inventory are first lien on inventory; levy and sale can be made of inventory in hands of purchaser, and action may be instituted against seller and/or purchaser for the tax (interpreting former law). 1985 Op Atty Gen, No. 85‑18, p 65.

In instances where a corporate business is conducted or continued after the revocation of the corporate charter, taxes should be assessed and collected as follows: Taxes incurred prior to forfeiture should be assessed the corporation and notice given the surviving directors; taxes incurred after forfeiture are the liability of the persons carrying on or conducting the business, and should be so assessed and should the corporate charter be reinstated, then in such an event, the taxes are also a corporate liability (interpreting former law). 1969‑70 Op Atty Gen, No. 2818, p 28.

NOTES OF DECISIONS

In general 1

1. In general

The directors of a corporation, selling its property as trustees, cannot buy the property, as individuals or as a newly formed corporation. J.H. Lane & Co. v. Maple Cotton Mill, 1916, 232 F. 421, 146 C.C.A. 415.

There is grave doubt that the members of a corporation which has been dissolved by forfeiture of its charter can continue its business as a de facto corporation. Especially so, where there is no association of persons who could exercise corporate powers, which is one of the essential elements of de facto existence. Bulova Watch Co. v. Roberts Jewelers of Rock Hill, Inc. (S.C. 1962) 240 S.C. 280, 125 S.E.2d 643.

It is well settled in this State that a corporation, after its charter is canceled, continues a body corporate for the purpose of winding up its affairs. Ocean Forest Co. v. Woodside (S.C. 1937) 184 S.C. 428, 192 S.E. 413.

Order authorizing liquidation need not designate directors as liquidating agents, since they become so by operation of law, and not as agents of bank examiner. Wilson v. Shuler (S.C. 1928) 146 S.C. 309, 144 S.E. 57.

Upon passing of order authorizing corporation to liquidate affairs, directors became ipso facto liquidating trustees. Browne v. Hammett (S.C. 1926) 133 S.C. 446, 131 S.E. 612. Banks And Banking 63.5

**SECTION 33‑14‑106.** Known claims against dissolved corporation.

 (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

 (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. 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 one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must 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;

 (2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice and the rejection notice stated that proceedings to enforce the claim must be commenced within ninety days.

 (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.

HISTORY: Derived from 1976 Code Section 33‑21‑60 [1962 Code Section 12‑22.6; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; and Section 33‑21‑180 [1962 Section 12‑22.18; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Sections 14.06 and 14.07 (Sections 33‑14‑106 and 33‑14‑107) provide a new and simplified system for handling known and unknown claims against a dissolved corporation, including claims based on events that occur after the dissolution of the corporation. Section 14.06 (Section 33‑14‑106) deals solely with known claims while section 14.07 (Section 33‑14‑107) deals with unknown or subsequently arising claims. A claim is a “known” claim even if it is unliquidated (see section 14.06(d) (Section 33‑14‑106(d)); a claim that is contingent or has not matured so that there is no immediate right to bring suit is not a “known” claim.

Known claims are handled in section 14.06 (Section 33‑14‑106) through a process of written notice to claimants; the written notice must contain the information described in section 14.06(b) (Section 33‑14‑106(b)). Section 14.06(c) (Section 33‑14‑106(c)) then provides fixed deadlines by which claims are barred under various circumstances, as follows:

(1) If a claimant receives written notice satisfying section 14.06(b) (Section 33‑14‑106(b)) but fails to file the claim by the deadline specified by the corporation, the claim is barred by section 14.06(c)(1) (Section 33‑14‑106(c)(1)).

(2) If a claimant receives written notice satisfying section 14.06(b) (Section 33‑14‑106(b)) and files the claim as required:

(i) but the corporation rejects the claim, the claimant must commence a proceeding to enforce the claim within 90 days of the rejection or the claim is barred by section 14.06(c)(2) (Section 33‑14‑106(c)(2)); or.

(ii) if the corporation does not act on the claim or fails to notify the claimant of the rejection, the claimant is not barred by section 14.06(c) (Section 33‑14‑106(c)) until the corporation notifies the claimant.

(3) If the corporation publishes notice under section 14.07 (Section 33‑14‑107), a claimant who was not notified in writing is barred unless he commences a proceeding within five years after publication of the notice.

(4) If the corporation does not publish notice, a claimant who was not notified in writing is not barred by section 14.06(c) (Section 33‑14‑106(c)) from pursuing his claim.

These principles, it should be emphasized, do not lengthen statutes of limitation applicable under general state law. Thus, claims that are not barred under the foregoing rules—for example, if the corporation does not act on a claim—will nevertheless be subject to the general statute of limitations applicable to claims of that type.

Even though the directors are not trustees of the assets of a dissolved corporation (see section 14.05(b)(3) (Section 33‑14‑105(b)(3)), they must discharge or make provision for discharging all of the corporation’s known liabilities before distributing the remaining assets to the shareholders. See sections 14.05 (a)(3) and (4) (Sections 33‑14‑105(a)(3) and (4)). See also sections 6.40 and 8.33 (Sections 33‑6‑400 and 33‑8‑330).

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 33‑21‑60(a) of the 1981 South Carolina Business Corporation Act required that the corporation send notice of the filing of its statement of intent to dissolve to each known creditor of the corporation and the Tax Commission. The new provision, which is similar to Section 14.06 of the 1984 Model Act, requires that notice be mailed to all known claimants but does not specifically require that notice be mailed to the Tax Commission. However, since taxing authorities to whom taxes are owed (including the Tax Commission) are known creditors, notice still must be sent to them. See 1980 Op. Att’y. Gen., No. 80‑95, p. 150.

The rest of the new provision is not found in prior South Carolina law. Prior to the 1981 amendment of the South Carolina Business Corporation Act, mailing the notice triggered a two‑year limitation period for asserting any claim against the corporation. However, after 1981, the law did not specify the effect of the notice or the failure to send it (except in a liquidation proceeding under former Section 33‑21‑180); claims survived the dissolution. See Section 33‑21‑220(a) of the 1981 South Carolina Business Corporation Act. The new provision reinstates the statute of repose. It requires that the notice be mailed to known claimants and state a deadline, not less than one hundred twenty days, by which the claim must be received. Failure to assert the claim by this deadline bars it. Additionally, if the corporation rejects the claim, the claimant has ninety days to commence proceedings to enforce it.

The new provision adds to the Model Act section a requirement that the corporation’s notice of rejection state that the claim will be barred unless proceedings to enforce the claim are commenced within ninety days.

DERIVATION: 1984 Model Act Section 14.06.

CROSS REFERENCES

Administrative dissolution, see Section 33‑14‑210.

Decree of dissolution, see Section 33‑14‑330.

“Deliver” includes mail, see Section 33‑1‑400.

Dissolved corporation, see Section 33‑14‑103.

Distributions, see Sections 33‑6‑400 and 33‑8‑330.

Effective date of dissolution, see Section 33‑14‑103.

Effective date of notice, see Section 33‑1‑410.

Judicial dissolution, see Sections 33‑14‑300 et seq.

“Notice” defined, see Section 33‑1‑410.

Notice to the corporation, see Section 33‑1‑410.

“Proceeding” defined, see Section 33‑1‑400.

Unknown claims, see Section 33‑14‑107.

Library References

Corporations 626 to 628.

Westlaw Topic No. 101.

C.J.S. Corporations Section 872.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

Attorney General’s Opinions

The procedure prescribed by this section [Code 1962 Section 12‑22.6] is mandatory, and must be strictly complied with to effect a voluntary dissolution of a domestic corporation. 1963‑64 Op Atty Gen, No. 1631, p 60.

Voluntary dissolution proceedings do not require judicial sanction, and the requirement that the notice of intent to dissolve be published in an appropriate newspaper is for the benefit of creditors who may be unknown or whose mailing address cannot be ascertained (interpreting former law). 1963‑64 Op Atty Gen, No. 1631, p 60.

