

**Nonprofit Organization Law Section Legislation Committee, Chapter 65 Work Group  
Proposed Changes to Chapter 65 of the Oregon Revised Statutes  
March 9, 2016**

This document presents proposed changes to modernize and clarify some sections of Chapter 65. Sections with no changes are not included here, but the headings are included to provide context. Changes are shown using strike (for deletions) and underscore (for additions). Legislative drafting counsel has not reviewed the language in this proposal, and any bill will be drafted by someone in that role.

The Work Group's goal is to submit a proposal to the NOLS Executive Committee in early April, with the further goal of submitting a proposal to the Oregon Bar by the end of April, for consideration by the legislature in 2017. The Work Group seeks comments and suggestions.

This document is long. The Work Group recommends printing only if necessary for your review, and if printing facilitates your review you may find that printing only portions will be sufficient.

**65.001 Definitions**

(5) "Bylaws" means the rules and regulations adopted by a corporation as required by ORS 65.061. Bylaws can only be amended by following the procedure in ORS 65.461 - .462. Bylaws control other documents regulating or managing the affairs of the corporation except the articles of incorporation. ~~code or codes of rules, other than the articles adopted under this chapter or the laws governing a foreign corporation, for regulating or managing the affairs of the domestic or foreign corporation, irrespective of the name or names by which the rules are designated.~~

(7) "Contact information" means the address provided by a member or director at which the member or director will receive notices or other mailings from the corporation. The address can be a physical address or an electronic address, or both, and If the corporation permits, a member can list the corporation's address as the address for the member's contact information. ~~address" means a mailing address at which a person affiliated with the organization will receive and transmit to the organization notices intended for the foreign or domestic corporation either when sending the notices to the registered agent is not practical or when a duplicate notice is desirable. The contact address may be the principal place of business, if any, or the business or residence address of any person associated with the corporation or foreign corporation who has consented to serve, but may not be the address of the registered agent.~~

(11) “Directors” means individuals designated in the articles or bylaws, appointed as provided in the articles or bylaws, or elected by the incorporators, directors or members to act as members of the board, with the right to vote, and their successors.

(12) “Distribution” means any payment from the income or assets of the corporation to any person paying a dividend or any part of the income or profit of a corporation to the corporation’s members, directors or officers, other than paying payments of reasonable value to any person for property received or services performed or paying benefits payments in furtherance of to further the corporation’s purposes.

(26)(a) “Member” means a person that is entitled, under a domestic or foreign corporation’s articles or bylaws, without regard to what the person is called in the articles or bylaws, to vote on ~~more than one occasion to elect a director or directors~~, one or more of the items listed in ORS 65.144.

(b) A person is not a member by virtue of any of the following rights the person has:

(A) As a delegate;

(B) To designate or appoint a director or directors;

(C) As a director; or

(D) As a holder of an evidence of indebtedness the corporation has issued or will issue.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, a person is not a member if the person’s membership rights have been eliminated as provided in ORS 65.164 or 65.167.

(28) “Mutual benefit corporation” means a domestic corporation that is formed and operates primarily to serve the mutual interests of a group of individuals or entities and -as a mutual benefit corporation under ORS 65.044 to 65.067 and is designated a mutual benefit corporation by a statute or does not come within the definition of public benefit or religious corporation.

(41) “Uncompensated officer” means an individual who serves in an office without compensation for personal service. For purposes of this subsection, payment solely for actual expenses in performing duties of the officer or a ~~stipend that is paid~~ a payment that is made only to compensate the average expenses the individual incurs over the course of a year is not compensation.

(43) “Vote” ~~means~~ includes authorization by written ballot and written consent, where permitted or other process for voting authorized by the corporation.

New Definitions:

“Appointed director” means a director appointed by a person other than the board of directors.

“Designated director” means a director whom the articles of incorporation or bylaws identify as a director in a manner that identifies a specific individual or group of individuals as a director.

“Gift instrument” means a record or records, including a solicitation, under which property is granted to, transferred to, or held by a corporation.

“Written” means a communication in writing that is inscribed on a tangible medium or created and stored in an electronic medium.

(Filing Documents)

65.004 Filing requirements.

65.007 Filing, service, copying and certification fees.

65.011 Effective time and date of document.

65.014 Correcting filed document.

65.016 Forms; rules.

65.017 Filing duty of Secretary of State.

65.021 Appeal from Secretary of State’s refusal to file document.

65.024 Evidentiary effect of certified copy of filed document or secretary’s certificate.

65.027 Certificate of existence or authorization.

(Secretary of State)

65.031 Powers.

**65.034 Notice.** (1) Notice may be oral or written unless otherwise specified for a particular kind of notice.

(2) Notice may be communicated in person, by telephone, electronically, ~~telegraph, teletype or other form of wire or wireless communication~~, or by mail or private carrier, including publication in a newsletter or similar document sent to a member’s or director’s address. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of

general circulation in the area where the meeting is to be held, or by radio, television or other form of public broadcast communication.

(3) Notice will be effective only if communicated in a comprehensible form.

~~—(3) Written notice by a domestic or foreign corporation to its member, if in a comprehensible form, is effective when mailed if it is mailed postpaid and is correctly addressed to the member's address shown in the corporation's current records of members.~~

~~(4) Oral notice is effective when communicated. if communicated in a comprehensible manner.~~

(5) Written notice sent electronically is effective at the earlier of the following:

(a) When received;

(b) Two days after it is sent, if correctly addressed;

~~(5) Except as provided in subsection (3) of this section, personal wWritten notice sent by mail or private carrier, if in a comprehensible form, is effective at the earliest of the following:~~

~~(a) When received;~~

~~(b) Five days after its deposit in the United States mail postmark, if mailed by United States mail correctly addressed and with first class postage affixed;~~

~~(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.~~

~~—(d) Thirty days after its deposit in the United States mail if mailed correctly addressed and with other than first class, registered or certified postage affixed; or~~

~~(e) The date specified by the articles of incorporation or bylaws with respect to notice to directors.~~

~~(67)(a) Written notice is correctly addressed to a member or director of a domestic or foreign corporation if addressed to the most recent address provided by the member or director for corporate communications. electronic or physical member's address shown in the corporation's current list of members.~~

(b) A written notice or report delivered as part of a newsletter, magazine or other publication sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

(c) Written notice is correctly addressed to a domestic or foreign corporation authorized to transact business in this state, other than in its capacity as a member, if addressed to its registered agent or, if none is of record, to its principal office shown in its most recent annual report or, if none, in the articles of incorporation or its application for a certificate of authority to do business.

