

CHAPTER 30.

PROVISIONS APPLICABLE TO EXISTING ENTITIES OF A TYPE THAT MAY NO LONGER BE FORMED: ~~UNINCORPORATION~~ UNINCORPORATED PROFESSIONAL ASSOCIATIONS AND CLOSE CORPORATIONS

ARTICLE 1. UNINCORPORATED PROFESSIONAL ASSOCIATIONS

"§10-10-110A-30-1.01 Definitions; applicable to professional associations formed prior to January 1, 1984.

"For the purposes of this ~~chapter~~ article, the following terms shall have the meanings respectively ascribed to them by this section:

"~~(2)~~(1) PROFESSIONAL ASSOCIATION. An unincorporated association organized under this ~~chapter~~ article for the purpose of rendering professional service.

"~~(+)~~(2) PROFESSIONAL SERVICE. Any type of professional service which may be legally performed only pursuant to a license issued by a state court, state regulatory licensing board, or other like agency pursuant to state laws.

Comment

This section is derived from section 10-10-1. Pursuant to Acts of Alabama 1983, No. 83-514, sec. 30, codified as sec. 10A-30-1.02(b), below, no unincorporated professional associations may be formed under this article on or after January 1, 1984. The definitions in this section continue to apply to 'grandfathered' unincorporated professional associations formed prior to that date however.

"§10-10-210A-30-1.02. Laws Governing -- Generally; applicability of article to professional associations formed prior to January 1, 1984.

"(a) Professional associations organized pursuant to this ~~chapter~~ article shall be governed generally by all laws governing or applicable to corporations, where applicable, and not in conflict herewith. No such

association shall be held or deemed to be a partnership, nor shall such association be governed by laws relating to partnerships.

"(b) This chapter shall apply only to professional associations organized hereunder before January 1, 1984.

Comment

This section is derived from section 10-10-2, without substantive change. Pursuant to Acts of Alabama 1983, No. 83-514, sec. 30, codified as subsection (b) above, the provisions of this article apply only to unincorporated professional associations formed prior to January 1, 1984.

No unincorporated professional associations may be formed under this article on or after that date.

"§10-10-310A-30-1.03. Laws governing -- Actions; applicable to professional associations formed prior to January 1, 1984.

"Actions by and against a professional association organized pursuant to this ~~chapter~~ article shall be governed by Article 7 of Chapter 7 of Title 6.

Comment

This section is derived from section 10-10-3.

"§10-10-410A-30-1.04. Formation; restriction on service rendered; applicable to professional associations formed prior to January 1, 1984.

"~~Any~~ Prior to January 1, 1984, one or more persons duly licensed to practice a profession under the laws of this state may form a professional association, as distinguished from a partnership or corporation, for the purpose of carrying on a profession upon compliance with the terms of this ~~chapter~~ article; provided, that no professional association organized pursuant to the provisions of this ~~chapter~~ article shall render professional service in more than one type of professional service.

Comment

This section is derived from section 10-10-4. The only change is the insertion of the phrase "prior to January 1, 1984." Pursuant to Acts of

Alabama 1983, No. 83-514, sec. 30, codified as sec. 10A-30-1.02(b) above, no unincorporated professional association may be formed under this article after January 1, 1984. Unincorporated professional associations formed under this provision prior to that date continue to be subject to the proviso that they can not render professional service in more than one type of professional service.

"§10-10-510A-30-1.05. Articles of association Certificate of formation; name of association; dissolution; applicable to professional associations formed prior to January 1, 1984.

"Such Prior to January 1, 1984, person or persons may form a professional association by executing and recording ~~articles of association certificate of formation~~ in the office of the judge of probate of the county in which the principal office of ~~such the~~ association is located, and must be by ~~such the~~ judge recorded in a book kept for that purpose. After recording ~~such the~~ ~~articles of association certificate of formation~~, the ~~probate~~ judge ~~of probate~~ shall endorse thereon ~~his a~~ certificate of registration, showing the book and page where recorded, and for ~~his~~ services for recording the certificate shall receive fifteen cents \$.15 for each 100 words of the ~~articles of association certificate of formation~~ and ~~\$2.50~~ two dollars fifty cents (\$2.50) for examining the ~~articles~~ certificate of formation.

