



BUSINESS LAW SECTION

NONPROFIT & UNINCORPORATED ORGANIZATIONS COMMITTEE
THE STATE BAR OF CALIFORNIA
180 Howard Street
San Francisco, CA 94105-1639
<http://www.calbar.org/buslaw/nonprofits/>

NONPROFIT AND CONSUMER COOPERATIVE CLEANUP

LEGISLATIVE PROPOSAL (BLS-2009-05)

TO: Office of Governmental Affairs
FROM: Lisa A. Runquist, Chair
Business Law Section (the "Section") Nonprofit & Unincorporated Organizations Committee (the "Committee")
DATE: July 30, 2008
RE: Proposal to amend Corporations Code Sections 5047, 5062, 5063.5, 5132, 5150, 5151, 5211, 5212, 5213, 5220, 5222, 5231, 6610 7132, 7150, 7151, 7211, 7212, 7213, 7220, 7222, 7231, 8610, 9132, 9151, 9211, 9212, 9213, 9220, 9222, 9241, 9680, 9916, 12233, 12241, 12242.5, 12330, 12331, 12351, 12352, 12353, 12360, 12362, 12371, 12630, 12694, 18360 and to add Corporations Code Section 9260

SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the "Executive Committee"): July 18, 2008
Approval Vote:

For: 13 Against: 0

Date of Approval by Legislative Subcommittee of the Executive Committee: July 30, 2008
Approval Vote:

For: 6 Against: 0

Date of Approval by the Committee: May 2, 2008
Approval Vote:

For: 9 Against: 0

Date of Approval by Legislative Subcommittee of the Committee: July 29, 2008
Approval Vote:

For: 7 Against: 0

Executive Committee Contact:¹	Committee Contact:¹
Steven K. Hazen Vice Chair, Legislation 149 South Barrington Avenue, #245 Los Angeles, CA 90049-3310 Tel: (310) 377-4356 SKHazen@sbcglobal.net	Lisa A. Runquist Chair c/o Runquist & Associates 17554 Community Street Northridge, CA 91325 Tel: (818) 760-8986 lisa@runquist.com

¹ Contact information is as of the date submitted. Contact information for the 2008-09 State Bar year is contained in the Supplemental Contacts Information sheet at the end of this document.

HISTORY, DIGEST AND PURPOSE

This Proposal seeks to clarify various sections of the Corporations Code so that nonprofit and consumer cooperative corporations may have more certainty in their operations. The amendments clarify 1) director voting rights, 2) authorized number of directors, 3) quorum, 4) board committees, 5) officer titles, and 6) board reliance. They also provide for 1) streamlined merger and liquidation processes, 2) default provisions in the case of third party approvals, 3) procedures for board reductions, and 4) the requisite private foundation restrictions.

History

The Nonprofit Corporation Law became effective in 1980. The Consumer Cooperative Corporation Law was operative in 1984. Some of the code sections affected by this Proposal have been amended since their original codification. Section 18360 was added in 2006.

Proposal and Reasons for the Proposal

Defining Director

Many nonprofit corporations utilize titles including the word “director” although such persons as not part of the governing body of the corporation as specified in Corporation Code Sections 5047 and 12233. The Proposal would amend the definition of “director” in Sections 5047 and 12233 to provide that (1) persons who have a title suggesting they are directors (e.g., “honorary directors,” “directors emeritus,” “advisory directors”) but who have not been designated, elected or appointed to act as members of the corporation’s governing body and vote on actions or decisions taken by it on behalf of the corporation are not directors for purposes of the code, and (2) persons who become directors by reason of having a particular status or holding a specified position (“ex officio directors”) are directors for all purposes. This would eliminate common misperceptions and confusion about the ability of a nonprofit or consumer cooperative corporation to have nonvoting directors and about the voting rights of “ex officio” directors.

Unincorporated Nonprofit Association Mergers

Under present law, unincorporated nonprofit associations may not merge into nonprofit or consumer cooperative corporations due to the exclusion of nonprofit associations from the definition of “other business entity” in Corporation Code Sections 5063.5 and 12242.5. As a consequence, such mergers presently occur in a two-step process: the nonprofit association is first incorporated and then the merger is consummated.

To authorize a one-step merger process for nonprofit unincorporated associations and streamline their merger with nonprofit or consumer cooperative corporations, it is recommended that Sections 5063.5 and 12242.5 be amended to delete “other than a nonprofit association” so that all unincorporated associations are included in the definition of “other business entity.”

The Proposal would also remove the restriction which limits unincorporated associations to one-way mergers “into” a corporation, limited or general partnership, or limited liability company under Corporations Code Section 18360. It would remove the word “into” and replace it with the word “with”, which is used in the other sections of the Corporations Code permitting two-way mergers by for-profit corporations, nonprofit corporations, partnerships and limited liability companies. See Corporations Code Sections 1100, 6010(a), 8010, 9640(b), 12530, 16910, and 17550.

Third Party Rights

The Nonprofit Public Benefit Corporation Law has three provisions allowing nonmember/nondirector approvals or designations: Corporation Code Section 5132(c)(4) allows the articles of incorporation to provide that amendment or repeal of the articles of incorporation or bylaws must be approved by a specified person or persons other than the board or the members.² Section 5150(d) allows for the bylaws to provide that amendment of the bylaws must be approved by a specified person or persons other than the board or the members. Section 5220(d) allows for designation of the directors by a third party rather than election by members. These sections present similar problems if the specified third person(s) ceases to exist, disappears, or declines to participate in the governance of the corporation and act on a proposed amendment. Internal changes and turnover at an institution with authority to designate a director all too frequently results in no response at all when requests are made for appointment of a replacement director. In some cases, the designating entity may have dissolved or merged, resulting in a question of whether an appropriate successor entity even exists. Simple loss of interest or the like by the designating entity can have the same effect. And if the person with designating authority is an individual rather than an entity, death, poor health or even senility can also result in no response when requests are made for appointment of a replacement director. In those situations, failure to appoint a replacement director can have the effect of preventing the corporation from conducting its business in the ordinary course of events.