The publication provision is also for the protection of the corporation in the orderly liquidation of its assets and payment of claims (interpreting former law). 1963‑64 Op Atty Gen, No. 1631, p 60.

NOTES OF DECISIONS

In general 1

1. In general

A trial judge properly held that the Department of Social Services was a known creditor within the meaning of former Section 33‑21‑60 since an unresolved claim at the time of a 1975 dissolution of a nursing home made the Department a known creditor of the nursing home and required that it be notified of the intended dissolution. South Carolina Dept. of Social Services v. Winyah Nursing Homes, Inc. (S.C.App. 1984) 282 S.C. 556, 320 S.E.2d 464. Corporations And Business Organizations 3033

A supermarket customer injured in a “slip and fall” accident was a known creditor of the corporation where she had informed supermarket personnel of the accident and had retained an attorney in the matter who had had several discussions with the supermarket’s insurance adjuster concerning fall and the alleged liability of the supermarket; failure to provide the customer with notice of the corporation’s dissolution as required by former Section 33‑21‑60(b) rendered the two‑year limitation in former Section 33‑21‑220 inapplicable to her claim. Bonsall v. Piggly Wiggly Helms, Inc. (S.C. 1981) 275 S.C. 593, 274 S.E.2d 298.

**SECTION 33‑14‑107.** Unknown claims against dissolved corporation.

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

 (b) The notice must:

 (1) be published once 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;

 (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 corporation is barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

 (c) If the dissolved corporation publishes a newspaper 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 ten years after the publication date of the newspaper notice:

 (1) a claimant who did not receive written notice pursuant to Section 33‑14‑106;

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

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

 (d) A claim may be enforced under this section:

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

 (2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him 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 him.

HISTORY: Derived from 1976 Code Section 33‑21‑60 [1962 Code Section 12‑22.6; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2; 2004 Act No. 221, Section 18.

OFFICIAL COMMENT

Earlier versions of the Model Act did not recognize the serious problem created by possible claims that might arise long after the dissolution process was completed and the corporate assets distributed to shareholders. Most of these claims were based on personal injuries occurring after dissolution but caused by allegedly defective products sold before dissolution, but they also involved negligence for which the statute of limitations did not begin to run until the negligence was discovered (e.g., a surgical instrument left inside the patient). The application of the Model Act provision (and of the state dissolution statutes phrased in different terms) to this problem led to confusing and inconsistent results. See generally, Friedlander and Gilbert, “Post Dissolution Liabilities of Shareholders and Directors for Claims Against Dissolved Corporation,” 31 VAND L. REV. 1363 (1978). The problems raised by this type of litigation are intractable: on the one hand, the application of a mechanical two‑year limitation period to a claim for injury that occurs after the period has expired involves obvious 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 provision for creditors, and distribute the balance of the corporate assets to the shareholders.

In some circumstances a tort law concept of transferee liability, sometimes characterized as “de facto merger,” has been applied to allow plaintiffs incurring post‑dissolution injuries to bring suit against the person that acquired the corporate assets. See the Official Comment to section 11.01 (Section 33‑11‑101). Some courts have refused to apply this doctrine, particularly when the purchaser of the corporate assets has not continued the business of the dissolved corporation. In these cases, the remedy of the plaintiff is limited to claims against the dissolved corporation and its shareholders receiving assets pursuant to the dissolution.

The solution adopted in section 14.07 (Section 33‑14‑107) is to continue the liability of a dissolved corporation for subsequent claims for a period of five years after it publishes notice of dissolution. It is recognized that a five year cut‑off is itself arbitrary, but it is believed that the great bulk of post‑dissolution claims will arise during this period. This provision is, therefore, believed to be a reasonable compromise between the competing considerations of providing a remedy to injured plaintiffs and providing a period of repose after which dissolved corporations may distribute remaining assets free of all claims and shareholders may receive them secure in the knowledge that they may not be reclaimed.

Directors must generally discharge or make provision for discharging all of the corporation’s liabilities before distributing the remaining assets to the shareholders. See the Official Comment to section 14.06 (Section 33‑14‑106). But section 14.07 (Section 33‑14‑107) does not contemplate that liquidating distributions to shareholders will be deferred until all possible claims are barred under section 14.07 (Section 33‑14‑107). Many claims covered by this section are of a type for which provision may be made by the purchase of insurance or by the setting aside of a portion of the assets, thereby permitting prompt distributions in the remaining assets of the dissolved corporation. See section 14.07(d)(1) (Section 33‑14‑107(d)(1)). Further, where unexpected claims arise after distributions have been made to shareholders in liquidation, section 14.07(d)(2) (Section 33‑14‑107(d)(2)) authorizes recovery against the shareholders receiving the earlier distributions. The recovery, however, is limited to the smaller of the recipient shareholder’s pro rata share of the claim or the total amount of assets received as liquidating distributions by the shareholder from the corporation. The provision ensures that claimants seeking to recover distributions from shareholders will try to recover from the entire class of shareholders rather than concentrating only on the larger shareholders and protects the limited liability of shareholders.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 33‑21‑60(a) of the 1981 South Carolina Business Corporation Act required that the corporation publish notice of the filing of its statement of intent to dissolve in a newspaper in the county of its registered office. The new provision, like Section 14.07 of the 1984 Model Act, changes this to the county of its principal office if there is one in this State. The rest of this provision is not found in the prior South Carolina law.

The 1981 South Carolina Business Corporation Act did not specify the effect of this notice or the failure to publish it. Prior to the 1981 Act, publishing the notice triggered a two‑year limitation period for asserting any unknown claim against the corporation. The new provision provides that the publication triggers a five‑year statute of repose for such claims. However, the new provision does not contain subsection (c)(3) of Model Act Section 14.07 providing that contingent claims and those based on an event occurring after dissolution are subject to the five‑year statute of repose, too. The statute of repose in the new provision only applies to claims existing at dissolution.

DERIVATION: 1984 Model Act Section 14.07.

CROSS REFERENCES

Administrative dissolution, see Section 33‑14‑210.

Decree of dissolution, see Section 33‑14‑330.

“Deliver” includes mail, see Section 33‑1‑400.

Distributions, see Section 33‑6‑400 and 33‑8‑330.

Effective date of dissolution, see Section 33‑14‑103.

Effective date of notice, see Section 33‑1‑410.

Judicial dissolution, see Section 33‑14‑300 et seq.

Known claims, see Section 33‑14‑106.

“Notice” defined, see Section 33‑1‑410.

“Principal office”: defined, see Section 33‑1‑400.

“Proceedings” defined, see Section 33‑1‑400.

Registered office: required, see Sections 33‑2‑102 and 33‑5‑101.

Shareholder option to dissolve statutory close corporation, see Section 33‑18‑330.

Library References

Corporations 626 to 628.

Westlaw Topic No. 101.

C.J.S. Corporations Section 872.

RESEARCH REFERENCES

ALR Library

130 ALR 824 , Personal Liability of Corporate Directors or Officers Under Statute Imposing Such Liability in Respect of Excessive Indebtedness, as Affected by Payment by the Corporation...

Encyclopedias

S.C. Jur. Banks and Banking Section 75, Extent of Liability.

Forms

South Carolina Legal and Business Forms Section 1:23 , Dissolution and Liquidation‑Voluntary Dissolution.