"The person or persons forming the association shall adopt such name for the association as they in their discretion may determine, provided that the name selected shall be followed by the words "Professional Association" or the abbreviation "P.A." Any dentist or dentists forming the association shall be governed by the rules of the regulating board of their profession in adopting a name for the association.

"The ~~articles of association~~ certificate of formation may contain any provisions not in violation of law or the public policy of this state as the members of the association may decide.

"Such ~~The~~ ~~articles~~ certificate of formation may be amended or dissolved at any time and from time to time by agreement of two thirds of the members at any regular meeting or at a special meeting called for that purpose, upon likewise recording ~~such an~~ amendment or instrument of dissolution in the same place or places as the original ~~articles of association~~ certificate of formation.

Comment

This section is derived from section 10-10-5. The phrase “prior to January 1, 1984” has been inserted. Pursuant to Acts of Alabama 1983, No. 83-514, sec. 30, codified as sec. 10A-30-1.02(b) above, no unincorporated professional association may be formed under this article on or after January 1, 1984. Also the generic term “certificate of formation” has been substituted for the original term “articles of association” but this is simply a change of nomenclature and not of substance. “Certificate of formation” is the term used throughout this Code for document filed to form a filing entity. See the definition in Section 10A-1-1.03(7). The provisions of this section as to certificate of formation (i.e. “articles of association”, name, and requirements for amendment or dissolution continue to apply to unincorporated professional associations formed prior to that date.

"§10-10-610A-30-1.06. Purposes; applicable to professional associations formed prior to January 1, 1984.

"A professional association may be organized only for the purpose of rendering one specific kind of professional service and shall not engage in any business other than rendering the professional service for which it was organized. However, it may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment and may own real or personal property necessary or appropriate for rendering professional service.

Comment

This section is derived from section 10-10-6, without change.

"§10-10-710A-30-1.07. Stock and nonstock associations; nature and transferability of members' interests; applicable to professional associations formed prior to January 1, 1984.

A professional association organized pursuant to ~~the provisions of this chapter article~~ may issue stock or certificates of evidence of ownership of an interest in the assets of the professional association to the members of a stock-type association, or the association may be a nonstock organization with the members owning no individual interest in the assets of the association but with the rights and duties specified in the ~~articles of association~~ certificate of formation, or the association may be a nonstock organization with the members owning undivided interests in the assets of the association according to the ~~articles of association~~ certificate of formation. The stock or certificates of ownership, if a stock-type association, or a membership in a nonstock association, shall be freely transferable, except as may be lawfully restricted in the ~~articles of~~

~~association~~ certificate of formation. A professional association may issue its capital stock to, if it is a stock-type association, or accept as members of the professional association, if a nonstock association, only persons who are duly licensed or otherwise legally authorized to render the same professional service as that for which the professional association was organized. Subject to the provisions of the ~~articles of association~~ certificate of formation, the estate of a member or shareholder who was a person duly licensed or otherwise legally authorized to render the same professional service as that for which the professional association was organized may continue to hold stock or membership pursuant to the ~~articles of association~~ certificate of formation for a reasonable period of administration of the estate, but shall not be authorized to participate in any decisions concerning the rendering of professional service.

Comment

This section is derived from section 10-10-7, without substantive change. In a non-substantive change, the generic term “certificate of formation” has been substituted for the original term “articles of association.”

"§10-10-810A-30-1.08. Board of governors; officers; bylaws; voting by members or shareholders; applicable to professional associations formed prior to January 1, 1984.