The Proposal provides a default provision to address this problem if drafters of articles or bylaws do not. In such a situation, the authority defaults to the members or, if no members, to the directors. Section 5222(f), relating to removals of directors, is also amended to mesh with Section 5220(d) as amended. Sections 7132(c)(5), 7150(d), 7220(d) and 7222(f) in the Nonprofit Mutual Benefit Corporation Law and Sections 12330(d), 12360(d) and 12362(g) in the Consumer Cooperative Corporation Law are amended similarly. Section 9132(c)(4) in the Nonprofit Religious Corporation Law is amended to correspond with Section 5132(c)(4); there is no Religious Corporation Law provision similar to Sections 5150(d) or 5220(d).

² It should be noted that, in all of these cases, the person may be either an entity or an individual. Therefore, we have chosen to use the language “dies or ceases to exist” to cover both situations.

Method of Determining Authorized Number of Directors

Nonprofit corporations sometimes wish to determine the size of the board of directors by a formula tied to specific objective factors. The Corporations Code currently provides that (i) the bylaws may **fix** the number of authorized directors within a range specified by them, or (ii) the board may determine the number of directors within that range by resolution. However, there is no provision clearly permitting the number of directors to be determined by a formula set forth in the bylaws. The Proposal would amend Sections 5151, 7151, 9151 and 12331 to allow the bylaws to provide for a method of determining the number of directors.

Quorum; One Director One Vote; No Proxy Voting by Directors

Nonprofit corporations may wish to ensure that certain board actions may not be taken without the presence, at the meeting where such action is taken, of certain directors or constituencies who are on or represented on the board. Sections 5211(a)(7), 7211(a)(7), 9211(a)(7), and 12351(a)(7) do not expressly provide that the requisite quorum must include certain specified directors. This practice is relatively common and expressly permitted in some other states. The Corporations Code should state expressly that the articles or bylaws may specify that certain directors must be present for a quorum to be present as long as that does not prevent efficient decision-making for the corporation when those directors die or the person or persons authorized to appoint or elect them have died or ceased to exist.

In addition, Sections 5211(a)(7), 7211(a)(7), 9211(a)(7), and 12351(a)(7) refer to the authorized number of directors as stated in the articles or bylaws. In many cases, the bylaws provide for a range of directors (for example from three to nine) and the authorized number is set by the board in a resolution. The Proposal adds the language “or pursuant to” before the articles or bylaws to clarify that the authorized number may be the number authorized by resolution and not the highest end of a range in the articles or bylaws.

Constituents of nonprofit corporations sometimes wish to permit certain directors to possess more than one vote. However, that is inconsistent with the Corporations Code and a director’s fiduciary duties. While the existing provisions suggest that an action or decision taken by a board of directors is determined by a headcount of directors present rather than a vote cast by them, that subtlety is not always clearly recognized by volunteers trying to manage the affairs of a corporation. We believe that can be readily clarified. In addition, although the code does not expressly forbid a director from participating in a decision by proxy, this restriction should be made clear as such volunteers may not recognize the risk of that being inconsistent with fiduciary duties. The Proposal adds a new subdivision (c) to Sections 5211, 7211, 9211 and 12351 to state that each director has only one vote and no director may vote by proxy.

Board Committees; Board and Advisory Committees

Sections 5212(a), 7212(a), 9212(a), and 12352(a) list restrictions on the authority of board committees, including “the approval of any action for which this part also requires

approval of the members ... or approval of a majority of all members.” This restriction is usually interpreted to apply to actions the law states require approval by members as defined in Sections 5034 and 5033 (and Sections 12224 and 12223), regardless of whether the corporation has or does not have members. The Proposal would add language clarifying that the restriction applies regardless of whether the corporation has members.

It is common practice to provide in bylaws for the creation of both “board” committees – committees comprised entirely of directors, to whom the board of directors may delegate its authority, except as provided in Sections 5212, 7212, 9212, and 12352 – and “advisory” committees – committees that may be partially or wholly comprised of nondirectors, and which advise the board or board committees or implement their decisions, but do not hold the authority of the board. The Proposal amends Sections 5212(b), 7212(b), 9212(b), and 12352(b) to clarify that board committees may only have directors as members but that other committees with nondirector members may be created as long as they do not exercise the authority of the board.

Officer Titles: Chairman of the Board and Chief Financial Officer

Section 5213(a) of the California Corporations Code currently sets forth the required officers for a nonprofit public benefit corporation. This section requires that the corporation have a “chairman of the board or a president or both.” It also requires that the corporation have a “chief financial officer” and a secretary. The same requirements apply to mutual benefit corporations (Section 7213(a)), religious corporations (Section 9213(a)), and consumer cooperative corporations (Section 12353(a)). For nonprofit corporations in existence on December 31, 1979, which are currently subject to the transition rule of Section 9916, and consumer cooperative corporations subject to Section 12694, the “treasurer” is deemed to be the “chief financial officer.”

Section 5062 defines an officers’ certificate as a document signed and verified by the chairman of the board or president (or any vice president), and the secretary, chief financial officer or treasurer (or any assistant secretary or treasurer). This definition applies to public benefit, mutual benefit and religious corporations. The same definition is found in section 12241 for consumer cooperative corporations.

The language of the current law allows titles of “other officers” to be at the board’s discretion, but does not expressly allow the board to change the title given to the “chairman of the board.” Many corporations prefer to use a gender-neutral term for this officer, such as “chair of the board” or “chairperson of the board,” or to grant the alternative title of “chairwoman of the board” when the person holding this office is female. In recent years, the Secretary of State’s office has rejected officers’ certificates signed under a title that does not exactly match the statutory text (“chairman of the board”). The Proposal would change Sections 5213(a), 7213(a), 9213(a) and 12353(a) to state that a corporation may use any of these four titles to designate the individual who serves in this statutory officer role.

The Proposal also amends the definition of the term “officers’ certificate” in sections 5062 and 12241 to allow an officer given any one of these four titles to sign the certificate.

The “chief financial officer” is a named and required office in Section 5213(a), 7213(a), 9213(a), and 12353(a), but a “treasurer” is not. This language is inconsistent with the treatment of the office of “president” and role of “chief executive officer” in the same code section. This language also causes confusion because many nonprofit corporations have both a “treasurer” and a “chief financial officer,” where the treasurer is a board officer and the chief financial officer is an executive staff member. To provide consistency in officer titles in a manner that conforms to many corporations’ existing practices, these sections would be changed to permit a corporation to have a “treasurer or a chief financial officer or both.” These sections and the transition rule in section 9916 would also be changed to note that unless otherwise provided in the corporation’s articles or bylaws, the treasurer will fulfill the role of “chief financial officer” if there is no separate chief financial officer.