(78) If ORS 65.214 or any other provision of this chapter prescribes different notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe different notice requirements for members or directors, not less stringent than the provisions of this section or other provisions of this chapter, those requirements govern. [1989 c.1010 §15]

(Private Foundations)

**65.036 Private foundations.**

**65.038 Judicial relief.** (1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent in the manner prescribed by its articles, bylaws or this chapter, then upon petition of a director, officer, delegate, member or the Attorney General, the circuit court for the State of Oregon for the county in which the principal office designated on the last filed annual report, articles or application for authority to transact business is located, or if none, within Oregon, Marion County, may order that such a meeting be called. The court may also order that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) If for any reason it is impractical or impossible for any corporation to identify its members, then upon petition of a director, officer, delegate, member or the Attorney General, the circuit court for the State of Oregon for the county in which the principal office designated on the last filed annual report, articles or application for authority to transact business is located, or if none, within Oregon, Marion County or Multnomah County, may declare who the members are, if any or may amend the articles to provide that the corporation will no longer have members.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who are the members or directors.

(3) The order issued pursuant to this section may for good cause shown dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement that would otherwise be imposed by the articles, bylaws or this chapter as to quorum or as to the number or percentage of votes needed for approval of an act.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent judicially authorized to those items, including amendments

to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. An order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and this chapter. [1989 c.1010 §17]

**65.040 Notice to Attorney General; effect of failure to notify.**

[The following provision was moved here from 65.667.]

**65.0-- Receivership or custodianship.** (1) At the request of the Attorney General, a court may appoint one or more receivers or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

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

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

(a) The receiver:

(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and

(B) May sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

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

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its members and creditors.

(5) The court periodically during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's attorney from the assets of the corporation or proceeds from the sale of the assets.

(Religious Corporations)

**65.042 Religious corporations; constitutional protections.**

INCORPORATION

**65.044 Incorporators.**

**65.047 Articles of incorporation.**

**65.051 Incorporation.**

**65.054 Liability for preincorporation transactions.**

**65.057 Organization of corporation.**

**65.061 Bylaws.** (1) The incorporators or board of directors of a corporation, whichever completes the organization of the corporation at its organizational meeting, shall adopt initial bylaws for the corporation.

(2) The bylaws may contain any provision for managing and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation controls. [1989 c.1010 §25]

**65.064 Emergency bylaws and powers.**

**65.067 Corporation sole.**

PURPOSES AND POWERS

**65.074 Purposes.**

**65.077 General powers.**

**65.081 Emergency powers.**

**65.084 Challenge of corporate authority; remedy.**

## NAME

**65.094 Corporate name.**

**65.097 Reserved name.**

**65.101 Registered name.**

## OFFICE AND AGENT

**65.111 Registered office and registered agent.**

**65.114 Change of registered office or registered agent.**

**65.117 Resignation of registered agent.**

**65.121 Service on the corporation.**

## MEMBERS AND MEMBERSHIPS

(Admission of Members)

**65.131 Admission.**

**65.134 Consideration**

**65.137 No requirement for members.** A corporation is not required to have members. A corporation shall have no members unless ~~if~~ its articles of incorporation ~~or bylaws~~ include a statement that “the corporation shall have ~~no~~ members” or words of similar import. [1989 c.1010 §41]

(Members' Rights and Obligations)

**65.144 Differences in Rights and obligations of members.** (1) Except as set forth in or authorized by the articles or bylaws, all members shall have the same rights and obligations. with respect to voting, dissolution, redemption and transfer, unless The articles or bylaws may establish classes of membership with different rights or obligations. ~~All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.~~ [1989 c.1010 §42]

(2) Members shall have the following rights, which cannot be abrogated by the articles or bylaws:

(a) the right to vote on amendments to the articles of incorporation and any action that would reduce or eliminate the right of members to vote; and

(b) the right to inspect and copy the records of the corporation, as provided in ORS 65.774.

(3) Except as otherwise provided in the articles or bylaws, members shall have the following rights and obligations:

(a) the right to elect directors, as provided in ORS 65.311;

(b) the right to remove directors, as provided in ORS 65.324;

(c) the right to vote on any change to the number or the range for the size of the board or a change from a fixed or a variable-range size board if the articles establish the size or range, as provided in ORS 65.307(2);

(d) the right to vote on the sale, transfer, exchange option, convey, merge or otherwise dispose of all or a significant portion of the assets of the corporation, as provided in ORS 65.803.

(e) the right to vote on dissolution of the corporation as provided in ORS 65.624.

(f) for voting members of a mutual benefit corporation, the right to approve a conflict of interest transaction, as provided in ORS 65.361

**65.147 Transfers.**

**65.151 Member's liability to third parties.**

**65.154 Member's liability for dues, assessments and fees.** A member may become liable to the corporation for dues, assessments or fees. An article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability to pay the obligation, but nonpayment may constitute grounds for expelling or suspending the member or suspending or terminating the membership without a hearing. [1989 c.1010 §45]

**65.157 Creditor's action against member.**

(Resignation and Termination)

**65.164 Resignation.**

**65.167 Termination, expulsion or suspension.** (1) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure that provides:

(A) Not less than 15 days' prior written notice, as deemed given under and effective under ORS 65.034, of the expulsion, suspension or termination and the reasons; and

(B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

~~—(3) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.~~

(43) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

(54) A member who has been expelled or suspended, or whose membership has been suspended or terminated, may be liable to the corporation for dues, assessments or fees as a result of obligations incurred by the member prior to expulsion, suspension or termination. [1989 c.1010 §48; 2005 c.22 §44]

**65.171 Acquiring memberships.**

(Derivative Suits)

**65.174 Derivative suits.** (1) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(a) Any member or members having two percent or more of the voting power or by 20 members, whichever is less; or

(b) Any director; or

(c) The Attorney General.

(2) In any such proceeding, each member complainant shall have been a member when the transaction complained of occurred.

(3) A complaint in a proceeding brought in the right of a corporation must allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(4) The complainants shall notify the Attorney General within 10 days after commencing any proceeding under this section if the proceeding involves a public benefit corporation, religious corporation or assets held in charitable trust by a mutual benefit corporation.

(5) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's members or a class of members, the court shall direct that notice be given the members affected. [1989 c.1010 §50]

(Delegates)

### **65.177 Delegates.**

## MEMBERSHIP MEETINGS AND VOTING

(Meetings and Action Without Meetings)

**65.201 Annual and regular meetings.** (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws or shall follow the procedure in ORS 65.---.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) An annual membership meeting or a ~~and~~ regular membership meeting may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or at a place the board of directors specifies, provided that the board's specification is not inconsistent with the bylaws. If the board of directors does not determine that the ~~annual and regular~~ meeting will occur solely by means of remote communication and a place for the ~~annual and regular~~ meeting is not stated in or otherwise fixed in accordance with the bylaws, the ~~annual and regular~~ meeting must be held at the corporation's principal office.