"A professional association organized pursuant to ~~the provisions of this chapter~~ article shall be governed by a board of governors elected by the members or shareholders and represented by officers elected by the board of governors, so that centralization of management will be assured, and no member shall have the power to bind the association within the scope of the association's business or profession merely by virtue of ~~his~~ being a member or shareholder of the association. Members of the board of governors need not be members or shareholders of the professional association and officers need not be members of the board of governors; except, that the president shall be a member of the board of governors; provided, that no officer or member of the board of governors who is not duly licensed to practice the profession for which the professional association was organized shall participate in any decisions constituting the practice of ~~said~~ the profession. The members may adopt ~~such~~ bylaws as they may deem proper, or the power to promulgate bylaws of the association may be delegated by the ~~articles of association~~ certificate of formation to the board of governors of the professional association, as the members or shareholders may decide. Each member or shareholder shall

have ~~such~~ the power to cast ~~such~~ a vote or votes at the meeting of the members or shareholders as the ~~articles of association~~ certificate of formation shall provide. The officers of the professional association may employ ~~such~~ agents or employees of the association as they may deem advisable subject to ~~the provisions of Section 10-10-12~~ 10A-30-1.12. The officers of the association shall include a president, vice-president, secretary, treasurer, and ~~such~~ other officers as the board of governors may determine. Any one person may serve in more than one office; provided, that the president and the secretary of the professional association shall not be the same person.

Comment

This section is derived from section 10-10-8, without substantive change. The generic term "certificate of formation" has been substituted for the original term "articles of association."

"§~~10-10-9~~10A-30-1.09. Powers; conveyances; exemption from liability; applicable to professional associations formed prior to January 1, 1984.

"A professional association organized pursuant to the provisions of this ~~chapter~~ article may contract in its own name, take, hold, and sell real and personal property in its own name, independent of its members, and sue and be sued as independent entities as now provided by law. Any conveyance in the name of the professional association to a third person executed by the president and attested by the secretary shall be conclusively presumed to be properly executed and shall divest all right, title, and interest of the professional association, its members, and the board of governors thereof. The assets of a professional association shall not be liable to attachment for the individual debts of its members or shareholders.

Comment

This section is derived from section 10-10-9, without substantive change.

"§~~10-10-10~~10A-30-1.10. Furnishing of statements to Secretary of State; applicable to professional associations formed prior to January 1, 1984.

"A professional association shall, within 30 days after the

organization of the professional association pursuant to ~~the provisions of~~ this ~~chapter article~~ and within 30 days after November 1 of each year thereafter, furnish a statement to the Secretary of State showing the names and ~~post-office~~ post office addresses of all members or shareholders in ~~such~~ the professional association and shall certify that all members or shareholders are duly licensed or otherwise legally authorized to render professional service in this state. This report shall be made on such forms and shall be prescribed and furnished upon request by the Secretary of State, shall be signed by the president or vice-president of the professional association and acknowledged and sworn to before a notary public by the person signing the report and shall be filed in the office of the Secretary of State. Upon the failure or refusal of any professional association to make ~~said~~ the return or report to the Secretary of State, the professional association shall be liable for a penalty of ~~\$50.00~~ fifty dollars (\$50), and the Secretary of State is authorized to issue his or her execution therefor, including all costs incurred.

Comment

This section is derived from sections 10-10-10, without substantive change. Though not stated expressly in the text, a professional association would be obliged to pay the filing fee for filing its annual report. The provision of section 10A-1-4.32 covering the filing of the annual report would be the fee "for any other document required or permitted under this Code."

"~~§10-10-11~~10A-30-1.11. Effect of chapter article on professional relationships; liability of members or shareholders; applicable to professional associations formed prior to January 1, 1984.

"This ~~chapter article~~ does not modify any law applicable to the relationship between a person furnishing professional services and a person receiving ~~such~~ the service, including liability for tort arising out of such professional service and including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any; and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted shall remain inviolate. Subject to the foregoing provisions of this section, the members or shareholders of any professional association organized pursuant to ~~the provisions of this chapter article~~ shall not be individually liable for the debts of, or claims against, the professional association unless such member or shareholder has personally participated in the transaction for which the debt or claim is made or out of which it arises.

Comment

This section is derived from section 10-10-11, without substantive change.

"§10-10-1210A-30-1.12. Professional services to be rendered only through licensed officers or employees; applicable to professional associations formed prior to January 1, 1984.