Notes of Decisions

In general 1

1. In general

South Carolina statute providing limitations period for future contingent claims against a dissolved corporation was not the exclusive remedy for creditor seeking to recover money owed from directors of insolvent corporation after they made distributions to shareholders who were family members, and thus statute did not preclude claim; statute did not create a private right of action, and did not apply to the directors of a corporation. PCS Nitrogen, Inc. v. Ross Development Corp., 2015, 126 F.Supp.3d 611. Corporations and Business Organizations 2845; Corporations and Business Organizations 3129

ARTICLE 2

Administrative Dissolution

**SECTION 33‑14‑200.** Grounds for administrative dissolution.

 (a) The Secretary of State shall commence a proceeding under Section 33‑14‑210(a) to dissolve a corporation administratively if:

 (1) the corporation does not pay when they are due any franchise taxes, taxes payable under Chapter 7 of Title 12, or penalties imposed by law;

 (2) the corporation does not deliver its annual report to the Department of Revenue when it is due;

 (3) the corporation is without a registered agent or registered office in this State;

 (4) the corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

 (5) the corporation’s period of duration stated in its articles of incorporation expires.

 (b) The Secretary of State shall dissolve a corporation pursuant to Section 33‑14‑210(c) if he is notified by the Department of Revenue that the corporation has failed to file a required tax return within sixty days of the notice required by Section 12‑6‑5520.

HISTORY: Derived from 1976 Code Section 33‑21‑40 [1962 Code Section 12‑22.4; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)] and Section 33‑21‑110 [1962 Code Section 12‑22.11; 1952 Code Sections 12‑621, 12‑622; 1942 Code Section 7704; 1932 Code Section 7704; Civ. C. ‘22 Section 4278; Civ. C. ‘12 Section 2811; Civ. C. ‘02 Section 1865; 1893 (21) 396; 1926 (34) 1727; 1962 (52) 1996; 1980 Act No. 486; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2; 1988 Act No. 659, Section 23; 1993 Act No. 181, Section 2004 Act No. 221, Section 19.

OFFICIAL COMMENT

Involuntary dissolution in earlier versions of the Model Act required judicial order upon suit filed by the state attorney general. In the comment to section 95 of the 1969 Model Act, this decision was explained on the basis that the Model Act “provides for judicial review in protection of rights that might otherwise be lost.” This position, however, was not generally accepted—in 1982 three jurisdictions limited involuntary dissolution to judicial action—with all other jurisdictions permitting administrative dissolution for a variety of reasons, usually including a failure to pay franchise taxes and often including failure to file annual reports or otherwise comply with similar requirements of the corporation statutes appear in the tax statutes rather than the corporation statutes of the states.

The experience in most states has been that administrative dissolution, or the threat thereof, is an effective enforcement mechanism for a variety of statutory obligations. Judicial dissolution is inappropriate for many of these violations because of its cost and the diversion of limited legal resources, particularly since most violations reflect the abandonment of the corporation by its owners.

The advantages of administrative dissolution in these circumstances are compelling; it not only reduces the number of records maintained by the secretary of state, but also avoids further wasteful attempts to compel compliance by the abandoned corporations and returns the corporate name promptly to the status of available names. Therefore, the revised Model Act includes, in sections 14.20 (Section 33‑14‑200) through 14.23 (Section 33‑14‑230), a model provision for the administrative dissolution of corporations in certain limited circumstances. There circumstances are set forth in section 14.20 (Section 33‑14‑200) and closely parallel provisions found in most state statutes on this subject.

SOUTH CAROLINA REPORTERS’ COMMENTS

(South Carolina Reporters’ Comments amended by 1988 Act No. 659).

Section 14.20 of the Model Act has been adopted with several technical changes. First, this provision reflects that the annual report required by Section 33‑16‑220 is to be filed with the Tax Commission, not the Secretary of State. Second, the failure to file a tax return within sixty days after the Tax Commission has notified the corporation of its delinquency is added as a ground for dissolution by the Secretary of State. He dissolves the corporation upon notification by the Tax Commission. Third, the sixty‑day grace period contained in the Model Act section is not included here. However, new Section 12‑7‑1675 requires the Tax Commission to give sixty‑day notice of failure to file a return before requesting the Secretary of State to administratively dissolve a delinquent corporation, and under Section 33‑14‑210(b) the corporation has sixty days to correct any other failure after notification by the Secretary of State. It was decided that one such sixty‑day period was sufficient.

This section also adds failure to file income tax returns to the Model Act grounds for administrative dissolution. Finally, it adds expiration of the period of duration stated in the corporation’s articles to the grounds for administrative dissolution; the special procedures of former Section 33‑21‑40 for dissolution (and reinstatement) of a corporation whose period of duration has expired are not continued.

DERIVATION: 1984 Model Act Section 14.20.

CROSS REFERENCES

Annual report, see Sections 12‑20‑30 and 33‑16‑220.

Appeal from administrative dissolution, see Section 33‑14‑230.

“Deliver” includes mail, see Section 33‑1‑400.

Duration of corporation, see Section 33‑3‑102.

Judicial dissolution, see Sections 33‑14‑300 through 33‑14‑330.

Registered office and agent, see Sections 33‑5‑101 et seq.

Reinstatement following administrative dissolution, see Section 33‑14‑220.

Voluntary dissolution, see Sections 33‑14‑101 and 33‑14‑102.

Library References

Corporations 592 to 599.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 811, 813 to 816, 818 to 819, 821 to 826, 830 to 831.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 1:24 , Dissolution and Liquidation‑Administrative and Judicial Dissolution.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8112.10, Grounds.

Attorney General’s Opinions

Authority of Secretary of State under this section [Code 1962 Section 12‑22.11] to invoke involuntary corporate dissolution for nonpayment of “franchise tax” covers delinquency of domestic corporations in paying “license fee” exacted by Code 1962 Section 65‑606. 1964‑65 Op Atty Gen, No. 1783, p 16.

NOTES OF DECISIONS

In general 1

1. In general

In Old Fort Improv. Co. v Lea, (1937, CA4 SC) 89 F2d 286, the court held that a corporation could file for reorganization in 1936 under the Bankruptcy Act even though its charter had been cancelled in 1934, because of nonpayment of taxes, and a receiver had been appointed for the corporation by the State court in 1927, as long as directors, who became its trustees with power to settle its affairs after dissolution, filed in the corporate name. Old Fort Imp. Co. v. Lea, 1937, 89 F.2d 286.

There is grave doubt that the members of a corporation, which has been dissolved by forfeiture of its charter, can continue its business as a de facto corporation. Especially so, where there is no association of persons who could exercise corporate powers, which is one of the essential elements of de facto existence. Bulova Watch Co. v. Roberts Jewelers of Rock Hill, Inc. (S.C. 1962) 240 S.C. 280, 125 S.E.2d 643.

**SECTION 33‑14‑210.** Procedure for and effect of administrative dissolution.

 (a) If the Secretary of State determines that grounds exist under Section 33‑14‑200(a) for dissolving a corporation, he shall mail written notice of his determination to the corporation.

 (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after the notice required by subsection (a) was mailed, the Secretary of State shall dissolve the corporation administratively by signing a certificate of dissolution that recites the grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office.

 (c) If the Secretary of State is notified by the Department of Revenue that the corporation has failed to file a required tax return within sixty days of the notice required by Section 12‑6‑5520, the Secretary of State shall dissolve the corporation administratively by signing a certificate of dissolution that recites the grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and send a copy to the corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office.

 (d) A corporation dissolved administratively continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 33‑14‑105 and notify claimants under Sections 33‑14‑106 and 33‑14‑107.

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

HISTORY: Derived from 1976 Code Section 33‑21‑110 [1962 Code Section 12‑22.11; 1952 Code Sections 12‑621, 12‑622; 1942 Code Section 7704; 1932 Code Section 7704; Civ. C. ‘22 Section 4278; Civ. C. ‘12 Section 2811; Civ. C. ‘02 Section 1865; 1893 (21) 396; 1926 (34) 1727; 1962 (52) 1996; 1980 Act No. 486; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)] and Section 33‑21‑130 [1962 Code Section 12‑22.13; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)] 1988 Act No. 444, Section 2; 1988 Act No. 659, Section 24; 2004 Act No. 221, Section 20.