(4) At the annual meeting:

(a) The president, and any other officer the board of directors or the president may designate, shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of ORS 65.214.

(5) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of ORS 65.214.

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action. [1989 c.1010 §52; 2013 c.274 §8]

**65.--- Procedure in lieu of annual meeting.** In lieu of an annual meeting, a corporation may (1) provide an annual report to members by posting the report on the website of the corporation or by sending the report to the most recent address provided by the member for corporate communications, and (2) provide for voting through the use of written ballots in a manner that conforms to the requirements of ORS 65.222.

**65.204 Special meeting.** (1) A corporation with members shall hold a special meeting of members:

(a) On call of the corporation's board of directors or of the person or persons that the articles of incorporation or bylaws authorize to call the meeting; or

(b) Except as provided in the articles or bylaws, if the holders of at least five percent of the voting power of any corporation sign, date and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose or purposes for which the meeting is to be held.

(2) If not otherwise fixed under ORS 65.207 or 65.221, the record date for members entitled to demand a special meeting is the date the first member signs the demand.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given pursuant to ORS 65.214 within 30 days after the date the written demand or demands are delivered to the corporation's secretary then, regardless of the requirements of subsection (4) of this section, a person that signs the demand or demands may set the time and place of the meeting and give notice pursuant to ORS 65.214.

(4) A special meeting of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or at a place the board of directors specifies, provided that the board's specification is not inconsistent with the bylaws. If the board of directors does not determine that the special meeting will occur solely by means of remote communication and a

place for the special meeting is not stated in or otherwise fixed in accordance with the bylaws, the special meeting must be held at the corporation's principal office.

(5) Only matters within the purpose or purposes described in the meeting notice required by ORS 65.214 may be conducted at a special meeting of members. [1989 c.1010 §53; 2013 c.274 §9]

**65.205 Participation in meeting by remote communication.** (1)(a) Members that are not physically present for a membership meeting may participate in, be deemed present in person at and vote at the membership meeting if the board of directors authorizes participation by remote communication. Participation by remote communication is subject to guidelines and procedures that the board adopts.

(b) Before a board of directors may authorize members to participate in a membership meeting by remote communication, the corporation shall implement measures to:

(A) Verify that a person that is participating in the membership meeting by remote communication is a member; and

(B) Ensure that a member may participate by remote communication in an effective manner.

(c) The corporation shall maintain a record of the vote or other action of a member that participates in a membership meeting by remote communication.

(2) A notice of a membership meeting at which the board authorizes participation by remote communication shall state that the board authorizes participation by remote communication and shall describe how a member may notify the corporation that the member intends to participate in the membership meeting by remote communication. [2013 c.274 §16]

**65.207 Court-ordered meeting; attorney fees.** (1) The circuit court of the county where a corporation's principal office is located, or, if the principal office is not in this state, where the registered office of the corporation is or was last located, may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in an annual or regular meeting or, in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting, unless the corporation complied with the requirements of ORS 65.---;

(b) On application of any member or other person entitled to participate in a regular meeting or, in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) On application of a member who signed a demand for a special meeting valid under ORS 65.204, a person or persons entitled to call a special meeting or, in the case of a public benefit corporation, the Attorney General, if notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary or the special meeting was not held in accordance with the notice.

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

(3)(a) Except as provided in paragraph (b) of this subsection, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(b) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action under this section.

(4) The request shall be set for hearing at the earliest possible time and shall take precedence over all matters, except matters of the same character and hearings on preliminary injunctions under ORCP 79 B(3). No order shall be issued by the court under this section without notice to the corporation at least five days in advance of the time specified for the hearing unless a different period is fixed by order of the court. [1989 c.1010 §54; 1995 c.696 §14]

**65.211 Action by written consent ~~without meeting.~~** (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a members' meeting may be taken without a meeting if the action is taken by all the members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records. Action taken under this section is effective when the last member signs the consent, unless the consent specifies an earlier or later effective date.

(2) If not otherwise determined under ORS 65.207 or 65.221, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [1989 c.1010 §55]

**65.214 Notice of meeting.** (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner. The corporation is required to give notice to members entitled to vote at the meeting and to any other person specified in this chapter, the articles of incorporation or the bylaws.

(2) Any notice which conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered, provided, however, that notice of matters referred to in subsection (3)(b) of this section must be given as provided in subsection (3) of this section.

(3) Notice is fair and reasonable if:

(a) The corporation notifies its members of the place, date and time of ~~each annual, regular and special~~ the meeting in a manner that conforms to the requirements of ORS 65.034; of ~~members no fewer than seven days, or if notice is mailed by other than first class or registered mail, no fewer than 30 nor more than 60 days before the meeting;~~

(b) Notice of an annual or regular meeting includes a description of any matter or matters which must be approved by the members under ORS 65.361, 65.404, 65.414 (1)(a), 65.437, 65.464, 65.487, 65.534 or 65.624; and

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

(4) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under ORS 65.221, however, notice of the adjourned meeting must be given under this section to the persons who are members as of the new record date. [1989 c.1010 §56; 1991 c.231 §2]

**65.217 Waiver of notice.**

**65.221 Record date.**

**65.222 Action by written ballot.** (1) Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot shall:

(a) Set forth each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when:

(a) the number of votes cast by ballot equals or exceeds any quorum required to be present at a meeting authorizing the action, and if the bylaws provide that the number of members who attend a meeting constitutes the quorum, then the number of votes cast by ballot constitutes a quorum; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify a reasonable time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked. [1989 c.1010 §59]

(Voting)

**65.224 Members' List of members for meeting; attorney fees.** (1) A corporation shall prepare and maintain an alphabetical list of the names, contact information and membership dates of all its members. If there are classes of members, the list must also show the ~~address and~~ number of votes each member is entitled to cast ~~vote~~ at the meeting. ~~The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but are not part of the main list of members.~~

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice of the meeting is given ~~for which the list was prepared~~ and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city or other location where the meeting will be held. A member, the member's agent or the member's attorney is entitled, on written demand setting forth a proper purpose, to inspect and, subject to the requirements of ORS 65.774 and 65.782, to copy the list at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, the member's agent or the member's attorney is entitled to inspect the list for any proper purpose at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, the member's agent or the member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, on application of the member, the circuit court of the county where the corporation's principal office, or if the principal office is not in this state, where its registered office is or was last located, may enter a temporary restraining order or preliminary injunction pursuant to ORCP 79 ordering the inspection or copying at the corporation's expense and may postpone the meeting ~~for which the list was prepared~~ until the inspection or copying is complete. The court may award reasonable attorney fees to the prevailing party in an action under this subsection. The party initiating such a proceeding shall not be required to post an undertaking pursuant to ORCP 82 A.