"A professional association may render professional services only through officers, employees, and agents who are themselves duly licensed or otherwise legally authorized to render professional service within this state. The term "employee," as used in this section, does not include clerks, bookkeepers, technicians, nurses, or other individuals who are not usually or ordinarily considered by custom and practice to be rendering professional services for which a license or other legal authorization is required in connection with the profession practiced by a particular professional association, nor does the term "employee" include any other person who performs all his or her employment under the direct supervision and control of an officer, agent, or employee who is himself or herself rendering professional service to the public on behalf of the professional association; provided, that no person shall under the guise of employment practice a profession unless duly licensed to practice that profession under the laws of this state.

Comment

This section is derived from section 10-10-12, without substantive change.

"§10-10-1310A-30-1.13. Withdrawal of members and employees becoming disqualified to practice; proceedings to dissolve noncomplying association; applicable to professional associations formed prior to January 1, 1984.

"If any member, shareholder, agent, or employee of a professional association becomes legally disqualified to render a professional service within the state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, he or she shall sever all employment with, or financial interest in, such professional association forthwith. A professional association's failure to comply or require compliance with this section shall be a ground for the forfeiture of its right to render professional service as a professional association pursuant to ~~the provisions of this chapter article~~. When a professional association's failure to comply with this section is brought to the attention of the Secretary of State, the Secretary of State shall certify that fact to the Attorney General for appropriate action to dissolve the professional association.

Comment

This section is derived from section 10-10-13, without change.

"§10-10-1410A-30-1.14. Purchase of membership or shares of former member or shareholder; applicable to professional associations formed prior to January 1, 1984.

"If the ~~articles of association or bylaws~~ governing documents of a professional association fail to fix a price at which a professional association or its members or shareholders may purchase the membership or shares of a deceased, retired, expelled, or disqualified member or shareholder and if the ~~articles of association or bylaws~~ governing documents do not otherwise provide, then the price for such share or shares or membership shall be the book value of such share or shares or membership at the end of the month immediately preceding the death or disqualification of the member or shareholder. Book value shall be determined by an independent certified accountant employed for such purpose from the books and records of the professional association by the regular method of accounting employed by the professional association. The determination by the certified public accountant of book value shall be conclusive on the professional association and its members or shareholders.

Comment

This section is derived from section 10-10-14, without change except for the non-substantive substitution of the term “governing documents” for the original “articles of association or bylaws”. Under the definitions provisions of Chapter One of this Code, “governing documents” is a generic term used to encompass the certificate of formation and other documents, such as bylaws, adopted to govern the formation or internal affairs of the entity. Section 10A-1-1.03(41).

"§10-10-1510A-30-1.15. Continuity of association independent of members or shareholders; applicable to professional associations formed prior to January 1, 1984.

"Unless the ~~articles of association~~ certificate of formation expressly provides otherwise, a professional association shall continue as a separate entity independent of its members or shareholders for all purposes for such period of time as provided in the ~~articles~~ certificate of formation or until dissolved by a vote of two thirds of the members, and shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of membership or ownership of shares, retirement, or expulsion of any one or more of the members or shareholders, the admission or transfer of membership or shares to any new member, members, shareholder, or shareholders or the happening of any other event which, under the law of this state and under like circumstances, would work a dissolution of the partnership, it being the aim and intention of this section that such professional association shall have continuity of life independent of the life or status of its members or shareholders.

Comment

This section is derived from section 10-10-15, without change except that in a non-substantive change the generic term “certificate of formation” has been substituted for “articles of association.”

"§10-10-1610A-30-1.16. Distribution of assets on dissolution; applicable to professional associations formed prior to January 1, 1984.

"In the event of dissolution of a stock-type professional association, the board of governors, as trustees of the property of such professional association, shall apply the assets first to the payment of

debts of the association and, secondly, to the holders of the stock as provided in the ~~articles of association~~ certificate of formation. In the event of dissolution of a nonstock-type association, the assets shall be distributed, or sold, and the net proceeds distributed first to the payment of debts of the association and, secondly, to or among the members of the association, as the ~~articles of association~~ certificate of formation shall provide."

Comment

This section is derived from section 10-10-16, without change except for the substitution of the generic term "certificate of formation" for "articles of association."