Board Reduction

Occasionally, a nonprofit corporation will be engaged in a board dispute whereby the board wishes to reduce the size of the board, and the director occupying the seat that will be terminated looks to the language “until a successor has been elected and qualified” in Section 5220(b) as evidence that unless that director is actually removed from the board, the director continues to serve. Section 5222(c) further states that any reduction of the authorized number of directors does not remove any director prior to the expiration of that director’s term of office.

To remedy this problem, the Proposal amends Sections 5220(b) and 5222(c) to state that this is the case unless the director has been removed from office. The corresponding sections in the Religious, Mutual Benefit and Consumer Cooperative Corporation Law, i.e., Sections 7220(b), 7222(c), 9220(c), 9222(c), 12360(b), and 12362(d) would also be amended.

Reliance

Under Sections 5210, 7210, 9210, and 12350, the board may delegate the management of the activities of the corporation to anyone, although it retains ultimate responsibility. Under Sections 5212, 7212, 9212, and 12352, the board may delegate board authority, within specified limits, to committees of the board composed only of two or more directors. Under subsection (b)(3) of Sections 5231, 7231, 9241, and 12371, in discharging their fiduciary duties, directors may rely on “information, opinions, reports or statements prepared or presented by” a “committee of the board upon which the director does not serve,” as to matters within its designated authority. As drafted, it is unclear how to read these three sections together. It is assumed in practice the only committee on which a director may rely is a committee that complies with Section 5212 (and its parallel sections), but Section 5231(b)(3) does not expressly provide this limitation.

The proposed amendment to Sections 5231(b)(3), 7231(b)(3), 9241(b)(3), and 12371(b)(3) clarifies what committees can be relied upon by substituting the ambiguous phrase, “committee of the board,” with a description of committees composed entirely of directors. The Proposal also widens the reliance category to include advisory committees composed of (i) those with fiduciary duties to the corporation (e.g., officers and employees), (ii) those with relevant professional expertise (e.g., attorneys and accountants), and (iii) directors. It is expected that subsection (b)(3) as amended will apply to most Audit Committees.

Dissolution

California Corporations Code Section 6610 currently requires “approval of the board” for voluntary dissolution of a nonprofit public benefit corporation if there are no members and in certain other situations. Similar rules apply to mutual benefit and religious corporations in Sections 8610 and 9680 and to consumer cooperative corporations in Section 12630.

By the time corporations find it appropriate to dissolve, it is often impossible to find a sufficient number of directors to make up the quorum necessary for that approval. Although Section 5224 of the Code (and similar provisions in Sections 7224, 9224 and 12364) would allow the remaining directors to elect new directors to create a quorum in order to make this election, it can be difficult to find directors willing to join a board for the limited purpose of dissolving and winding up the corporation. This technical step should not be necessary before dissolving.

This Proposal would revise the requirement for board approval of a voluntary dissolution under Section 6610, by adding a new Subsection 6610(c). Under subsection (c), if the corporation would be permitted to dissolve by approval of the board, but the number of directors then in office is less than a quorum, an action by the board to elect to dissolve could be taken by the same vote as would be required under Section 5224 for the election of additional directors (that is, by a unanimous consent of all remaining directors, a vote of a majority of the remaining directors at a meeting, or the approval of the sole remaining director). Furthermore, after such an election to dissolve, any actions by the board during the period of winding up and dissolving, including an election to revoke the dissolution, would also require only the same vote that was required for the dissolution. This Proposal eliminates the need for a board that is less than a quorum to recruit and elect more board members to operate the corporation during this period.

Corresponding changes would be made to Sections 8610, 9680, and 12630 to apply the same rules to mutual benefit corporations, religious corporations and consumer cooperative corporations.

Private Foundation Restrictions

A private foundation is not tax exempt under federal law unless its governing instrument contains special provisions in addition to those required of all other organizations holding tax-exempt status under Internal Revenue Code Section 501(c)(3). A private foundation’s

governing instrument is considered to satisfy this requirement if applicable state law obligates it: (i) to act or refrain from acting so as not to subject the foundation to the taxes imposed on prohibited transactions, or (ii) to treat the mandatory provisions as contained in the foundation's governing instrument. Currently, Corporations Code Section 5260 allows a public benefit corporation that is a private foundation as described in that section to satisfy the IRS requirement without including this language in its governing instrument. The Proposal creates a new Section 9260 which make the provisions of Section 5260 applicable to religious corporations.

APPLICATION

If enacted, the legislation would become effective in 2010.

PENDING LITIGATION

We are not aware of any specific pending litigation that would be affected by this Proposal.

LIKELY SUPPORT AND OPPOSITION

We anticipate support from nonprofit and consumer cooperative corporations organized under the laws of California but have not taken any steps to assess the potential for such support, much less solicit it. We are unaware of any specific segments that might oppose this Proposal. Specifically, we do not believe that the amendments would work a change on existing standard of care provisions and thus should not be controversial to interests particularly focusing on that issue.

FISCAL IMPACT

None.

GERMANENESS

The matters addressed in this Proposal require the special knowledge, training, experience or technical expertise of the Section and of members of the Committee. The position advanced would promote clarity, consistency, and comprehensiveness in the law. Adoption of the Proposal would thus promote more efficient use of the judicial system.

TEXT OF PROPOSAL

Corporations Code

§ 5047. Except where otherwise expressly provided, “directors” means natural persons, designated in the articles or bylaws or elected by the incorporators, and their successors and natural persons designated, elected or appointed by any other name or title to act as members of the governing body of the corporation. *A person who does not have authority to act as a member of such governing body (including through voting as a member of the board of directors) is not a director as that term is used in this division regardless of title. If the articles or bylaws provide that a natural person is a director or member of the governing body of the corporation by reason of occupying a specified position within or without the corporation, then such person is a director for all purposes and shall have the same rights and obligations, including voting rights, as the other directors.*

§ 5062. “Officers’ certificate” means a certificate signed and verified by the chairman of the board, ~~the chairman~~ *the chairperson of the board, the chairman of the board, the chairwoman of the board*, the president or any vice president and by the secretary, the chief financial officer, the treasurer or any assistant secretary or assistant treasurer.