(5) Refusal or failure to prepare or make available the membership list does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

(7) The articles of a public benefit corporation organized primarily for political or social action, including but not limited to political or social advocacy, education, litigation or a combination thereof, may limit or abolish the right of a member or the member's agent or attorney to inspect or copy the membership list if the corporation provides a reasonable means to mail communications to the other members through the corporation at the expense of the member making the request. [1989 c.1010 §60; 1995 c.618 §41; 2005 c.22 §45]

**65.227 Voting entitlement of members.** (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter on which the members vote. ~~including each matter on which a member may vote under this chapter or the articles or bylaws.~~ Except as expressly prohibited in this chapter, the articles or bylaws may provide for different allocations of votes among member classes or exclude the members or some or all member classes from voting on any issue on which they would otherwise be entitled to vote under this chapter. ~~A person that does not retain a right to vote on more than one occasion to elect a director or directors is not a member.~~

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, with respect to voting the persons' acts have the following effect:

- (a) If only one person votes, the person's act binds all; and
- (b) If more than one person votes, the vote is divided on a pro rata basis.

(3) If a class is entitled to vote as a class for directors, a determination of the voting power of the class must be based on the percentage of the number of directors the class may elect out of

the total number of authorized directors. [1989 c.1010 §61; 1991 c.231 §3; 2013 c.158 §29; 2013 c.274 §11]

**65.231 Proxies.**

**65.234 Adjournment.**

**65.237 Corporation's acceptance of votes.**

**65.241 Quorum requirements.** (1) Unless the articles or bylaws provide for a higher quorum, those votes represented at a meeting of members shall constitute a quorum.

(2) An amendment to the articles or bylaws to decrease the quorum for any ~~member~~ action of the members may be approved by the members, or, unless prohibited by the articles or bylaws, by the board.

(3) An amendment to the articles or bylaws to increase the quorum required for any ~~member~~ action of the members must be approved by the members. [1989 c.1010 §62]

**65.244 Voting requirements.** (1) Unless this chapter, the articles or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of a majority of the votes represented and voting is the act of the members.

(2) An amendment to the articles or bylaws to add to, change or delete the vote required for any ~~member~~ action by the members must be approved by the members. [1989 c.1010 §63]

**65.247 Cumulative voting for directors.** (1) If the articles or bylaws provide for cumulative voting by members, a members may so vote, by multiplying the number of votes the members ~~are~~ is entitled to cast by the number of directors for whom they ~~are~~ member is entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of ORS 65.324 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast or, if such 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.

(4) Members may not cumulatively vote if the directors and members are identical. [1989 c.1010 §65]

**65.251 Other methods of electing directors.**

(Voting Agreements)

**65.254 Voting agreements.**

**DIRECTORS AND OFFICERS**

(Board of Directors)

**65.301 Requirement for and duties of board.** (1) Each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, the board of directors, subject to any limitation set forth in the articles of incorporation. ~~and except as provided in subsection (3) of this section.~~

~~—(3) The articles of incorporation may authorize a person or persons, or the manner of designating a person or persons, authorized to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities. [1989 c.1010 §70]~~

**65.304 Qualifications of directors.** All directors must be individuals. The articles of incorporation or bylaws may prescribe other qualifications for directors. [1989 c.1010 §71]

**65.307 Number of directors.**

**65.311 Election, designation and appointment of directors.**

**65.3-- Directors appointed by court.** If a corporation has no directors and no members who can elect directors, the circuit court of the county where the corporation's principal office is located, or if the principal office is not in this state where its registered office was last located, may, at the request of the Attorney General, appoint one or more directors.

**65.314 Terms of directors generally.**

**65.317 Staggered terms for directors.**

**65.321 Resignation of directors.**

**65.324 Removal of directors elected by members ~~or directors.~~** Unless the articles or bylaws provide otherwise:

~~\_\_\_~~ (1) The members may remove one or more directors elected by them with or without cause unless the articles of incorporation or bylaws provide that directors may be removed only for cause.

(2) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, only the members of that class, chapter, unit or grouping entitled to vote may participate in the vote to remove the director.

(3) ~~Except as provided in subsection (9) of this section, a~~ A director may be removed under subsection (1) or (2) of this section by a vote of the majority of the votes cast. ~~only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.~~

~~—(4) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.~~

~~(5)~~ An elected director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

~~—(6) In computing whether a director is protected from removal under subsections (2) to (4) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.~~

~~(7)~~ 5 An entire board of directors may be removed under subsections (1) to ~~(5)~~ 5 of this section.

**65.3-- Removal of directors elected by directors.** ~~—(8)~~ A director elected by the board of directors may be removed with or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause, by the vote of a majority two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. A director elected by the board to fill the vacancy of a director elected by the members may be removed by the voting members or the directors. ~~;~~ but not the board.

**65.3-- Removal of directors elected by members or directors.** If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed if the director misses more than a specified number of meetings or for reasons set forth in the articles or bylaws, a majority of the directors then in office ~~the board~~ may remove the director for such reasons. ~~The director may be removed only if a majority of the directors then in office vote for the removal.~~

**65.3-- Removal of directors of a religious corporation.** (10) The articles or bylaws of a religious corporation may:

(1) Limit the application of ORS 65.324 – 65--- [refer to both new sections following 65.324] ~~this section~~; and

(2) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board. [1989 c.1010 §77]

#### **65.327 Removal of directors by judicial proceeding.**

**65.331 Removal of designated or appointed directors.** (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) If a director is appointed:

(a) Except as otherwise provided in the articles or bylaws, the director may be removed with or without cause by the person appointing the director or by the board of directors;

(b) The person removing the director shall do so by giving written notice of the removal to the director, and if the person is the person appointing the director, by giving written notice to either the presiding officer of the board or the corporation's president or secretary; and

(c) A removal is effective when the notice is effective under ORS 65.034 unless the notice specifies a future effective date. [1989 c.1010 §78]

**65.334 Vacancy on board.** (1) Unless the articles or bylaws provide otherwise, and except as provided in subsections (2) and (3) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The members entitled to vote for directors, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board of directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under ORS 65.321 (2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [1989 c.1010 §80]

### **65.335 Compensation of directors.**

(Meetings and Action of Board)

**65.337 Regular and special meetings.** (1) If the time and place of a director's meeting is fixed by the bylaws or is ~~regularly~~ scheduled by the board of directors in a manner that provides all directors with the date, time and place of the meeting without additional notice, the meeting is a regular meeting. All other meetings are special meetings.