ARTICLE 2. CLOSE CORPORATIONS

"~~§10-2A-300~~10A-30-2.01. Law applicable to close corporations; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) This article applies to all close corporations, as defined in Section ~~10-2A-301~~ 10A-30-2.02. ~~Unless a corporation elects to become a close corporation in the manner prescribed, it shall be subject in all respects to the provisions of this chapter, except this article dealing with close corporations.~~

"(b) All provisions of this ~~chapter~~ article shall be applicable to all close corporations as defined in Section ~~10-2A-301~~ 10A-30-2.02 except insofar as this article otherwise provides.

"(c) Neither election to become, nor operation as, a close corporation shall deprive any shareholder of such corporation of the limitation of liability provided under former Section 10-2A-43 or a successor statute, including Section 10A-2-6.13.

"(d) This chapter shall apply only to close corporations formed in accordance with Section ~~10-2A-302~~ 10A-30-2.03 before January 1, 1995, or electing to become a close corporation pursuant to Section ~~10-2A-303~~ 10A-30-2.04 before January 1, 1995, and which has not voluntarily terminated its status as a close corporation or otherwise ceased to be a close corporation to which the provisions of this article apply before January 1, 1995.

Comment

This section is derived from section 10-2A-300. Subsection (d) has been revised to make it clear that this article is available only if a corporation was formed as a close corporation before January 1, 1995, or elected that status prior to the date. Earlier language was ambiguous and led to confusion.

"§10-2A-30110A-30-2.02. "Close corporation" defined; contents of articles of incorporation certificate of formation; number of shareholders; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) A close corporation is a corporation organized under ~~this chapter~~ former Chapter 2A of former Title 10 whose ~~articles of incorporation~~ certificate of formation contains the provisions required by ~~former~~ Section 10-2A-91 or a successor statute, including Section 10A-2-2.02 and, in addition, provide that:

"(1) The corporation is a close corporation authorized by this article;

"(2) All of the issued shares of all classes shall be subject to one or more of the restrictions on transfer permitted by ~~former~~ Section 10-2A-41 or a successor statute, including Section 10A-2-6.17; and

"(3) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by one shareholder.

"(b) ~~The articles of incorporation~~ certificate of formation of a close corporation may set forth the qualifications of shareholders, either by specifying classes of persons who shall be entitled to be holders of record of shares of any class, or by specifying classes of persons who shall not be entitled to be holders of shares of any class or both.

"(c) All of the corporation's issued shares of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding 30.

Comment

This section is derived from section 10-2A-301, with adjustments as to cross references and with the substitution of the generic term “certificate of formation” for the original term “articles of incorporation”.

§10-2A-30210A-30-2.03. Formation of a close corporation; applicable to corporations formed as close corporations before January 1, 1995.

"A close corporation shall be formed in accordance with Sections 10-2A-90 through 10-2A-96, or any successor statute, including Article 2 of Chapter 2, except that such formation must be authorized by the affirmative vote of all holders of and subscribers to shares of the corporation, and:

"(1) The ~~articles of incorporation~~ certificate of formation shall contain a heading stating the name of the corporation and that it is a close corporation; and

"(2) The ~~articles of incorporation~~ certificate of formation shall contain the provisions required by Section ~~10-2A-301~~ 10A-30-2.02; and

"(3) Each certificate for shares shall conspicuously note the fact that the corporation is a close corporation and make reference to the restriction on transfer of shares set forth in the ~~articles of incorporation~~ certificate of formation."

Comment

This section is derived from section 10-2A-302 with adjustments to cross references and with the substitution of the generic term “certificate of formation” for the original term “articles of incorporation.”.

Section 10-2A-303 of the Code of Alabama 1975, is repealed.

Comment

Section 10-2A-303 allowed corporations existing prior to January 1, 1995 to elect close corporation status. Since that power of election no longer exists, the section has been repealed.