§ 5063.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association ~~(other than a nonprofit association)~~, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 18035.

§ 5132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation’s existence to a specified date.

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 6510), 16 (commencing with Section 6610) and 17 (commencing with Section 6710) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) A provision that requires an amendment to the articles, as provided in subdivision ~~(e)~~(a) of Section 5812, or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *Unless otherwise provided in the articles, such a requirement (A) shall cease to be operative if (i) such specified person or persons (Section 5065) have died or ceased to exist, or (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist, and (B) shall not apply to a specific proposal for amendment or repeal if the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval of that proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.*

(5) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

§ 5150. (a) Except as provided in subdivision (c), and Sections 5151, 5220, 5224, 5512, 5613, and 5616, bylaws may be adopted, amended or repealed by the board unless the action would materially and adversely affect the rights of members as to voting or transfer.

(b) Bylaws may be adopted, amended or repealed by approval of members (Section 5034); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would materially and adversely affect the rights of that class as to voting or transfer in a manner different than such action affects another class.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 5151.

(d) Bylaws may also provide that repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *Unless otherwise provided in the bylaws, such right of approval shall not apply to a proposal to repeal or amend bylaws if (A) (i) the person or persons so entitled have ceased to exist, or (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has died or ceased to exist, or (B) the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval*

of such proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.

§ 5151. (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; *or the method of determining such number*; or that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e) of Section 5151. The number or minimum number of directors may be one or more.

(b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (c) of Section 5132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

(4) The appointment and authority of committees.

(5) The appointment, duties, compensation and tenure of officers.

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments and admission fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 5341.

(e) The bylaws may require, for any or all corporate actions (except as provided in paragraphs (1) and (2) of subdivision (a) of Section 5222, subdivision (c) of Section 5616, and Section 6610), the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members, or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

§ 5211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone,

including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business, *provided that the articles or bylaws may require the presence of one or more specified directors in order for a quorum to exist at a meeting, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate such director does not prevent the corporation from conducting business in the normal course of events.* The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in *or pursuant to* the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding

the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, "all members of the board" does not include an "interested director" as defined in Section 5233.

(c) *Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at such meeting. No director may vote at any meeting by proxy.*

(d) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

§ 5212. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in *or pursuant to* the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033), *regardless of whether such corporation has members.*

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

(8) The approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.

(b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. The board may create other committees that do not exercise the authority of the board and such other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 5210, but may not delegate the powers set forth in paragraphs (1) through (8) of subdivision (a) of this section.

§ 5213. (a) A corporation shall have a ~~chairman~~ of ~~the~~ its board (*who may be given the title chair of the board, chairperson of the board, chairman of the board or chairwoman of the board*) or a president or both, a secretary, a *treasurer or a chief financial officer or both*, and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the ~~chairman~~ of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial officer of the corporation, unless otherwise provided in the articles or bylaws.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that ~~neither~~ *none* of the secretary, ~~nor~~ *the treasurer, or the chief financial officer* may serve concurrently as the president or ~~chairman~~ of the board.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

(c) If the articles or bylaws provide for the election of any officers by the members, the term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years.

§ 5220. (a) Except as provided in subdivision (d), directors shall be elected for the terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, *unless the director has been removed from office.*

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members *or the board.* Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 5222. A bylaw provision

authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select the director or directors. *Unless otherwise provided in the articles or bylaws, such entitlement to designate or select shall cease if (1) the person or persons so entitled have ceased to exist, or (2), if such entitlement is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such entitlement to designate or select.*

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

§ 5222. (a) Subject to subdivisions (b) and (f), any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) if the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) If by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) If by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office, *unless such reduction or amendment also provides for removal of one or more specified directors.*

(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) If a director removed under this section or Sections 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) If a different person may be designated pursuant to a governing article or bylaw provision, the new designation shall be made.

(2) If the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) If by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

(3) Unless otherwise provided in the articles or bylaws, such right to remove shall cease if (1) the person or persons entitled to that right have ceased to exist, or (2), if such right to remove is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such right to remove.

§ 5231. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of (A) directors, (B) individuals described in paragraph (1) of subdivision (b), and (C) individuals described in paragraph (2) of subdivision (b)*, as to matters within *such committee's* ~~its~~-designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) Except as provided in Section 5233, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which a corporation, or assets held by it, are dedicated.

§ 6610. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033) or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated a bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (2), clause (i), of Section 5132.

(c) If a corporation comes within one of the descriptions set forth in subdivision (b) and if the number of directors then in office is less than a quorum, it may elect to wind up and dissolve by (1) the unanimous consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to waiver of notice by those directors complying with Section 5211(a)(3), or (3) the vote of a sole remaining director. If the corporation does so, references to the board in this chapter (commencing with Section 6610) and Chapter 17 (commencing with Section 6710) shall be deemed to be to a board consisting solely of those directors or that sole director and in that event action by the board shall require at least the same consent or vote as would be required under this subdivision (c) for an election to wind up.

§ 7132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) A provision conferring upon the holders of any evidences of indebtedness, issued or to be issued by a corporation the right to vote in the election of directors and on any other matters on which members may vote under this part even if the corporation does not have members.

(3) A provision conferring upon members the right to determine the consideration for which memberships shall be issued.

(4) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (4), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

- (1) The names and addresses of the persons appointed to act as initial directors.
- (2) Provisions concerning the transfer of memberships, in accordance with Section 7320.
- (3) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.
- (4) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.
- (5) A provision that requires an amendment to the articles, as provided in subdivision ~~(e)~~(a) of Section 7812, or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *Unless otherwise provided in the articles, such a requirement (A) shall cease to be operative if (i) such specified person or persons (Section 5065) have died or ceased to exist or; (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist, and (B) shall not apply to a specific proposal for amendment or repeal if the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval of that proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.*
- (6) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

§ 7150. (a) Except as provided in subdivision (c) and Sections 7151, 7220, 7224, 7512, 7613, and 7615, bylaws may be adopted, amended or repealed by the board unless the action would:

(1) Materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer;

(2) Increase or decrease the number of members authorized in total or for any class;

(3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or

(4) Authorize a new class of membership.