(2) The board of directors may hold regular or special meetings in or out of this state.

(3) Unless the articles or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which ~~either of the following occurs:~~

~~—(a) [A]all directors participating may simultaneously communicate hear or read each other's communications during the meeting.;~~

~~—(b) All communications during the meeting are immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.~~

(4) If a meeting is conducted through the use of any means described in subsection (3) of this section:

(a) All participating directors shall be informed that a meeting is taking place at which official business may be transacted; and

(b) A director participating in the meeting by this means is deemed to be present in person at the meeting. [1989 c.1010 §82; 2005 c.161 §1]

65.3—Action by email. (1) Unless the articles or bylaws provide otherwise, the board may use email or other electronic means to discuss matters that come before the board.

(2) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken by email, without a meeting, if the action is taken pursuant to this subsection.

(a) An email announcing that a vote will be taken by email must be sent to all directors at the email address for each director on record with the corporation. If any director does not have an email address on record, the board cannot vote by email.

(b) The email announcing the email vote must include a description of the matter on which the vote will be taken and the deadline for voting which must be at least 48 hours from the time the announcement email was sent.

(c) A director may change the director's vote at any time before the deadline for voting.

(d) The affirmative vote of a majority of the directors in office when the vote is taken is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(e) Action taken under this section is effective at the deadline set for the vote, unless the email announcing the vote specifies an earlier or later effective date.

(f) The email announcing the vote and a record of the votes received shall be included in the minutes or filed with the corporate records reflecting the action taken.

(g) An action taken under this section has the effect of a meeting vote and may be described as such in any document.

**65.341 Action by written consent without meeting.** (1) As used in this section:

~~—(a) "Electronic" has the meaning given that term in ORS 84.004.~~

~~—(b) "Electronic signature" has the meaning given that term in ORS 84.004.~~

~~—(c) "Sign" includes an electronic signature.~~

~~—(d) "Written" includes a communication that is transmitted or received by electronic means.~~

(2-1) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at ~~the~~ a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board of directors. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(3 2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date.

(4-3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [1989 c.1010 §83; 2005 c.161 §2]

**65.344 Call and notice of meetings.** (1) Unless the articles, bylaws or this chapter provide otherwise, regular meetings of the board may be held without additional notice of the date, time, place or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board must be preceded by ~~at least two days'~~ notice to each director of the date, time and place of the meeting that conforms to the requirements of ORS 65.034. Unless this chapter provides otherwise, the notice need not describe the purposes of the special meeting unless required by the articles of incorporation or bylaws.

(3) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president or 20 percent of the directors then in office may call and give notice of a meeting of the board. [1989 c.1010 §84]

**65.347 Waiver of notice.** (1) A director may at any time waive any notice required by this chapter, the articles of incorporation or bylaws. Except as provided in subsection (2) of this section, the waiver must be in writing, including a writing transmitted electronically, must be signed by the director entitled to the notice, must specify the meeting for which notice is waived and must be filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. [1989 c.1010 §85]

**65.351 Quorum and voting.** (1) Unless the articles of incorporation or bylaws require a greater number or a lesser number as authorized under subsection (2) of this section, a quorum of a board of directors consists of:

- ~~—(a) If the corporation has a fixed board size, a majority of the fixed number of directors; or~~
- ~~—(b) If the corporation has a variable range size board, a majority of the number of directors prescribed, or if no number is prescribed, a majority of the number in office immediately before the meeting begins.~~

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the ~~fixed or prescribed~~ number of directors in office immediately before a meeting begins. ~~determined under subsection (1) of this section.~~

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present when the act is taken is the act of the board of directors unless the articles of

incorporation or bylaws require the vote of a greater number of directors. A director is considered present regardless of whether the director votes or abstains from voting.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting the business at the meeting;

(b) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) The director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [1989 c.1010 §86; 1991 c.231 §4]

**65.354 Committees that exercise board authority.** (1) Unless the articles or bylaws provide otherwise, a board of directors may create one or more committees ~~of the board of directors~~ which exercise the authority of the board of directors, ~~and~~ The board may appoint members of the board to serve on ~~the~~ committees or designate the method of selecting committee members. Each committee shall consist of two or more directors, who serve at the pleasure of the board of directors, and only directors can serve as voting members of the committee.

(2) The creation of a committee and appointment of directors to the committee or designation of a method of selecting committee members must be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles or bylaws to take action under ORS 65.351.

(3) ORS 65.337 to 65.351, governing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) Except as provided in subsection (5) of this section, to the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the authority of the board of directors.

(5) A committee of the board may not:

(a) Authorize distributions;

(b) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(c) Elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(d) Adopt, amend or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in ORS 65.357. [1989 c.1010 §87]

**65.3—Committees that do not exercise board authority.** (1) A board of directors may create one or more committees to advise the board or to serve the corporation. The board may appoint individuals to serve on the committees or designate the method of selecting committee members. Members of these committees may be, but need not be, directors or members of the corporation.

(2) A committee created under this subsection may not exercise the authority of the board and may not take any action described in ORS 65.354(5).

(Standards of Conduct)

**65.357 General standards for directors.** (1) A director shall discharge the duties of a director, including the director's duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

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

(b) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(c) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) In the case of religious corporations, 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.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable to the corporation, any member or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. The liability of a director for monetary damages to the corporation and its members may be eliminated or limited in the corporation's articles to the extent provided in ORS 65.047 (2)(c).

~~—(5) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property. [1989 c.1010 §88]~~

**65.361 Director conflict of interest.** (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction is fair to the corporation at the time it was entered into or is approved as provided in subsection (2) or (3) of this section.

(2) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(a) By the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest are disclosed or known to the board of directors or committee of the board of directors; or

(b) By obtaining approval of the:

(A) Attorney General; or

(B) The circuit court in an action in which the Attorney General is joined as party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved:

(a) In advance by the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors; or

(b) If the material facts of the transactions and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction.

(4) For the purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) Another entity of which the director is a director, officer or trustee is a party to the transaction, and the transaction is or should be considered by the board of directors of the corporation.

(c) A person related to the director or a business associate of the director.

(5) For purposes of subsections (2) and (3) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction. A transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction votes to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) or (3)(a) of this section if the transaction is otherwise approved as provided in subsection (2) or (3) of this section.