§10-2A-30410A-30-2.04. Voluntary termination of close corporation

status by amendment of articles of incorporation the certificate of formation; vote required; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) A corporation may voluntarily terminate its status as a close corporation and cease to be subject to this article by amending its ~~articles of incorporation~~ certificate of formation to delete therefrom the additional provisions required or permitted by Section ~~10-2A-304~~ 10A-30-2.02 to be stated in the ~~articles of incorporation~~ certificate of formation of close corporations except such provisions as are permitted by ~~this chapter~~ Chapter 2 which the corporation chooses to retain. Any such amendment shall be adopted and shall become effective in accordance with ~~Section 10-2A-115~~ Article 10 of Chapter 2, except that it must be approved by a vote of the holders of record of at least one-third of the shares of each class of stock of the corporation which are outstanding.

"(b) The ~~articles of incorporation~~ certificate of formation of a close corporation may provide that on any amendment to terminate its status as a close corporation, a vote greater than one-third or a vote of all shares of any class shall be required; and if the certificate of incorporation contains such a provision, that provision shall not be amended, repealed, or modified by any vote less than that required to terminate the corporation's status as a close corporation.

Comment

This section is derived from section 10-2A-304, with adjustment of cross references and with the substitution of the generic term "certificate of formation" for the original term "articles of association."

"§~~10-2A-305~~10A-30-2.05. Issuance or transfer of shares of a close corporation in breach of qualifying conditions; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) If shares of a close corporation are issued or transferred to any person who is not entitled under any provision of the ~~articles of incorporation~~ certificate of formation permitted by Section ~~10-2A-304~~ 10A-30-2.02 to be a holder of record of shares of ~~such~~ the corporation, and if the certificate for shares conspicuously notes the qualifications of the persons entitled to be holders of record thereof, such person is conclusively presumed to have notice of the fact of his or her ineligibility

to be a shareholder.

"(b) If a certificate for shares of any close corporation conspicuously notes the fact of a restriction on transfer of shares of the corporation and the restriction is one which is permitted by former Section 10-2A-41 or any successor statute, including Section 10A-2-6.17, the transferee of the shares is conclusively presumed to have notice of the fact that he or she has acquired shares in violation of the restriction, if such acquisition violates the restriction.

"(c) Whenever any person to whom shares of a close corporation have been issued or transferred has, or is conclusively presumed under this section to have notice either that he or she is a person not eligible to be a holder of shares of the corporation, or that the transfer of shares is in violation of a restriction on transfer of shares, the corporation may, at its option, refuse to register transfer of the shares into the name of the transferee in addition to any remedies which may be available under former Section 10-2A-41 or any successor statute, including Section 10A-2-6.17 or otherwise.

"(d) The provisions of subsection (c) ~~of this section~~ shall not be applicable if the transfer of shares even though otherwise contrary to subsections (a) or (b) ~~of this section~~, has been consented to by all the shareholders of the close corporation, or if the close corporation has amended its ~~articles of incorporation~~ certificate of formation in accordance with Section ~~10-2A-304~~ 10A-30-2.04.

"(e) The term "transfer," as used in this section, is not limited to a transfer for value.

"(f) The provisions of this section do not in any way impair any rights of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty express or implied.

Comment

This section is derived from section 10-2A-305, with adjustments as to cross references.

"§10-2A-30610A-30-2.06. Corporate option where a restriction on transfer of shares is held invalid; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"If a restriction on transfer of shares of a close corporation is held not to be authorized by former Section 10-2A-41 or any successor statute, including Section 10A-2-6.27, the corporation shall nevertheless have an option for a period of 30 days after the judgment setting aside the restriction becomes final, to acquire the restricted shares at a price which is agreed upon by the parties or if no agreement is reached as to price, then at the fair value as determined by the circuit court of the county in which the corporation has its registered office or any court in such place having jurisdiction. In order to determine fair value, the court may appoint an appraiser to receive evidence and report to the court his or her findings and recommendation as to fair value. The appraiser shall have such powers and shall proceed, so far as applicable, in the same manner as appraisers appointed under former Section 10-2A-163 or any successor statute, including Section 10A-2-13.21(e).

Comment

This section is derived from section 10-2A-306, with adjustments of cross-references.