(b) Bylaws may be adopted, amended or repealed by approval of the members (Section 5034); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would:

(1) Materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption, or transfer in a manner different than such action affects another class;

(2) Materially and adversely affect such class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for such class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or

(6) Authorize a new class of memberships.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 7151.

(d) Bylaws may also provide that the repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *Unless otherwise provided in the bylaws, such right of approval shall not apply to a proposal to repeal or amend bylaws if (A) (i) the person or persons so entitled have died or ceased to exist, or (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist, or (B) the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval of such proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.*

§ 7151. (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; *or the method of determining such number*; or that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e) of Section 7151. The number or minimum number of directors may be one or more.

(b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (c) of Section 7132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

(5) The appointment, duties, compensation and tenure of officers.

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and admission and transfer fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 7341.

(e) The bylaws may require, for any or all corporate actions (except as provided in paragraphs (1) and (2) of subdivision (a) of Section 7222, subdivision (c) of Section 7615, and Section 8610) the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall

not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

§ 7211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business, *provided that the articles or bylaws may require the presence of one or more specified directors in order for a quorum to exist at a meeting, as long as the death of a director or the death or nonexistence of the person or*

persons otherwise authorized to appoint or designate such director does not prevent the corporation from conducting business in the normal course of events. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in *or pursuant to* the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For purposes of this subdivision only, “all members of the board” does not include an “interested director” as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) *Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at such meeting. No director may vote at any meeting by proxy.*

(d) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

§ 7212. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in *or pursuant to* the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033), *regardless of whether such corporation has members.*

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

- (4) The amendment or repeal of bylaws or the adoption of new bylaws.
 - (5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.
 - (6) The appointment of committees of the board or the members thereof.
 - (7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.
 - (8) With respect to any assets held in charitable trust, the approval of any self-dealing transaction except as provided in paragraph (3) of subdivision (d) of Section 5233.
- (b) ~~Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. The board may create other committees that do not exercise the authority of the board and such other committees may include persons who are not directors.*
- (c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 7151 or otherwise, powers as authorized by Section 7210, but may not delegate the powers set forth in paragraphs (1) through (8) of subdivision (a) of this section.

§ 7213. (a) A corporation shall have a ~~chairman~~ *of the its board (who may be given the title chair of the board, chairperson of the board, chairman of the board or chairwoman of the board)* or a president or both, a secretary, a *treasurer or a chief financial officer or both*, and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the ~~chairman~~ of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial officer of the corporation, unless otherwise provided in the articles or bylaws.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

§ 7220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, *unless the director has been removed from office*.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members *or the board*. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (f) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 12224), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select the director or directors. *Unless otherwise provided in the articles or bylaws, such entitlement to designate or select shall cease if (1) the person or persons so entitled have died or ceased to exist, or (2) if such entitlement is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such entitlement to designate or select.*

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

7222. (a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 7615, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office, *unless such reduction or amendment also provides for removal of one or more specified directors.*

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Sections 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

(3) Unless otherwise provided in the articles or bylaws, such right to remove shall cease if (1) the person or persons entitled to that right have died or ceased to exist, or (2) if such right to remove is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such right to remove.

§ 7231. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of (A) directors, (B) individuals described in paragraph (1) of subdivision (b), and (C) individuals described in paragraph (2) of subdivision (b), as to*

matters within *such committee's* ~~its~~-designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which assets held by a corporation are dedicated.

§ 8610. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033), or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated as bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (4), clause (i) of Section 7132.

(c) If a corporation comes within one of the descriptions set forth in subdivision (b) and if the number of directors then in office is less than a quorum, it may elect to wind up and dissolve by (1) the unanimous consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to waiver of notice by those directors complying with Section 7211(a)(3), or (3) the vote of a sole remaining director. If the corporation does so, references to the board in this chapter (commencing with Section 8610) and Chapter 17 (commencing with Section 8710) shall be deemed to be to a board consisting solely of those directors or that sole director and in that event action by the board shall require at least the same consent or vote as would be required under this subdivision (c) for an election to wind up.

§ 9132. (a) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the corporation's existence to a specified date.

(2) In the case of a subordinate corporation instituted or created under the authority of a head organization, a provision setting forth either or both of the following:

(i) That the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away by, or revoked by the head organization granting it.

(ii) That in the event of its dissolution pursuant to an article provision allowed by subdivision (a), paragraph (2), clause (i), of this section, or, in the event of its dissolution for any reason, any assets of the corporation after compliance with the applicable provisions of Chapters 16

(commencing with Section 6610) and 17 (commencing with Section 6710) (made applicable pursuant to Section 9680) shall be distributed to the head organization.

(b) Nothing contained in subdivision (a) shall affect the enforceability, as between the parties thereto, of any lawful agreement not otherwise contrary to public policy.

(c) The articles of incorporation may set forth any or all of the following provisions, which shall not be effective unless expressly provided in the articles:

(1) The names and addresses of the persons appointed to act as initial directors.

(2) The classes of members, if any, and if there are two or more classes, the rights, privileges, preferences, restrictions and conditions attaching to each class.

(3) A provision which would allow any member to have more or less than one vote in any election or other matter presented to the members for a vote.

(4) A provision that requires an amendment to the articles or to the bylaws, and any amendment or repeal of that amendment, to be approved in writing by a specified person or persons other than the board or the members. *Unless otherwise provided in the articles, such a requirement (A) shall cease to be operative if (i) such specified person or persons (Section 5065) have died or ceased to exist, or (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist, and (B) shall not apply to a specific proposal for amendment or repeal if the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval of that proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.*

(5) Any other provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the corporation, including any provision which is required or permitted by this part to be stated in the bylaws.

§ 9151. (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; *or the method of determining such number;* or that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Section 5034), in the manner provided in the bylaws, subject to subdivision (e) of Section 9151. The number or minimum number of directors may be one or more.

(b) Except as otherwise provided in the articles or bylaws, once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (c) of Section 9132.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

(5) The appointment, duties, compensation and tenure of officers.

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and admissions and transfer fees.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members.