(6) For purposes of subsection (3)(b) of this section, a conflict of interest transaction is authorized, approved or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (4) of this section may be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (3)(b) of this section. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws or a resolution of the board may impose additional requirements on conflict of interest transactions. [1989 c.1010 §89]

**65.364 Loans to or guarantees for directors and officers.**

**65.367 Liability for unlawful distributions.**

**65.369 Liability of qualified directors.**

(Officers)

**65.371 Required officers.** (1) A corporation shall have a president, a secretary, a treasurer and such other officers as are elected or appointed by the board or by any other person as may be authorized in the articles or bylaws, provided that the articles of incorporation or bylaws may

designate other titles in lieu of president, ~~and~~ secretary and treasurer. An officer may or may not be a member of the board of directors.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) The same individual may simultaneously hold more than one office in a corporation.

(4) In a public benefit corporation the same person may not simultaneously serve as president, secretary and treasurer.

**65.377 Standards of conduct for officers.** (1) An officer shall discharge the officer's duties:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of an officer, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

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

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(c) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable to the corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section. The liability of the officer for monetary damages to the corporation and its members may be eliminated or limited in the corporation's articles to the extent provided in ORS 65.047 (2)(c). [1989 c.1010 §95]

**65.381 Resignation and removal of officers.** (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective under ORS 65.034 unless the notice specifies a later effective date. If a resignation is made effective at

a later date and the corporation accepts the later effective date, its board of directors or any other person as authorized under the articles or bylaws may fill the pending vacancy before the effective date if the board or any other person provides that the successor does not take office until the effective date.

(2) A board of directors or any other person authorized under the articles or bylaws to elect or appoint an officer, may remove any officer the board or any other person is entitled to elect or appoint, at any time with or without cause.

(3) Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the board of directors. [1989 c.1010 §96; 1991 c.231 §8]

**65.3-- Removal of officers by judicial proceeding.** (1) The circuit court of the county where a corporation's principal office is located, or if the principal office is not in this state where its registered office was last located, may remove any officer of a public benefit corporation from office in a proceeding commenced by the Attorney General if the court finds that:

(a) The officer engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or the officer has violated a duty set forth in ORS 65.377; and

(b) Removal is in the best interest of the corporation.

(2) If members or the Attorney General commence a proceeding under subsection (1) of this section, the corporation shall be made a party defendant.

(3) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

## AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

(Amendment of Articles of Incorporation)

### **65.431 Authority.**

### **65.434 Amendment by directors.**

**65.437 Amendment by board of directors and members.** (1) Unless this chapter, the articles, bylaws, the members, acting pursuant to subsection (2) of this section, or the board of directors acting pursuant to subsection (3) of this section, require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

(a) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors or the method or way in which directors are elected or selected;

(b) Except as provided in ORS 65.434 (1), by the members entitled to vote on articles by ~~at least two-thirds a majority~~ of the votes cast. ~~or a majority of the voting power, whichever is less;~~ and

(c) In writing by any person or persons whose approval is required for an amendment to the articles as authorized by ORS 65.467.

(2) The members entitled to vote on articles may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or board approval is required by subsection (1) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis. For the amendment to be adopted, the board of directors shall, except in those cases described in subsection (1)(a) of this section, adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members, which may be either an annual or special meeting.

(4) If the board or the members entitled to vote on articles seek to have the amendment approved by such members at a membership meeting, the corporation shall give notice to such members of the proposed membership meeting in writing in accordance with ORS 65.214. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members entitled to vote on articles seek to have the amendment approved by such members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment. [1989 c.1010 §109]

**65.4-- Amendment by board of directors in absence of members.** If for at least three years no meeting of the members of a public benefit corporation has been held and no members have actively participated in the corporation:

(1) The members shall be deemed to have approved a change to articles providing that the corporation will no longer have members as defined in this chapter.

(2) After providing notice to all known members and posting notice of the proposed action on the corporation's website or providing a comparable level of notice to the public, the board of directors can act pursuant to 65.434 to amend the articles to provide that the corporation will no longer have members as defined in this chapter.

**65.441 Class voting by members on amendments.** (1) In a public benefit corporation the members of a class entitled to vote on articles are entitled to vote as a class on a proposed

amendment to the articles if the amendment would affect the rights of that class as to voting in a manner different than the amendment would affect another class or members of another class.

(2) In a mutual benefit corporation the members of a class entitled to vote on articles are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

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

(e) Effect an exchange, reclassification or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(3) In a religious corporation the members of a class entitled to vote on articles are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class entitled to vote on articles that would be created by the amendment.

(5) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class entitled to vote on articles by a majority ~~two-thirds~~ of the votes cast. ~~by the class or a majority of the voting power of the class, whichever is less.~~

(6) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment. [1989 c.1010 §110]

**65.454 Amendment pursuant to court order.** (1) A corporation's articles may be amended without board approval or approval by the members entitled to vote on articles, or approval required pursuant to ORS 65.467:

(a) To carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute; or

(b) In a proceeding brought by the Attorney General ~~in the Circuit Court for Marion County~~ to correct the statement in the articles of incorporation or the annual report with regard to

whether the corporation is a public benefit or mutual benefit corporation or, subject to the provisions of ORS 65.042, a religious corporation.

(2) The articles after amendment shall contain only provisions required or permitted by ORS 65.047.

(3) The individual or individuals designated by the court in a reorganization proceeding, or the Attorney General in a proceeding brought by the Attorney General, shall deliver to the Office of the Secretary of State for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment approved by the court;
- (c) The date of the court's order or decree approving the articles of amendment;
- (d) The title of the proceeding in which the order or decree was entered; and
- (e) A statement whether the court had jurisdiction of the proceeding under federal statute or under subsection (1)(b) of this section.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [1989 c.1010 §113]

(Amendment of Bylaws)

**65.464 Amendment by directors and members.** Except as provided in 65.241 and 65.244:

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

- (a) The articles of incorporation ~~or this chapter~~ [add reference to applicable sections] reserve this power exclusively to the members, or to a party authorized under ORS 65.467, or both, in whole or in part; or
- (b) The members entitled to vote on bylaws, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's members entitled to vote on bylaws, subject to ORS 65.467, may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. [1989 c.1010 §116]

MERGER

**65.484 Limitations on mergers by public benefit or religious corporations.** (1) Without the prior written consent of the Attorney General or the prior approval of the circuit court of the county where the corporation's principal office is located or, if the principal office is not in this state, where the registered office of the corporation is or was last located, in a proceeding in

which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:

(a) A public benefit or religious corporation;

(b) A foreign corporation which would qualify under this chapter as a public benefit or religious corporation;

(c) A wholly owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or

(d) A foreign or domestic business or mutual benefit corporation, provided that:

(A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit or religious corporation or the fair market value of the public benefit or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under ORS 65.637 (1)(e) and (f) had it dissolved;

(B) It shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in, or officers, employees, agents or consultants of, the surviving corporation.