OFFICIAL COMMENT

Many failures to comply with statutory requirements that may give rise to administrative dissolution under section 14.20 occur because of oversight or inadvertence by responsible corporate officers of corporations that are continuing in business. Such failures are usually corrected promptly when brought to the corporation’s attention. Sections 14.21(a) and (b) (Section 33‑14‑210(a) and (b)), therefore, provide a mandatory notice by the secretary of state to each corporation subject to administrative dissolution and a 60‑day grace period following the notice before the certificate of administrative dissolution may be filed.

In most instances, the issue whether the corporation is subject to administrative dissolution will not be controverted. If a corporation is administratively dissolved, it may petition the secretary of state for reinstatement under section 14.22 (Section 33‑14‑220) and, if this is denied, it may appeal to the courts under section 14.23 (Section 33‑14‑230).

SOUTH CAROLINA REPORTERS’ COMMENTS

(South Carolina Reporters’ Comments amended by 1988 Act No. 659).

Section 14.21 of the 1984 Model Act has been adopted with several changes. The Model Act requires that the notices specified by this section be served upon the corporation, either by service upon its registered agent or, if the corporation has no registered agent or he cannot be served, by certified (or registered) mail, return receipt requested, addressed to the corporation’s secretary at its principal office. The new provision requires that the first notice be mailed to the corporation. This should be done in accordance with Section 33‑1‑410(d). The new provision further requires that the notice of dissolution be sent by certified (or registered) mail to the registered agent or the corporation’s secretary; a return receipt need not be requested by the Secretary of State at the time of mailing. Thus, the method of notification has been simplified, while still assuring actual notice to the corporation. Requiring a return receipt would merely add to the cost and recordkeeping burdens of the Secretary of State’s office without any benefit, since the United States Postal Service keeps records of delivery of all registered and certified mail and this information can be obtained later if the fact or date of delivery is at issue.

A new subsection (c) has been added to provide for administrative dissolution by the Secretary of State if a corporation fails to file a tax return within sixty days after notification of delinquency by the Tax Commission. Since the Tax Commission is responsible for the collection of taxes and keeps track of the filing of returns, it should give the initial notice that dissolution is imminent if the corporation does not file its overdue return with the Commission. Under subsection (c) the Secretary of State dissolves the corporation without giving another sixty‑day advance notice.

This provision follows the Model Act in reducing the period for the corporation to respond to the Secretary of State’s notice of determination that grounds for administrative dissolution exist from ninety to sixty days, but otherwise the procedure is similar to that under the 1981 South Carolina Business Corporation Act.

DERIVATION: 1984 Model Act Section 14.21.

Code Commissioner’s Note

At the direction of the Code Commissioner, “Department of Revenue” was substituted for “Tax Commission” in subsection (c).

CROSS REFERENCES

Appeal from denial of reinstatement, see Section 33‑14‑230.

Claims, see Sections 33‑14‑106 through 33‑14‑107.

Contents of certificate of existence from Secretary of State, see Section 33‑1‑280.

Deposit with Director of Department of Revenue and Taxation, see Section 33‑14‑400.

Issuance of certificate of existence where Secretary of State has not mailed notice that corporation is subject to being dissolved, see Section 33‑1‑280.

Reinstatement following administrative dissolution, see Section 33‑14‑220.

Reservation of name of corporation administratively dissolved under this section, see Section 33‑4‑102.

Winding up, see Section 33‑14‑105.

Library References

Corporations 613.

Westlaw Topic No. 101.

C.J.S. Corporations Sections 835, 840.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 12, Capacity of Parties.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8112.20, Procedure.

Attorney General’s Opinions

Administrative dissolution proceedings begun under section 33‑21‑110, and which are still pending as of January 1, 1989, the effective date of section 33‑14‑210, may be completed pursuant to the requirements of section 33‑21‑110. 1988 Op Atty Gen, No. 88‑85, p 240.

**SECTION 33‑14‑220.** Reinstatement following administrative dissolution.

 (a) A corporation dissolved administratively under Section 33‑14‑210 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

 (1) recite the name of the corporation and the effective date of its administrative dissolution;

 (2) state that the grounds for dissolution either did not exist or have been eliminated;

 (3) state that the corporation’s name satisfies the requirements of Section 33‑4‑101; and

 (4) contain a certificate from the South Carolina Department of Revenue reciting that all taxes, penalties, and interest owed by the corporation, whether assessed or not, have been paid.

 (b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and send a copy to the corporation.

 (c) 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.

HISTORY: Derived from 1976 Code Section 33‑21‑120 [1962 Code Section 12‑22.12; 1962 (52) 1996; 1973 (58) 735; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2; 1988 Act No. 659, Section 25; 1991 Act No. 3, Section 1; 1991 Act No. 109, Section 6; 1993 Act No. 181, Section 514.

OFFICIAL COMMENT

Section 14.22 (Section 33‑14‑220) provides a two‑year period during which a corporation may seek reinstatement following administrative dissolution. This section may apply when a corporation through inadvertence or a failure to maintain a registered agent fails to receive or respond to the pre‑dissolution notice of default required by section 14.21 (Section 33‑14‑210). A corporation that is reinstated pursuant to this section resumes carrying on its business as before dissolution.

In order to be eligible for reinstatement, a corporation must comply with all statutory requirements at the time it seeks reinstatement. It must establish, for instance, that all taxes have been paid and that its name is available when it files the application for reinstatement.

SOUTH CAROLINA REPORTERS’ COMMENTS

(South Carolina Reporters’ Comments amended by 1988 Act No. 659).

Section 14.22 of the 1984 Model Act has been adopted with one change. The Model Act requires that the Secretary of State serve the notice of reinstatement upon the corporation. It was decided that formal service is purposeless, so this provision merely requires that the Secretary of State send the notice of reinstatement to the corporation.

This provision follows the Model Act in reducing the period for reinstatement from five years to two years, and it deletes the requirement of the 1981 South Carolina Business Corporation Act that all outstanding judgments against the corporation be paid before reinstatement. Otherwise, the procedure is similar to that under prior South Carolina law.

DERIVATION: 1984 Model Act Section 14.22.

1991 Act No. 3, Section 2, effective March 15, 1991, provides as follows:

“SECTION 2. The amendment to Section 33‑14‑220(a) of the 1976 Code, as contained in Section 1 of this act, is applicable to all corporations in a state of dissolution at the time this act becomes effective regardless of the effective dates of their dissolution.”

CROSS REFERENCES

Appeal from denial of reinstatement, see Section 33‑14‑230.

Corporate name, generally, see Sections 33‑4‑101 et seq.

Effective date of administrative dissolution, see Section 33‑14‑210.

Filing fees, see Section 33‑1‑220.

Filing requirements, see Section 33‑1‑200.

Grounds for administrative dissolution, see Section 33‑14‑200.

Library References

Corporations 615.5.

Westlaw Topic No. 101.

RESEARCH REFERENCES

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8112.30, Reinstatement Following Dissolution.

Attorney General’s Opinions

This section [Code 1962 Section 12‑22.12] is curative legislation, designed to afford any corporation whose charter has been cancelled for nonpayment of taxes the remedy of reinstatement upon qualification under, and compliance with, the reinstatement provision of the new Business Corporation Act. 1963‑64 Op Atty Gen, No. 1672, p 114.

Reinstatement of a domestic corporation whose charter was cancelled and forfeited in 1963 for nonpayment of capital stock and license taxes, and which applies for reinstatement after January 1, 1964, may be handled in accordance with this section [Code 1962 Section 12‑22.12]. 1963‑64 Op Atty Gen, No. 1672, p 114.

It is immaterial whether dissolution by forfeiture occurred under the new or old laws where the reinstatement application is filed after January 1, 1964, but within one year of forfeiture of the corporation’s charter (interpreting former law). 1963‑64 Op Atty Gen, No. 1672, p 114.