(e) The bylaws may require, for any or all corporate actions (except as provided in Section 9222 and subdivision (b) of Section 9680), the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members, or the vote of a larger proportion of, or all of, the directors than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

§ 9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by a corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation. Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference

telephone and electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting, if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business, *provided that the articles or bylaws may require the presence of one or more specified directors in order for a quorum to exist at a meeting, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate such director does not prevent the corporation from conducting business in the normal course of events.*

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number as is required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) *Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at such meeting. No director may vote at any meeting by proxy.*

(d) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees *mutatis mutandis*.

§ 9212. (a) Subject to any provision in the articles or bylaws: (i) the board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board; and (ii) appointments to such committees shall be by a majority vote of the directors then in office. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 5034) or approval of a majority of all members (Section 5033), *regardless of whether such corporation has members.*

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

~~(b) Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. The board may create other committees that do not exercise the authority of the board and such other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee powers as authorized by Section 9210, but may not delegate the powers set forth in paragraphs (1) through (6) of subdivision (a) of this section.

§ 9213. (a) A corporation shall have a ~~chairman~~ *of the its board (who may be given the title chair of the board chairperson of the board, chairman of the board or chairwoman of the board)* or a president or both, a secretary, a *treasurer or a chief financial officer or both*, and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president, the ~~chairman~~ of the board, is the general manager and chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial officer of the corporation, unless otherwise provided in the articles or bylaws.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise, except that ~~neither~~ *none* of the secretary, ~~nor~~ *the treasurer, or the chief financial officer* may serve concurrently as the president or ~~chairman~~ of the board.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

§ 9220. (a) The articles or bylaws may provide for the tenure, election, selection, designation, removal, and resignation of directors.

(b) In the absence of any provision in the articles or bylaws, the term of directors shall be one year.

(c) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, *unless the director has been removed from office.*

(d) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all

incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

§ 9222. (a) Except as provided in the articles or bylaws and subject to subdivision (b) of this section, any or all directors may be removed without cause if the removal is approved by the members (Section 5034).

(b) Except for a corporation having no members pursuant to Section 9310:

(1) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(2) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office, *unless such reduction or amendment also provides for removal of one or more specified directors.*

§ 9241. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as is appropriate under the circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of (A) directors, (B) individuals described in paragraph (1) of subdivision (b), (C) individuals described in paragraph (2) of subdivision (b), and (D) individuals described in paragraph (4) of subdivision (b),* as to matters within *such committee's* ~~its~~ designated authority, which committee the director believes to merit confidence, or

(4) Religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

(c) The provisions of this section, and not Section 9243, shall govern any action or omission of a director in regard to the compensation of directors, as directors or officers, or any loan of money or property to or guaranty of the obligation of any director or officer. No obligation,

otherwise valid, shall be voidable merely because directors who benefited by a board resolution to pay such compensation or to make such loan or guaranty participated in making such board resolution.

(d) Except as provided in Section 9243, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge his or her obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat any purpose to which the corporation, or assets held by it, may be dedicated.

§ 9260. The provisions of Section 5260 apply to religious corporations.

§ 9680. (a) Chapters 16 (commencing with Section 6610) and 17 (commencing with Section 6710) of Part 2 apply to religious corporations except for Sections 6610, 6614, 6710, 6711 and 6716.

(b) (1) Any corporation may elect voluntarily to wind up and dissolve (A) by approval of a majority of all the members (Section 5033) or (B) by approval of the board and approval of the members (Section 5034).

(2) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(A) A corporation which has been adjudicated a bankrupt.

(B) A corporation which has disposed of all its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(C) A corporation which has no members.

(D) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subparagraph (i) of paragraph (2) of subdivision (a) of Section 9132.

(3) *If a corporation comes within one of the descriptions set forth in paragraph (2) and if the number of directors then in office is less than a quorum, it may elect to wind up and dissolve by (1) the unanimous consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to waiver of notice by those directors complying with Section 9211(a)(3), or (3) the vote of a sole remaining director. If the corporation does so, references to the board in Chapters 16 and 17 referred to in subsection (a) above shall be deemed to be to a board consisting solely of those directors or that sole director and in that event action by the board shall require at least the same consent or vote as would be required under this paragraph (3) for an election to wind up.*

(c) If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (1) the corporation, or (2) the authorized number (Section 5036), or (3) the Attorney General, or (4) three or more creditors, and upon such notice to the corporation and members and creditors as the court may order, may take jurisdiction over the voluntary winding up proceeding if that appears necessary for the protection of the assets of the corporation. The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the corporation and the protection of its creditors and its assets as justice and equity may require. Chapter 15 (commencing with Section 6510) (except Sections 6510 and 6511) shall apply to those court proceedings.

(d) The powers and duties of the directors (or other persons appointed by the court pursuant to Section 6515) and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

- (1) To elect officers and to employ agents and attorneys to liquidate or wind up its affairs.
- (2) To continue the conduct of the affairs of the corporation insofar as necessary for the disposal or winding up thereof.
- (3) To carry out contracts and collect, pay, compromise, and settle debts and claims for or against the corporation.
- (4) To defend suits brought against the corporation.
- (5) To sue, in the name of the corporation, for all sums due or owing to the corporation or to recover any of its property.
- (6) To collect any amounts remaining unpaid on memberships or to recover unlawful distributions.
- (7) Subject to the provisions of Section 9142, to sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the corporation in an amount deemed reasonable by the board without compliance with Section 9631, and to execute bills of sale and deeds of conveyance in the name of the corporation.
- (8) In general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling and liquidating the affairs of the corporation.

(e) After complying with Section 6713:

- (1) Except as provided in Section 6715, all of a corporation's assets shall be disposed of on dissolution in conformity with its articles or bylaws subject to complying with the provisions of any trust under which such assets are held.
- (2) Except as provided in subdivision (3), the disposition required in subdivision (1) shall be made by decree of the superior court of the proper county. The decree shall be made upon petition therefor, upon 30 days' notice to the Attorney General, by any person concerned in the dissolution.
- (3) The disposition required in subdivision (1) may be made without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition.

(f) A vacancy on the board may be filled during a winding up proceeding in the manner provided in Section 9224.