(2) Notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General at least 20 days before consummation of any merger of a public benefit corporation or a religious corporation ~~pursuant to subsection (1)(d) of this section.~~

(3) Without the prior written consent of the Attorney General or the prior approval of the court specified in subsection (1) of this section in a proceeding in which the Attorney General has been given written notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership in the surviving public benefit or religious corporation. Where approval or consent is required by this section, it shall be given if the transaction is consistent with the purposes of the public benefit or religious corporation or is otherwise in the public interest. [1989 c.1010 §119]

**65.487 Action on plan by board, members and third persons.** (1) Unless ~~this chapter~~, the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, adoption of a plan of merger requires, with respect to each corporation party to the merger, approval:

(a) By the board;

(b) By the members entitled to vote on the merger, if any, by at least a majority ~~two-thirds of~~ the votes cast ~~or a majority of the voting power, whichever is less~~; and

(c) In writing, by any person or persons whose approval is required for an amendment to the articles or bylaws by a provision of the articles, as authorized by ORS 65.467.

(2) Unless the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, and if the corporation does not have members entitled to vote on the merger, the merger must be approved by the board. ~~a majority of the directors in office at the time the merger is approved. In addition,~~ The corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with ORS 65.344(2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(3) The board of directors may condition its submission of the proposed merger to a vote of members, and the members entitled to vote on the merger may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of each disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of each disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

(6) Unless the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of members to vote as a class on the proposed amendment under ORS 65.441. The plan is approved by a class of

members by a majority two-thirds of the votes cast by the class. ~~or a majority of the voting power of the class, whichever is less.~~

(7) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors. [1989 c.1010 §120]

**65.491 Articles of merger.** (1) After a plan of merger is approved by the board of directors of each merging corporation and, if required by ORS 65.487, by the members and any other persons, the surviving corporation shall deliver to the Office of the Secretary of State for filing articles of merger setting forth:

(a) The plan of merger.

(b) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors of each corporation.

(c) If approval by the members of one or more corporations was required:

(A) The designation and number of members of, and number of votes entitled to be cast by, each class entitled to vote separately on the plan; and

(B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan.

(d) If approval by the Attorney General was required, a statement that the plan was approved by the Attorney General.

~~(d)~~ (e) If approval of the plan by some person or persons other than the members or the board is required pursuant to ORS 65.487 (1)(c), a statement that the approval was obtained.

(2) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed. [1989 c.1010 §121]

**65.494 Effect of merger.** When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) The surviving corporation remains subject to any restriction imposed by a gift instrument on assets held by any party to the merger by a gift instrument.

(5) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(6) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger; and

(7) The memberships or shares of each nonprofit or business corporation party to the merger that are to be converted into memberships, obligations, shares or other securities of the surviving or any other corporation or into cash or other property are converted and the former holders of the memberships or shares are entitled only to the rights provided in the articles of merger. [1989 c.1010 §122]

~~—65.501 Effect of merger on bequests, devises and gifts. Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides. [1989 c.1010 §124]~~

## SALE OF ASSETS

**65.534 Sale of assets other than in regular course of activities.** (1) A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (2) of this section.

(2) Unless this chapter, the articles, bylaws or the board of directors or members, acting pursuant to subsection (4) of this section, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) By the board;

(b) By the members entitled to vote on the transaction by ~~at least two-thirds~~ a majority of the votes cast ~~or a majority of the voting power, whichever is less~~; and

(c) In writing by any person or persons whose approval is required for an amendment to the articles or bylaws by a provision of the articles as authorized by ORS 65.467.

(3) If the corporation does not have members entitled to vote on the transaction, the transaction must be approved by the board of directors. ~~a majority of the directors in office at the~~

~~time the transaction is approved.~~ In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property of the corporation and contain or be accompanied by a description of the transaction.

(4) The board of directors may condition its submission of the proposed transaction to a vote of members, and the members entitled to vote on the transaction may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the board seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property of the corporation and contain or be accompanied by a description of the transaction.

(6) If the board seeks to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a description of the transaction.

(7) A public benefit or religious corporation must give written notice to the Attorney General ~~20~~ 30 days before it sells, leases, exchanges or otherwise disposes of all or substantially all of its property unless the transaction is in the usual and regular course of its activities or the Attorney General has given the corporation a written waiver of this notice requirement.

(8) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors. [1989 c.1010 §127; 2005 c.22 §48]

## DISSOLUTION

(Voluntary Dissolution)

**65.624 Dissolution by directors, members and third persons.** ~~(1)~~ Unless ~~this chapter,~~ the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class:

    (1) Dissolution is authorized if it is approved:

(a) By the board;

(b) By the members entitled to vote on dissolution, if any, by at least a majority ~~two-thirds~~ of the votes cast ~~or a majority of the voting power, whichever is less~~; and

(c) In writing, by any person or persons whose approval is required for an amendment of the articles or bylaws, as authorized by ORS 65.467, or for dissolution.

(2) If the corporation does not have members entitled to vote on dissolution, dissolution must be approved by the board of directors. ~~a vote of a majority of the directors in office at the time the transaction is approved~~. In addition, the corporation shall provide notice of any meeting of the board of directors at which such approval is to be considered in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution to a vote of members, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give all members, whether or not entitled to vote, notice of the proposed membership meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid. [1989 c.1010 §131; 1991 c.231 §11]

**65.627 Notices to Attorney General.** (1) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (2) of this section to the Attorney General or until the Attorney General has consented in writing, or indicated in writing, that the Attorney General will take no action in respect to the transfer or conveyance, whichever is earlier.

~~(1)(2)~~ A public benefit or religious corporation shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution.

~~—(2) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by~~

~~subsection (1) of this section to the Attorney General or until the Attorney General has consented in writing, or indicated in writing, that the Attorney General will take no action in respect to the transfer or conveyance, whichever is earlier.~~

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, ~~other than creditors~~, who received assets and indicate what assets each received. [1989 c.1010 §132]

**65.631 Articles of dissolution.**

**65.634 Revocation of dissolution.**

**65.637 Effect of dissolution.**

**65.641 Known claims against dissolved corporation.**

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

(2) The notice must be published:

(a) ~~Be published~~ At least one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is located, or if the principal office is not in this state, where its registered office is or was last located; or

(b) On the corporation's primary media account if the account is stable and will remain accessible to the public for at least 30 days.