The rights of third parties cannot be adversely affected by retrospective construction and operation of the new reinstatement provision to corporations whose charter was cancelled in 1963 for nonpayment of taxes (interpreting former law). 1963‑64 Op Atty Gen, No. 1672, p 114.

**SECTION 33‑14‑230.** Appeal from denial of reinstatement.

 (a) If the Secretary of State denies a corporation’s application for reinstatement following administrative dissolution, he shall send a written notice that explains the reasons for denial to the corporation by registered or certified mail addressed to its registered agent at its registered office or to the office of the secretary of the corporation at its principal office.

 (b) The corporation may appeal the denial of reinstatement to the circuit court for Richland County within thirty days after the notice of denial was received. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State’s certificate of dissolution, the corporation’s application for reinstatement, and the Secretary of State’s notice of denial.

 (c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

 (d) The court’s final decision may be appealed as in other civil proceedings.

HISTORY: 1988 Act No. 444, Section 2; 1988 Act No. 659, Section 26.

OFFICIAL COMMENT

Section 14.23 (Section 33‑14‑230) provides for an appeal from a decision by the secretary of state denying a petition for reinstatement. The court with jurisdiction over an appeal should be specified, and states adopting this section of the Model Act should specify who has the burden of proof on appeal and the standard for judicial review. See the Official Comment to section 1.26 (Section 33‑1‑260).

SOUTH CAROLINA REPORTERS’ COMMENTS

(South Carolina Reporters’ Comments amended by 1988 Act No. 659, Section 26).

Section 14.23 of the 1984 Model Act has been adopted with only a few technical changes. The Model Act requires that the notice of denial be served upon the corporation, either by service upon its registered agent or, if the corporation has no registered agent or he cannot be served, by certified (or registered) mail, return receipt requested, addressed to the corporation’s secretary at its principal office. The new provision requires that the notice be sent by certified (or registered) mail to the registered agent or the corporation’s secretary but does not require that a return receipt be requested at the time of mailing. Thus, the method of notification is simplified, while still assuring actual notice to the corporation. A conforming change has been made to subsection (b) to start the thirty‑day period for appeal from receipt, rather than service, of the notice. This is when the notice would be effective under the general provisions of Section 33‑1‑410(e). If a dispute arises about the date or fact of receipt, the Secretary of State can obtain from the United States Postal Service a record of delivery of the notice since the notice has to be sent registered or certified mail.

There was no similar provision in the 1981 South Carolina Business Corporation Act.

DERIVATION: 1984 Model Act Section 14.23.

CROSS REFERENCES

Grounds for administrative dissolution, see Section 33‑14‑200.

“Notice” defined, see Section 33‑1‑410.

Reinstatement following administrative dissolution, see Section 33‑14‑220.

Library References

Corporations 615.5.

Westlaw Topic No. 101.

ARTICLE 3

Judicial Dissolution

**SECTION 33‑14‑300.** Grounds for judicial dissolution.

 The circuit courts may dissolve a corporation:

 (1) in a proceeding by the Attorney General if it is established that the corporation:

 (i) obtained its articles of incorporation through fraud; or

 (ii) has continued to exceed or abuse the authority conferred upon it by law;

 (2) in a proceeding by a shareholder if it is established that:

 (i) the directors or those in control of the corporation 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;

 (ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder (whether in his capacity as a shareholder, director, or officer of the corporation);

 (iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired;

 (iv) the corporate assets are being misapplied or wasted;

 (v) the corporation has abandoned its business and has failed, within a reasonable time, to dissolve, to liquidate its affairs, or to distribute its remaining property among its shareholders; or

 (vi) the corporation’s period of duration stated in its articles of incorporation has expired;

 (3) in a proceeding by a creditor if it is established that:

 (i) the creditor’s claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

 (ii) the corporation has admitted in writing that the creditor’s claim is due and owing and the corporation is insolvent; or

 (4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

HISTORY: Derived from 1976 Code Section 33‑21‑140 [1962 Code Section 12‑22.14; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], and Section 33‑21‑150 [1962 Code Section 12‑22.15; 1952 Code Section 12‑651; 1942 Code Section 7725; 1932 Code Section 7725; 1922 (32) 1026; 1962 (52) 1996, 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Section 14.30 (Section 33‑14‑300) provides grounds for the judicial dissolution of corporations at the request of the state, a shareholder, a creditor, or a corporation which has commenced voluntary dissolution. This section states that a court “may” order dissolution if a ground for dissolution exists. Thus, there is discretion on the part of the court as to whether dissolution is appropriate even though grounds exist under the specific circumstances.

1. Involuntary Dissolution by State.

Section 14.30(1) (Section 33‑14‑300(1)) preserves long standing and traditional provisions authorizing the state to seek to dissolve involuntarily a corporation by judicial decree. While this power has been exercised only rarely in recent years, this right of the state involves a policing action that provides a means by which the state may ensure compliance with, and non‑abuse of, the fundamentals of corporate existence. Section 14.30(1) (Section 33‑14‑300(1)) limits the power of the state in this regard to grounds that are reasonably related to this objective.

The legality of proposed corporations or of proposed actions has sometimes been tested by the secretary of state’s refusal to accept documents for filing. The role of the secretary of state in reviewing documents for filing has been restricted by the Model Act (see section 1.25 (Section 33‑1‑250) and its Official Comment). It is intended that suits under this article will replace those actions.

2. Involuntary Dissolution by Shareholders.

Section 14.31(2) (Section 33‑14‑310(2)) provides for involuntary dissolution at the suit of a shareholder under circumstances involving deadlock or significant abuse of power by controlling shareholders or directors.

a. Deadlock.

Dissolution because of deadlock is available if there is a deadlock at the directors’ level but only if (1) the shareholders are unable to break the deadlock and (2) either “irreparable injury” to the corporation is being threatened or suffered or the business and affairs “can no longer be conducted to the advantage of” the shareholders. This language closely follows the earlier versions of the Model Act except that the requirement of “irreparable injury” has been relaxed to some extent. Dissolution because of deadlock at the directors’ level is not dependent on the lapse of time during which the deadlock continues.

Dissolution is also available because of deadlock at the shareholders’ level if the shareholders are unable to elect directors over a two‑year period. This remedy is particularly important in small or family‑held corporations in which share ownership may be divided on a 50‑50 basis or a supermajority provision (including possibly a requirement of unanimity) may under section 14.30(2)(iii) (Section 33‑14‑300(2)(iii)) is not dependent on irreparable injury or misconduct by the directors then in office; if injury or misconduct is present, a deadlocked shareholder may proceed under another clause of section 14.30(2) (Section 33‑14‑300(2)).

b. Abuse of power.

A shareholder may sue for involuntary dissolution upon proof either that those in control of the corporation are acting illegally, oppressively, or fraudulently (section 14.30(2)(ii) (Section 33‑14‑300(2)(ii)) or that the corporate assets are being misapplied or wasted (section 14.30(2)(iv) (Section 33‑14‑300(2)(iv)). The application of these grounds for dissolution to specific circumstances obviously involves judicial discretion in the application of a general standard to concrete circumstances. The court should be cautious in the application of these grounds so as to limit them to genuine abuse rather than instances of acceptable tactics in a power struggle for control of a corporation.

3. Dissolution by Creditors.

Creditors may obtain involuntary dissolution only when the corporation is insolvent and only in the limited circumstances set forth in section 14.30(3)(Section 33‑14‑300(3)). Typically, a proceeding under the federal Bankruptcy Act is an alternative in these situations.