"~~§10-2A-307~~10A-30-2.07 Agreements restricting discretion of directors; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"A written agreement among the shareholders of a close corporation holding a majority of the outstanding shares entitled to vote, whether solely among themselves or with a party not a shareholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the shareholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement.

Comment

This section is derived from section 10-2A-307, without change except for the non-substantive substitution of "certificate of formation" for the original term "articles of incorporation."

"§10-2A-30810A-30-2.08. Management by shareholders; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

The ~~articles of incorporation~~ certificate of formation of a close corporation may provide that the business of the corporation shall be managed by the shareholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

- (1) No meeting of shareholders need be called to elect directors;
- (2) Unless the context clearly requires otherwise, the shareholders of the corporation shall be deemed to be directors for purposes of applying provisions of this article; and
- (3) The shareholders of the corporation shall be subject to all liabilities of directors.

Such a provision may be inserted in the ~~articles of incorporation~~ certificate of formation by amendment if all incorporators and subscribers or all holders of record of all of the outstanding shares, whether or not having voting power, authorize such a provision. An amendment to the ~~articles of incorporation~~ certificate of formation to delete such a provision shall be adopted by a vote of the holders of record of not less than one-third of all outstanding shares of the corporation, whether or not otherwise entitled to vote. If the ~~articles of incorporation~~ certificate of formation contain a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

Comment

This section is derived from section 10-2A-308, without change except for the substitution of the generic term "certificate of formation" for "articles of association."

"§10-2A-30910A-30-2.09. Appointment of custodian for close corporation; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) The circuit court of the county in which the corporation has its registered office or any court in such place having jurisdiction, upon

application of any shareholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of any close corporation when:

"(1) Pursuant to Section ~~10-2A-308~~ 10A-30-2.08, the business and affairs of the corporation are managed by the shareholders and they are so divided that the business of the corporation is suffering or is threatened with irreparable injury and any remedy with respect to such deadlock provided in the ~~articles of incorporation~~ governing documents or bylaws or in any written agreement of the shareholders has failed; or

"(2) The petitioning shareholder has the right to the dissolution of the corporation under a provision of the ~~articles of incorporation~~ certificate of formation permitted by Section ~~10-2A-312~~ 10A-30-2.12.

"(b) In lieu of appointing a custodian for a close corporation under this section, the court may appoint a provisional director, whose powers and status shall be as provided in Section ~~10-2A-310~~ 10A-30-2.10 if the court determines that it would be in the best interest of the corporation. ~~Such~~ the appointment shall not preclude any subsequent order of the court appointing a custodian for such corporation.

"(c) A custodian appointed under this section shall have all the powers of a receiver or custodian appointed under ~~former~~ Section ~~10-2A-196~~ or any successor statute, including Section 10A-2-14.22, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the court shall otherwise order.

Comment

This section is derived from section 10-2A-309, with adjustments as to cross references and with the substitution of "certificate of formation" for "articles of incorporation."

"~~§10-2A-310~~10A-30-2.10. Appointment of a provisional director in certain cases; applicable to corporations formed as close corporations or electing close corporation status prior to January, 1 1995.

"(a) Notwithstanding any contrary provision of the ~~articles of incorporation or the bylaws~~ governing documents or agreement of the shareholders, the circuit court of the county in which the registered office

of the corporation is located may appoint a provisional director for a close corporation if the directors are so divided respecting the management of the corporation's business and affairs that the votes required for action by the board of directors cannot be obtained with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

"(b) An application for relief under this section must be filed (1) by at least one-half of the number of directors then in office, or (2) by the holders of at least one-third of all shares then entitled to elect directors, or, (3) if there be more than one class of shares then entitled to elect one or more directors, by the holders of two-thirds of the shares of any such class; but the ~~articles of incorporation~~ certificate of formation of a close corporation may provide that a lesser proportion of the directors or of the shareholders or of a class of shareholders may apply for relief under this section.