(3) The notice must:

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

(b) ~~(c)~~ State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(4) ~~(3)~~ If the dissolved corporation publishes a ~~newspaper~~ notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the ~~newspaper~~ notice:

(a) A claimant who did not receive written notice under ORS 65.641;

(b) A claimant whose claim was sent in a timely manner to the dissolved corporation but not acted on; or

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

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

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

(b) Against any person, other than a creditor of the corporation, to whom the corporation distributed its property in liquidation subject to the following:

(A) If the distributee received a pro rata share of a distribution, the distributee's liability will not exceed the same pro rata share of the claim; and

(B) The distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee, less any liability of the corporation paid on behalf of the corporation by that distributee after the date of distribution. [1989 c.1010 §137]

(Administrative Dissolution)

**65.647 Grounds for administrative dissolution.** (1) The Secretary of State may commence a proceeding under ORS 65.651 to administratively dissolve a corporation if:

(a)~~(1)~~ The corporation does not pay when due any fees imposed by this chapter;

(b)~~(2)~~ The corporation does not deliver its annual report to the Secretary of State when due;

(c)~~(3)~~ The corporation is without a registered agent or registered office in this state;

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

(e)~~(5)~~ The corporation's period of duration, if any, stated in its articles of incorporation expires.

**65.651 Procedure for and effect of administrative dissolution.**

**65.654 Reinstatement following administrative dissolution**

**65.657 Appeal from denial of reinstatement.**

(Judicial Dissolution)

**65.661 Grounds for judicial dissolution.** (1) The circuit courts may dissolve a corporation:

(a) In a proceeding by the Attorney General if it is established that:

(A) The corporation obtained its articles of incorporation through fraud;

(B) The corporation has exceeded or abused the authority conferred upon it by law;

(C) The corporation has fraudulently solicited money or has fraudulently used the money solicited;

(D) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(E) The corporation is a public benefit corporation and is no longer able to carry out its purposes or the Internal Revenue Service has revoked its federal tax exemption.

(b) Except as provided in the articles or bylaws of a religious corporation, in a proceeding by 50 members or members holding five percent or more of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(B) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

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

(D) The corporate assets are being misapplied or wasted; or

(E) The corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;

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

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

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

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

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) There are reasonable alternatives to dissolution;

(b) Dissolution is in the public interest, if the corporation is a public benefit corporation; or

(c) Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation. [1989 c.1010 §142]

**65.664 Procedure for judicial dissolution.** (1) Venue for a proceeding by the Attorney General to dissolve a corporation lies in Marion or Multnomah Counties or ~~Venue for a proceeding brought by any other party named in ORS 65.661~~ lies in the county where a corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located. Venue for a proceeding brought by any other party named in ORS 65.661 lies in the county where a corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually. If the Attorney General joins claims against a director or officer with an action for judicial dissolution of the corporation, venue is proper where the corporation's principal office is located or, if the principal office is not in this state, where its registered office is or was last located.

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

(4) A person other than the Attorney General who brings ~~an involuntary~~ a judicial dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene. [1989 c.1010 §143]

**65.667 Receivership or custodianship.** (1) A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may, pursuant to ORS 65.--- [section following .038] appoint one or more receivers to wind up and liquidate the affairs of the corporation, or one or more custodians to manage the affairs of the corporation. ~~The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.~~

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

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

~~—(a) The receiver:~~

~~—(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and~~

~~—(B) May sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.~~

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

~~—(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the corporation, its members and creditors.~~

~~—(5) The court periodically during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's attorney from the assets of the corporation or proceeds from the sale of the assets. [1989 c.1010 §144]~~

### **65.671 Judgment of dissolution.**

(Disposition of Assets)

### **65.674 Deposit with Department of State Lands.**

## FOREIGN CORPORATIONS

(Authority to Transact Business)

### **65.701 - 65.731 [no changes]**

(Withdrawal)

### **65.734 Withdrawal of foreign corporation.**

(Administrative Revocation of Authority)

### **65.737 - 65.747**

(Judicial Revocation of Authority)

### **65.751 - 65.757**

## RECORDS AND REPORTS

(Records)

**65.771 Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all corporate action taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and ~~address~~ contact information of all members, in alphabetical order-by class showing the number of votes each member is entitled to cast ~~vote~~.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records for inspection:

(a) Articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(e) Written communications required by this chapter and those regarding general membership matters made to members within the past three years;

(f) A list of the contact information of its current directors and officers.

~~(g) (f)~~ A list of the names and business or home addresses of its current directors and officers;

~~(h) (g)~~ The last three annual financial statements, if any. The statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, including a balance sheet and statement of operations, if any, for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis;

~~(i)(h)~~ The last three accountant's reports if annual financial statements are reported upon by a public accountant; and

~~(j)(i)~~ The most recent annual report delivered to the Secretary of State under ORS 65.787. [1989 c.1010 §164]

**65.7-- Inspection of records by directors.** A director is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation to the extent reasonably necessary for the director to fulfill the director's fiduciary duties to the corporation. The director must give the corporation written notice of the director's demand at least five business days before the date on which the director wishes to inspect and copy.

**65.774 Inspection of records by members.** (1) Subject to subsection (5) of this section and ORS 65.777 (3), a member is entitled to inspect and copy, at a reasonable time and location

specified by the corporation, any of the records of the corporation described in ORS 65.771 (5) if the member gives the corporation written notice of the member's demand at least five business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) of this section and gives the corporation written notice of the member's demand at least five business days before the date on which the member wishes to inspect and copy:

(a) Excerpts from any records required to be maintained under ORS 65.771 (1), to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) Subject to ORS 65.782, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) of this section only if:

(a) The member's demand is made in good faith and for a proper purpose;

(b) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) The records are directly connected with this purpose.

(4) This section does not affect:

(a) The right of a member to inspect records under ORS 65.224 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of the court, independently of this chapter, to compel the production of corporate records for examination.

(5)(a) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

(b) The articles of a public benefit corporation organized primarily for political or social action, including but not limited to political or social advocacy, education, litigation or a combination thereof, may limit or abolish:

(A) The right of a member to obtain from the corporation information as to the identity of contributors to the corporation; and

(B) The right of a member or the member's agent or attorney to inspect or copy the membership list if the corporation provides a reasonable means to mail communications to other members through the corporation at the expense of the member making the request. [1989 c.1010 §165]

### **65.777 Scope of inspection right.**

**65.781 Court-ordered inspection; attorney fees.**

**65.782 Limitations on use of membership list.**

(Reports)

**65.784 Report to members and other persons of indemnification**

**65.787 Annual report.**

TRANSFER OF ASSETS OF HOSPITAL

MISCELLANEOUS

65.--- Electronic writing and signature. As used in this chapter:

(1) "Electronic" has the meaning given that term in ORS 84.004.

(2) "Electronic signature" has the meaning given that term in ORS 84.004.

(3) "Sign" includes an electronic signature.

(4) "Written" includes a communication that is transmitted or received by electronic means.

PENALTY