4. Dissolution by Corporation.

A corporation that has commenced voluntary dissolution may petition a court to supervise its dissolution. Such an action may be appropriate to permit the orderly liquidation of the corporate assets and to protect the corporation from a multitude of creditors’ suits or suits by dissatisfied shareholders.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 14.30 of the Model Act has been adopted with several changes. Section 33‑14‑300(2)(i) has been broadened to include a deadlock of those in control of the corporation (see Section 33‑8‑101(c)), thus producing the same result as under Section 33‑21‑150(a)(3) of the 1981 South Carolina Business Corporation Act; Section 33‑14‑300(2)(ii) has been broadened to follow the formula used in Section 33‑21‑150(a)(4) of the 1981 South Carolina Business Corporation Act defining the circumstances under which a shareholder may bring an involuntary dissolution action; Section 33‑14‑300(2)(v) has been added to include grounds under the prior South Carolina law; and Section 33‑14‑300(2)(vi) has been added to permit a shareholder to seek judicial dissolution when the period of duration specified in the articles of incorporation has expired.

The new provision does not continue the authorization in the 1981 South Carolina Business Corporation Act for a director to bring an action for dissolution on any of the grounds available to shareholders nor does it allow a creditor to seek dissolution because the corporate assets are being misapplied or wasted. Under the new provision shareholders no longer have the right to seek judicial dissolution because the corporation is insolvent or unable to provide security to its creditors. Additionally, the new provision does not continue the former provision for special dissolution provisions in the articles of incorporation (Section 33‑21‑130 of the 1981 South Carolina Business Corporation Act) and, thus, deletes this as a ground for a shareholder seeking judicial dissolution. A closely‑held corporation may have such dissolution provisions under the Statutory Close Corporation Supplement. See Chapter 18.

The new provision also does not continue the prior law’s requirement that the Attorney General bring an action to dissolve a corporation in every case in which security is given to indemnify the State against any costs and expenses of the proceeding even though he has determined that the public interest does not warrant the action, as well as in every case in which he determines that the public interest does warrant it. The latter requirement is meaningless; the former, unwise. The grounds for a dissolution action by the Attorney General are the same under the new provision as under prior South Carolina law.

DERIVATION: 1984 Model Act Section 14.30.

CROSS REFERENCES

Action by board of directors, see Sections 33‑8‑200 through 33‑8‑240.

Administrative dissolution, see Section 33‑14‑200 through 33‑14‑230.

Attorney general commencing proceeding to dissolve professional corporation, see Section 33‑19‑420.

Court action to protect shareholders of statutory close corporation, see Section 33‑18‑400.

Decree of dissolution, see Section 33‑14‑330.

Dissolution of statutory close corporation, see Section 33‑18‑430.

Election of directors, see Section 33‑8‑103.

Judicial dissolution, see Section 33‑14‑310.

“Proceeding” defined, see Section 33‑1‑400.

Revocation of articles of incorporation by State, see Section 33‑2‑103.

Shareholder voting, see Sections 33‑7‑250 through 33‑7‑270.

Terms of directors, see Sections 33‑8‑105 through 33‑8‑106.

Ultra vires acts, see Section 33‑3‑104.

Voluntary dissolution, see Sections 33‑14‑101 through 33‑14‑105.

Library References

Corporations 592 to 606.

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C.J.S. Corporations Sections 811, 813 to 816, 818 to 831.

RESEARCH REFERENCES

Encyclopedias

92 Am. Jur. Proof of Facts 3d 163, Establishing Liability for Minority Shareholder Oppression.

Forms

South Carolina Legal and Business Forms Section 1:24 , Dissolution and Liquidation‑Administrative and Judicial Dissolution.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8078, Creditors.

NOTES OF DECISIONS

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1. In general

Corporate dissolution statute, former Section 33‑21‑150, was jurisdictional, and asking for dissolution was merely prerequisite to obtaining other forms of relief under former Section 33‑21‑155. Dissolution of entire corporation would clearly be improper due to continued profitability and growth potential of business and investments of time and money by parties involved in business. Hendley v. Lee, 1987, 676 F.Supp. 1317.

The application of the grounds for judicial dissolution of a corporation, under the Business Corporation Act, to specific circumstances, involves judicial discretion in the application of a general standard to concrete circumstances; a court should be cautious in the application of those grounds so as to limit them to genuine abuse rather than instances of acceptable tactics in a power struggle for control of a corporation. Mason v. Mason (S.C.App. 2015) 412 S.C. 28, 770 S.E.2d 405, rehearing denied, certiorari dismissed. Corporations and Business Organizations 3009

Illegal or fraudulent conduct is not required under the Business Corporation Act provision allowing for dissolution of a corporation based on director’s illegal, fraudulent, or unfairly prejudicial acts; the concern and focus in shareholder oppression cases is that the minority faces a trapped investment and an indefinite exclusion from participation in business returns. Mason v. Mason (S.C.App. 2015) 412 S.C. 28, 770 S.E.2d 405, rehearing denied, certiorari dismissed. Corporations and Business Organizations 1526(5); Corporations and Business Organizations 3009

The Business Corporation Act provision allowing for dissolution of a corporation based on director’s illegal, fraudulent, or unfairly prejudicial acts broadens the scope of actionable conduct by providing a frozen‑out minority shareholder a right of action based on conduct by a majority shareholders which might not rise to the level of fraud. Mason v. Mason (S.C.App. 2015) 412 S.C. 28, 770 S.E.2d 405, rehearing denied, certiorari dismissed. Corporations and Business Organizations 3009

Amendment of judicial dissolution statute to include “unfairly prejudicial” conduct by directors or those in control of the corporation, as grounds for dissolution, broadened the scope of actionable conduct, by providing the frozen‑out minority shareholder a right of action based on conduct by the majority shareholders which might not rise to the level of fraud. Kiriakides v. Atlas Food Systems & Services, Inc. (S.C. 2001) 343 S.C. 587, 541 S.E.2d 257. Corporations And Business Organizations 3009

A court cannot judicially order a corporate dissolution solely upon the basis that a party’s “reasonable expectations” have been frustrated by majority shareholders, but frustration of reasonable expectations can be one factor in assessing oppressive conduct, as basis for dissolution. Kiriakides v. Atlas Food Systems & Services, Inc. (S.C. 2001) 343 S.C. 587, 541 S.E.2d 257. Corporations And Business Organizations 3009

“Oppressive” or “unfairly prejudicial” conduct by directors or those in control of the corporation, as grounds for judicial dissolution, are elastic terms whose meaning varies with the circumstances presented in a particular case. Kiriakides v. Atlas Food Systems & Services, Inc. (S.C. 2001) 343 S.C. 587, 541 S.E.2d 257. Corporations And Business Organizations 3009

Conduct of majority shareholder in closely‑held family corporation in depriving minority shareholders of their interests in corporation and subsidiary, loss of one minority shareholder’s employment as corporation’s president, corporation’s indication it would not declare dividends in foreseeable future despite corporation’s substantial cash and liquid assets, total estrangement of minority shareholders from majority shareholder, and majority shareholder’s extremely low buyout offers, constituted “oppressive” or “unfairly prejudicial” conduct, as grounds for judicial dissolution. Kiriakides v. Atlas Food Systems & Services, Inc. (S.C. 2001) 343 S.C. 587, 541 S.E.2d 257. Corporations And Business Organizations 3009

2. Direct action

Under South Carolina law, prepetition state court cause of action brought by minority shareholders seeking judicial dissolution of Chapter 11 debtor‑corporation and other relief under state law was a direct action, and so did not belong to the bankruptcy estate; minority shareholders could bring the action themselves without asserting it on behalf of the corporation. In re Greenwood Supply Co. (Bkrtcy.D.S.C. 2002) 295 B.R. 787. Bankruptcy 2553