(g) Chapter 15 (commencing with Section 6510) does not apply to religious corporations except to the extent its provisions apply under subdivision (d) of Section 6617, subdivision (c) of Section 6719, or subdivision (c) or (d) of this section.

§ 9916. Subdivision (a) of Section 5213 of the new public benefit corporation law applies to subject corporations governed by the public benefit corporation law, subdivision (a) of Section 7213 of the new mutual benefit corporation law apply to subject corporations governed by the mutual benefit corporation law, and subdivision (a) of Section 9213 of the new religious corporation law applies to subject corporations governed by the religious corporation law; but the “treasurer” of such corporations shall be deemed to be the “chief financial officer;” *unless otherwise provided in the articles or bylaws.*

§ 12233. “Directors” means natural persons, designated in the articles or bylaws or elected by the incorporators, and their successors and natural persons designated, elected, or appointed by any other name or title to act as members of the governing body of the corporation. “Directors” also means alternate directors described in Section 12331. *A person who does not have authority to act as a member of such governing body (including through voting rights as a member of the board of directors) is not a director regardless of title. If the articles or bylaws provide that a natural person is a director or member of the governing body of the corporation by reason of occupying a specified position within or without the corporation, then such person is a director for all purposes and shall have the same rights and obligations, including voting rights, as the other directors.*

§12241. “Officers’ certificate” means a certificate signed and verified by the chairman of the board, *the chairperson of the board, the chairman of the board, the chairwoman of the board,* the president, or any vice president, and by the secretary, the chief financial officer, the treasurer, or any assistant secretary or assistant treasurer.

§ 12242.5. “Other business entity” means a domestic or foreign limited liability company, limited partnership, general partnership, business trust, real estate investment trust, unincorporated association ~~(other than a nonprofit association)~~, or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance as set forth in Article 16 (commencing with Section 1550) of Chapter 3 of Part 2 of Division 1 of the Insurance Code. As used herein, “general partnership” means a “partnership” as defined in subdivision (7) of Section 16101; “business trust” means a business organization formed as a trust; “real estate investment trust” means a “real estate investment trust” as defined in subsection (a) of Section 856 of the Internal Revenue Code of 1986, as amended; and “unincorporated association” has the meaning set forth in Section 18035.

§ 12330. (a) Except as provided in subdivision (c) and Sections 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted, amended or repealed by the board unless the action would:

(1) Materially and adversely affect the rights or obligations of members as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital;

(2) Increase or decrease the number or members authorized in total or for any class;

(3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or

(4) Authorize a new class of membership.

(b) Bylaws may be adopted, amended or repealed by approval of the members (Section 12224); provided, however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would:

(1) Materially and adversely affect the rights or obligations of that class as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital, in a manner different than such action affects another class;

(2) Materially and adversely affect such class as to voting, dissolution, redemption, transfer, distributions, patronage distributions, patronage, property rights, or rights to repayment of contributed capital, by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for such class;

(4) Increase the number of memberships authorized for another class;

(5) Effect an exchange, reclassification or cancellation of all or part of the memberships of such class; or

(6) Authorize a new class of memberships.

(c) The articles or bylaws may restrict or eliminate the power of the board to adopt, amend or repeal any or all bylaws, subject to subdivision (e) of Section 12331.

(d) Bylaws may also provide that repeal or amendment of those bylaws, or the repeal or amendment of specified portions of those bylaws, may occur only with the approval in writing of a specified person or persons other than the board or members. *Unless otherwise provided in the bylaws, such right of approval shall not apply to a proposal to repeal or amend bylaws if (A) (i) the person or persons so entitled have died or ceased to exist, or (ii) if the right to so approve is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist, or (B) the corporation has provided written notice of that proposal (including a copy of it) to such specified person or persons at the most recent address of each on the records of the corporation and has not received from such person or persons written approval or nonapproval of such proposal within a period specified in the notice of not less than ten nor more than thirty days commencing at least twenty days after the notice is provided.*

§ 12331. (a) The bylaws shall set forth (unless such provision is contained in the articles, in which case it may only be changed by an amendment of the articles) the number of directors of the corporation; *or the method of determining such number*; or that the number of directors shall be not less than a stated minimum nor more than a stated maximum with the exact number of directors to be fixed, within the limits specified, by approval of the board or the members (Sections 12222 and 12224), in the manner provided in the bylaws, subject to subdivision (e). The number or minimum number of directors shall not be less than three. Alternate directors may be permitted, in which event, the bylaws shall specify the manner and times of their election and the conditions to their service in place of a director.

(b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members.

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

(1) Any provision referred to in subdivision (c) of Section 12313.

(2) The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

(4) The appointment of committees, composed of directors or nondirectors or both, by the board or any officer and the authority of any such committees.

(5) The appointment, duties, compensation and tenure of officers.

(6) The mode of determination of members of record.

(7) The making of reports and financial statements to members.

(8) Setting, imposing and collecting dues, assessments, and membership and transfer fees.

(9) The time and manner of patronage distributions consistent with this part.

(d) The bylaws may provide for eligibility, the manner of admission, withdrawal, suspension, and expulsion of members, and the suspension or termination of memberships consistent with the requirements of Section 12431.

(e) The bylaws may require, for any or all corporate actions, the vote of a larger proportion of, or all of, the members or the members of any class, unit, or grouping of members or the vote of a larger proportion of, or all of, the directors, than is otherwise required by this part. Such a provision in the bylaws requiring such greater vote shall not be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws.

(f) The bylaws may contain a provision limiting the number of members, in total or of any class, which the corporation is authorized to admit.

(g) The bylaws may provide for the establishment by the corporation of a program for the education of its members, officers, employees and the general public in the principles and techniques of cooperation.

§ 12351. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the chairman of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation

(Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in *or pursuant to* the articles or bylaws constitutes a quorum of the board for the transaction of business, *provided that the articles or bylaws may require the presence of one or more specified directors in order for a quorum to exist at a meeting, as long as the death of a director or the death or nonexistence of the person or persons otherwise authorized to appoint or designate such director does not prevent the corporation from conducting business in the normal course of events.* The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in *or pursuant to* the articles or bylaws, or less than two, whichever is larger.