"(c) A provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the circuit court of the county. A provisional director is not a receiver of the corporation and does not have the title and powers of a custodian or receiver. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors until such time as he or she shall be removed by order of the circuit court of the county or by the holders of a majority of all shares then entitled to vote to elect directors or by the holders of two-thirds of the shares of that class of voting shares which filed the application for appointment of a provisional director. His or her compensation shall be determined by agreement between him or her and the corporation subject to approval of the circuit court of the county, which may fix his or her compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

"(d) Even though the requirements of subsection (b) ~~of this section~~ relating to the number of directors or shareholders who may petition for appointment of a provisional director are not satisfied, the circuit court of the county may nevertheless appoint a provisional director if permitted by subsection (b) ~~of Section 10-2A-309~~.

Comment

This section is derived from section 10-2A-310, with adjustments for a cross reference and with the substitution of the generic term “certificate of formation” for “articles of incorporation.”

"§10-2A-31110A-30-2.11. Shareholders' agreements; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"No written agreement among shareholders of a close corporation, nor any provision of the articles of incorporation or of the bylaws governing documents of the corporation, which agreement or provision relates to any phase of the affairs of such corporation, including but not limited to the management of its business or declaration and payment of dividends or other division of profits or the election of directors or officers or the employment of shareholders by the corporation or the arbitration of disputes, shall be invalid on the ground that it is an attempt by the parties to the agreement or by the shareholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the shareholders or between the shareholders and the corporation in a manner that would be appropriate only among partners.

Comment

This section is derived from section 10-2A-311, without change except for the substitution of the generic term “governing documents” for “articles of incorporation or bylaws.”

"§10-2A-31210A-30-2.12. Shareholders' option to dissolve corporation; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"(a) The articles of incorporation certificate of formation of any close corporation may include a provision granting to any shareholder, or to the holders of any specified number or percentage of shares of any class of shares, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the shareholders exercising such the option shall give written notice thereof to all other shareholders. After the expiration of 30 days following the sending of such the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting power had consented in writing to dissolution of the corporation as provided by Section ~~10-2A-181~~ 10A-2-14.02.

"(b) If the ~~articles of incorporation~~ certificate of formation as originally filed do not contain a provision authorized by subsection (a) ~~of this section~~, the ~~articles~~ certificate of formation may be amended to include such provision if adopted by the affirmative vote of the holders of all the outstanding shares, whether or not entitled to vote, unless the ~~articles of incorporation~~ certificate of formation specifically authorize such an amendment by a vote which shall be not less than two-thirds of all the outstanding shares whether or not entitled to vote.

"(c) Each certificate for shares in any corporation whose ~~articles of incorporation~~ certificate of formation authorize dissolution as permitted by this section shall conspicuously note on the face thereof the existence of the provision. Unless noted conspicuously on the face of the certificate for shares the provision is ineffective.

Comment

This section is derived from section 10-2A-312, with adjustment of a cross reference and with the substitution of "certificate of formation" for "articles of incorporation."

"~~10-2A-313~~10A-30-2.13. Effect of the close corporation provisions on other laws; applicable to corporations formed as close corporations or electing close corporation status prior to January 1, 1995.

"This article shall not be deemed to repeal any statute or rule of law which is or would be applicable to any corporation which is organized under the provisions of ~~this chapter~~ Chapter 2 but is not a close corporation."

Comment

This section is derived from Section 10-2A-313.

(a) The following Sections of the Code of Alabama 1975, are expressly repealed: 10-2B-1.27, 10-2B-1.28, 10-3A-223.1, 10-4-404, 10-4-405, 10-4-406, 10-9B-305, 10-15-1, 10-15-2, 10-15-5, and 10-15-7.

(b) Any section of Title 10 of the Code of Alabama 1975, not otherwise amended and renumbered by this act or otherwise repealed by this act, is repealed.

This act shall become effective January 1, ~~2009~~ 2011.

The following Sections of the Code of Alabama 1975, are expressly repealed: 10-2B-1.27, 10-2B-1.28, 10-3A-223.1, 10-4-404, 10-4-405, 10-4-406, 10-9B-305, 10-15-1, 10-15-2, 10-15-5, and 10-15-7.

(b) Any section of Title 10 of the Code of Alabama 1975, not otherwise amended and renumbered by this act or otherwise repealed by this act, is repealed.