3. Shareholder oppression

Minority shareholder was not an oppressed shareholder, so as to warrant judicial dissolution under Business Corporation Act in shareholder’s action against family member owners of auto‑service company, and against company, seeking repurchase of his shares, where shareholder seemed to be primary party who engaged in illegal activities and benefited from them, received benefits from “casing” scheme, was not re‑elected as president of company, but was elected to serve as vice‑president and received same salary, chose to leave company and, as a result, to stop receiving salary and other benefits, refused to repay company for personal expenses, and had knowledge that adjusting company’s inventory to diminish its tax liability was fraudulent. Mason v. Mason (S.C.App. 2015) 412 S.C. 28, 770 S.E.2d 405, rehearing denied, certiorari dismissed. Corporations and Business Organizations 1526(5); Corporations and Business Organizations 3009

Evidence supported finding that shares which defendants received from corporation, in addition to those received from its founder, were issued in anticipation of “future services or benefits,” and thus corporation should have placed shares in escrow; defendants paid money to founder directly and not to corporation, and stock purchase agreement listed duties that each party would perform. Ballard v. Roberson (S.C. 2012) 399 S.C. 588, 733 S.E.2d 107, rehearing denied. Corporations and Business Organizations 1384(2)

Minority shareholders seeking to protect their rights by action for oppression, must allege some future harm; there is no need to impose a further requirement of imminent harm. Ballard v. Roberson (S.C. 2012) 399 S.C. 588, 733 S.E.2d 107, rehearing denied. Corporations and Business Organizations 1526(7)

The concern and focus in shareholder oppression cases is that the minority faces a trapped investment and an indefinite exclusion from participation in business returns. Ballard v. Roberson (S.C. 2012) 399 S.C. 588, 733 S.E.2d 107, rehearing denied. Corporations and Business Organizations 1526(5)

4. Review

Special referee’s rulings in minority shareholder’s breach of contract action against family member owners of auto‑service company, that shareholder’s breach of contract claim was not pled in his amended complaint, and that agreement was illegal and unenforceable, became law of case under two‑issue rule, where, on appeal, shareholder did not address referee’s ruling that his claim was not pled, and as to the agreement’s illegality, simply argued that the result was inequitable. Mason v. Mason (S.C.App. 2015) 412 S.C. 28, 770 S.E.2d 405, rehearing denied, certiorari dismissed. Appeal and Error 853

**SECTION 33‑14‑310.** Procedure for judicial dissolution.

 (a) Venue for a proceeding to dissolve a corporation lies in the county where a corporation’s principal office (or, if none in this State, its registered office) is or was last located.

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

 (c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite 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.

 (d) In any action filed by a shareholder to dissolve the corporation on the grounds enumerated in Section 33‑14‑300, the court may make such order or grant such relief, other than dissolution, as in its discretion is appropriate, including, without limitation, an order:

 (1) canceling or altering any provision contained in the articles of incorporation, or any amendment to the articles, or in the bylaws of the corporation;

 (2) canceling, altering, or enjoining any act or resolution of the corporation;

 (3) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

 (4) providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders.

 (e) The relief authorized in subsection (d) may be granted as an alternative to a decree of dissolution or may be granted whenever the circumstances of the case are such that the relief, but not dissolution, is appropriate.

HISTORY: Derived from 1976 Code Section 33‑21‑155 [1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑160 [1962 Code Section 12‑22.16; 1952 Code Sections 12‑651, 12‑652; 1942 Code Section 7725; 1932 Code Section 7725; 1922 (32) 1026; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], Section 33‑21‑190 [1962 Code Section 12‑22.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)], and Section 33‑21‑230 [1962 Code Section 12‑22.23; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Section 14.31 (Section 33‑14‑310) designates the attorney general as the officer to bring suits for involuntary dissolution by the state. The county or counties where these suits must be commenced should be specified; it typically is either the state capital or the county in which the corporation’s principal office is located. See the Official Comment to section 1.26 (Section 33‑1‑260). Suits brought for judicial dissolution under other subdivisions of section 14.30 (Section 33‑14‑300) must be brought where the corporation’s principal office is located or, if not located in this state, where its registered office is or was last located.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 14.31 of the 1984 Model Act has been adopted with several changes. Venue is the same for all actions, as under the 1981 South Carolina Business Corporation Act, rather than providing special venue in Richland County as the Model Act suggests. Subsections (d) and (e) have been added to the new provision to continue the explicit statement of the court’s inherent equitable powers found in Section 33‑21‑155 of the 1981 South Carolina Business Corporation Act. The net effect of these changes is that the new provision is quite similar to prior South Carolina law.

DERIVATION: 1984 Model Act Section 14.31.

CROSS REFERENCES

Attorney general commencing proceeding to dissolve professional corporation, see Section 33‑19‑420.

Custodian, see Section 33‑14‑320.

“Principal office”: defined, see Section 33‑1‑400.

“Proceeding” defined, see Section 33‑1‑400.

Receiver, see Section 33‑14‑320.

Registered office: required, see Sections 33‑2‑102 through 33‑5‑101.

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C.J.S. Corporations Sections 835 to 836, 840 to 851.

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16 ALR 6th 693 , Use of Marketability Discount in Valuing Closely Held Corporation or Its Stock.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8043, Alternative Remedies.

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1. In general

A minority shareholder was entitled to seek the statutory relief enumerated in Section 33‑14‑310(d) where the majority stockholder (a corporation) voted to approve a stock exchange agreement between itself and the subject corporation, and the agreement provided that one share of the subject corporation’s stock would be exchanged for 10 shares of the majority stockholder’s stock; a stockholder alleging a legitimate ground for dissolution may seek the alternative equitable relief of Section 33‑14‑310(d). Hite v. Thomas & Howard Co. of Florence, Inc. (S.C. 1991) 305 S.C. 358, 409 S.E.2d 340.

2. Direct action

Under South Carolina law, prepetition state court cause of action brought by minority shareholders seeking judicial dissolution of Chapter 11 debtor‑corporation and other relief under state law was a direct action, and so did not belong to the bankruptcy estate; minority shareholders could bring the action themselves without asserting it on behalf of the corporation. In re Greenwood Supply Co. (Bkrtcy.D.S.C. 2002) 295 B.R. 787. Bankruptcy 2553

Minority shareholders’ action to dissolve Chapter 11 debtor‑corporation under South Carolina’s judicial dissolution statute was one “against the debtor” within meaning of the automatic stay, even if shareholders elected not to seek the drastic remedy of dissolving the corporation, but only wished to compel the purchase of their shares at a fair value by the majority shareholders. In re Greenwood Supply Co. (Bkrtcy.D.S.C. 2002) 295 B.R. 787. Bankruptcy 2395

3. Purchase of shares

Finding that defendant shareholders acted oppressively to “freeze‑out” minority shareholder, and order requiring them to purchase his stock at fair market value, was supported by evidence that defendants authorized new shares, in violation of shareholders agreement and articles of incorporation, diluting minority shareholder’s interest from 20% to 2%, and excluded him from involvement with corporation. Ballard v. Roberson (S.C. 2012) 399 S.C. 588, 733 S.E.2d 107, rehearing denied. Corporations and Business Organizations 1526(7)

**SECTION 33‑14‑320.** Receivership or custodianship.

 (a) A court in a judicial proceeding brought to dissolve a corporation may appoint receivers to wind up and liquidate, or 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.

 (b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this State) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

 (1) the receiver (i) 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 (ii) may sue and defend in his own name as receiver of the corporation in all courts of this State;

 (2) 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.

 (d) 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 in the best interests of the corporation, its shareholders, and creditors.