(8) Subject to the provisions of Sections 12352, 12373, 12374 and subdivision (e) of Section 12377, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting, or a greater number as is required by this division, the articles or bylaws.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) *Each director present and voting at a meeting shall have one vote on each matter presented to the board of directors for action at such meeting. No director may vote at any meeting by proxy.*

§ 12352. (a) The board may, by resolution adopted by a majority of the number of directors then in office, provided that a quorum is present, create one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Appointments to such committees shall be by a majority vote of the directors then in office, unless the articles or bylaws require a majority vote of the number of directors authorized in the articles or bylaws. The bylaws may authorize one or more committees, each consisting of two or more directors, and may provide that a specified officer or officers who are also directors of the corporation shall be a member or members of such committee or committees. The board may appoint one or more directors as

alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board or in the bylaws, shall have all the authority of the board, except with respect to:

(1) The approval of any action for which this part also requires approval of the members (Section 12224) or approval of a majority of all members (Section 12223), *regardless of whether such corporation has members.*

(2) The filling of vacancies on the board or in any committee which has the authority of the board.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of bylaws or the adoption of new bylaws.

(5) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.

(6) The appointment of committees of the board or the members thereof.

(7) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.

~~(b) Subdivision (a) shall not apply to any committee which does not exercise the authority of the board.~~ *A committee exercising the authority of the board shall not include as members persons who are not directors. The board may create other committees that do not exercise the authority of the board and such other committees may include persons who are not directors.*

(c) Unless the bylaws otherwise provide, the board may delegate to any committee, appointed pursuant to paragraph (4) of subdivision (c) of Section 12331 or otherwise, powers as authorized by Section 12350, but may not delegate the powers set forth in paragraphs (1) through (7) of subdivision (a) of this section.

§ 12353. (a) A corporation shall have a ~~chairman~~ *member* of ~~the~~ *its* board serving as chair (*who may be given the title chair of the board, chairperson of the board, chairman of the board or chairwoman of the board*) or a president or both, a secretary, a *treasurer or a* chief financial officer *or both*, and such other officers with such titles and duties as shall be stated in the bylaws or determined by the board and as may be necessary to enable it to sign instruments. The president, or if there is no president the ~~chairman~~ of the board, is the chief executive officer of the corporation, unless otherwise provided in the articles or bylaws. *If there is no chief financial officer, the treasurer is the chief financial officer of the corporation, unless otherwise provided in the articles or bylaws.* Any number of offices may be held by the same person unless the articles or bylaws provide otherwise. Either the ~~chairman~~ of the board or the president shall be elected from among those board members elected by the membership of the corporation.

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

§ 12360. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. In the absence of any provision in the articles or bylaws, the terms shall be one year. No amendment of the articles or bylaws may

extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members.

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, *unless the director has been removed from office.*

(c) The articles or bylaws may prescribe requirements for eligibility for election as a director.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members *or the board.* Those directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (g) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select the director or directors. *Unless otherwise provided in the articles or bylaws, such entitlement to designate or select shall cease if (1) the person or persons so entitled have died or ceased to exist, or (2) if such entitlement is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such entitlement to select or designate.*

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

§ 12362. (a) Subject to subdivisions (b), (c) and (g), any or all directors may be removed without cause if one of the following applies:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 12223).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 12224).

(b) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 12485, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and

(c) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(d) Any reduction of the authorized number of directors or any amendment reducing the number of class of directors does not remove any director prior to the expiration of the director's term of

office, *unless such reduction or amendment also provides for removal of one or more specified directors.*

(e) Except as provided in this section and Sections 12361 and 12363, a director may not be removed prior to the expiration of the director's term of office.

(f) Where a director removed under this section or Sections 12361 or 12363 was chosen by designation pursuant to subdivision (d) of Section 12360, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made; or

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(g) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, the provisions shall also provide for removal of those directors and any director so designated may only be removed as so provided. *Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons. Unless otherwise provided in the articles or bylaws, any director so designated may only be removed with the written consent of the designating person or persons and such right to remove shall cease if (1) the person or persons so entitled have ceased to exist, or (2) if such right to remove is in the capacity of officer, trustee or other status, the respective office, trust or status has ceased to exist; and after such cessation the members (or, if there are no members, the board) shall succeed to such right to remove.*

§ 12371. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee ~~of the board~~ upon which the director does not serve *that is composed exclusively of any or any combination of (A) directors, (B) individuals described in paragraph (1) of subdivision (b), and (C) individuals described in paragraph (2) of subdivision (b),* as to matters within *such committee's* ~~its~~ designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(c) A person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge the person's obligations as a director.

§ 12630. (a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 12223) or (2) by approval of the board and approval of the members (Section 12224).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been adjudicated as bankrupt.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(c) If a corporation comes within one of the descriptions set forth in subdivision (b) and if the number of directors then in office is less than a quorum, it may elect to wind up and dissolve by (1) the unanimous consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to waiver of notice by those directors complying with Section 12351, or (3) the vote of a sole remaining director. If the corporation does so, references to the board in this chapter (commencing with Section 12630) and Chapter 17 (commencing with Section 12650) shall be deemed to be to a board consisting solely of those directors or that sole director and in that event action by the board shall require at least the same consent or vote as would be required under this subdivision (c) for an election to wind up.

§ 12694. Subdivision (a) of Section 12353 of the new law shall apply to subject corporations, but the treasurer of these corporations shall be deemed to be the chief financial officer,“ unless otherwise provided in the articles or bylaws.

§ 18360. An unincorporated association may merge ~~into~~with a domestic or foreign corporation, domestic or foreign limited partnership, domestic or foreign general partnership, or domestic or foreign limited liability company. Notwithstanding this section, a merger may be effected only if each constituent entity is authorized to effect the merger by the laws under which it was organized.

SUPPLEMENTAL CONTACTS INFORMATION
(2008-09 STATE BAR YEAR)

Executive Committee Contact:	Committee Contact:
Stewart Laughlin McDowell Vice Chair for Legislation Gibson, Dunn & Crutcher LLP One Montgomery Street San Francisco, CA 94104 (415) 393-8322 smcdowell@gibsondunn.com	Lani Meanley Collins, Chair c/o Collins & Associates 213 West Canon Perdido Street Santa Barbara, CA 93101-3706 (805) 730-1333 lani.collins@collins-assoc.com