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

HISTORY: Derived from 1976 Code Section 33‑21‑170 [1962 Code Section 12‑22.17; 1952 Code Section 12‑653; 1942 Code Section 7725; 1932 Code Section 7725; 1922 (32) 1026; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

Section 14.32 (Section 33‑14‑320) preserves provisions from earlier versions of the Model Act authorizing the appointment of a receiver, and adds authority to appoint a custodian as an alternative, for a corporation in a judicial dissolution proceeding. In many states, general statutes or rules of court regulate the appointment of receivers or custodians and define their duties. Section 14.32 (Section 33‑14‑320) is designed to supplement these general provisions and grant the court power to take the steps it considers necessary to resolve the internal corporate problem or to effect liquidation of the corporation in an efficient manner.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 14.32 of the 1984 Model Act has been adopted without change. It adds to the 1981 South Carolina Business Corporation Act’s authorization of the appointment of a receiver, the authority to appoint a custodian to manage the business and affairs of the corporation. The new provision does not require, as prior law did, that an individual receiver or custodian be a citizen of the United States.

DERIVATION: 1984 Model Act Section 14.32.

CROSS REFERENCES

Attorney general commencing proceeding to dissolve professional corporation, see Section 33‑19‑420.

Custodianship pendente lite, see Section 33‑14‑310.

“Notice” defined, see Section 33‑1‑410.

Receivership pendente lite, see Section 33‑14‑310.

Library References

Corporations 621, 622.

Westlaw Topic No. 101.

C.J.S. Corporations Section 866.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 33, Dissolution and Liquidation Proceedings.

Forms

South Carolina Legal and Business Forms Section 8:30 , Deed‑Receiver.

NOTES OF DECISIONS

In general 1

1. In general

One of the purposes of a receivership is that corporate assets shall be held in impartial hands so that the proceeds may be administered according to the priorities of the claims thereto. Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc. (S.C.App. 2004) 360 S.C. 473, 602 S.E.2d 83, rehearing denied, certiorari denied. Corporations And Business Organizations 2924

Majority stockholders, by their vote, are given the right by law to the appointment of receivers and to a dissolution of the corporation, but neither under the general law of corporations nor under this section have minority stockholders any such right as a matter of course, and this section leaves the issuing of such orders to the discretion of the court upon a consideration by the court of the entire record of the business history and present condition of the corporation. (Decided under former law) Towles v. South Carolina Produce Ass’n (S.C. 1938) 187 S.C. 290, 197 S.E. 305. Corporations And Business Organizations 3051

**SECTION 33‑14‑330.** Decree of dissolution.

 (a) If after a hearing the court determines that grounds for judicial dissolution described in Section 33‑14‑300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of court shall deliver a certified copy of the decree to the Secretary of State, who shall file it without charging any fee.

 (b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation’s business and affairs in accordance with Section 33‑14‑105 and the notification of claimants in accordance with Sections 33‑14‑106 and 33‑14‑107.

HISTORY: Derived from 1976 Code Section 33‑21‑200 [1962 Code Section 12‑22.20; 1952 Code Section 12‑655, 1942 Code Section 7716; 1932 Code Section 7716, Civ. C. ‘22 Section 4288, Civ. C. ‘12 Section 2821; Civ. C. ‘02 Section 1873, 1898 (22) 774, 1962 (52) 1996, 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2.

OFFICIAL COMMENT

A court decree ordering that a corporation be dissolved involuntarily has the same legal effect as articles of dissolution. Section 14.33 (Section 33‑14‑330) requires that the secretary of state receive and file a copy of the decree. Thereafter, the corporation’s business and affairs are to be wound up as provided in sections 14.05, 14.06, and 14.07 (Sections 33‑14‑105, 33‑14‑106 and 33‑14‑107).

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 14.33 of the 1984 Model Act has been adopted with only one change. The Model Act does not require, as the 1981 South Carolina Business Corporation Act did, that filing of the Decree of Dissolution by the Secretary of State be without fee. The new provision specifies that no fee is to be charged.

The new provision stipulates that the decree of dissolution is granted after the court determines that grounds exist. Thus, under the new provision, the decree of dissolution does not mark the completion of winding up and liquidation and the termination of the corporation’s legal existence as it did under prior South Carolina law. Instead, it has an effect similar to the filing of Articles of Dissolution under Section 33‑14‑103: the corporation is dissolved and may not carry on its business any longer.

DERIVATION: 1984 Model Act Section 14.33.

CROSS REFERENCES

Attorney general commencing proceeding to dissolve professional corporation, see Section 33‑19‑420.

Claims, see Sections 33‑14‑106 and 33‑14‑107.

Custodianship, see Sections 33‑14‑310 and 33‑14‑320.

“Deliver” includes mail, see Section 33‑1‑400.

Deposit with Director of Department of Revenue and Taxation, see Section 33‑14‑400.

Dissolution does not terminate authority of registered agent, see Section 33‑14‑105.

“Proceeding” defined, see Section 33‑1‑400.

Receivership, see Sections 33‑14‑310 and 33‑14‑320.

Secretary of State’s filing duties, see Section 33‑1‑250.

Winding up, see Section 33‑14‑105.

Library References

Corporations 613(7), 614(7).

Westlaw Topic No. 101.

C.J.S. Corporations Sections 835, 840 to 844.

ARTICLE 4

Miscellaneous

**SECTION 33‑14‑400.** Deposit with Department of Revenue.

 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, must be reduced to cash and deposited with the Department of Revenue or other appropriate state official for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Department of Revenue or other appropriate state official shall pay him or his representative that amount.

HISTORY: Derived from 1976 Code Section 33‑21‑210 [1962 Code Section 12‑22.21; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 4(1)]; 1988 Act No. 444, Section 2; 1993 Act No. 181, Section 515.

OFFICIAL COMMENT

Section 14.40 (Section 33‑14‑400) is a deposit provision, not an escheat provision. It does not provide for ultimate disposition of unclaimed funds. Rather, it permits a corporation that has dissolved to pay over for safekeeping to the state treasurer (or other appropriate state official with statutory authority to receive such funds) funds belonging to a creditor, claimant, or shareholder who cannot be found.

The handling and ultimate disposition of unclaimed funds by the state treasurer or other appropriate state official is to be determined by state law other than the Model Act.

SOUTH CAROLINA REPORTERS’ COMMENTS

The new provision is similar to Section 14.40 of the 1984 Model Act except that it specifies that the deposit is to be made with the Tax Commission, which is the depository under the Uniform Disposition of Unclaimed Property Act, Chapter 17 of Title 27 of the 1976 Code. See Section 27‑17‑70. The reference in Section 33‑21‑210 of the 1981 South Carolina Business Corporation Act to the escheat law of the State, Chapter 19 of Title 27 of the 1976 Code, was erroneous and, thus, was not continued.

DERIVATION: 1984 Model Act Section 14.40.

CROSS REFERENCES

Administrative dissolution, see Section 33‑14‑200.

Claims, see Sections 33‑14‑106 and 33‑14‑107.

Judicial dissolution, see Section 33‑14‑300.

Voluntary dissolution, see Sections 33‑14‑101 et seq.

Library References

Escheat 3.

Westlaw Topic No. 152.

C.J.S. Escheat Section 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Banks and Banking Section 44, Merger or Consolidation of State Bank Into a National Bank.

**SECTION 33‑14‑420.** Claims against former shareholder of dissolved corporation.

 Notwithstanding another provision of this title, a claimant may not commence a suit or other proceeding against a former shareholder of a dissolved corporation for any known or unknown claim arising from the liabilities of the corporation, acts or omissions of the corporation, or acts committed in its name if the corporation filed its articles of dissolution with the Secretary of State before January 1, 1989, or was otherwise judicially or administratively dissolved before January 1, 1989. Further, a claimant may not satisfy a judgment rendered against a dissolved corporation by proceeding against or joining an individual shareholder if the corporation filed its articles of dissolution with the Secretary of State before January 1, 1989, or was otherwise judicially or administratively dissolved before January 1, 1989.

HISTORY: 2005 Act No. 145, Section 41.A, eff June 7, 2005.

Editor’s Note

2005 Act No. 145, Section 41.B, provides as follows:

“This section takes effect upon approval by the Governor, and applies to corporations dissolved before, on, or after the effective date of this section.”