ASSOCIATIONS:

No general statute governing unincorporated associations.

Formation.—No unincorporated association may transact business in state unless individual names of all concerned are first certified by an officer of the association to prothonotary of each county. (6-3104). Requisites of certificates are same as in case of limited partnership. See topic Partnership.

Rights and Powers.—No statutory provisions.

Liabilities.—See this topic, subhead Actions.

Actions.—Unincorporated association of persons, including a partnership, may sue and be sued in its common name. Judgment recovered in such a case is a lien and may be executed by levy, seizure and sale of personal or real estate of association or of persons composing same as if they had been made parties defendant by their individual names. (10-3904). Class actions may be brought by or against members of association. (Ch. Ct. Rule 23.2).

Dissolution.—No statutory provisions. Absent agreement withdrawal of part of membership will not effect dissolution. (39 Del. Ch. 221, 163 A.2d 242).

Professional Associations.—See topic Corporations, subhead Professional Corporations.

BANKS AND BANKING:


Banks and trust companies except savings banks and national banks, are created under corporation law for State banks and trust companies. (5-c.7). Banking powers may not be exercised by corporations formed under general corporation law (8-126) or by foreign corporations (8-379). Bank or trust company, if authorized by charter, with paid-in capital stock of at least $25,000 and surplus of at least $23,000 for each place of business then established or to be established may open Delaware branch office upon authorization of State Bank Commissioner. (5-770). Bank or trust company having paid in capital and surplus exceeding $1,000,000 may open branch office outside state upon issuance of certificate by State Bank Commissioner. (5-771). Banks and trust companies allowed reasonable time to commence business. (5-734, 933). Consumer credit banks (5-c. 10) must commence business within six months from date of incorporation (5-1022).

Exercise of bank powers, directly or through bank subsidiary, is subject to regulation by State Banking Commissioner. (5-761).

Minimum of 15 Delaware citizens required to create corporation to form bank or trust company; minimum of three persons, including two Delaware citizens, required to establish bank or trust company which, in opinion of State Bank Commissioner, is formed as part of planned acquisition of stock in Delaware bank by foreign bank holding company. (5-722).

Banks and trust companies doing business in Delaware may not merge or consolidate with other bank or trust company without approval by State Bank Commissioner. (5-751).


No acquisition of any bank or trust company is permitted without minimum of 60 days prior written notice of such proposed change in control to State Banking Commissioner, who shall have authority to approve or disapprove such acquisitions. (5-160).
Regulated by tit. 5.

Stockholders.—Private property of stockholders not subject to payment of corporate debts unless otherwise provided in articles of association. (5-747). No stock issued until par value fully paid in cash, and no business transacted until all stock subscribed for and paid for in cash. (5-746).

Deposits.—Deposits for minors, married women, decedents, joint deposits (payable to either or to survivor), and deposits in trust governed by 5-920-924.

Unclaimed Deposits.—See topic Absentees, subhead Escheat.

Collections.—Uniform Commercial Code adopted. (6-4-301-303).

Trust Companies.—General powers of corporation organized under 5-c.7 set forth at 5-761. Trust companies established under 5-c. 7 authorized to act as fiduciaries (5-765) and as corporate agents (5-766).

Uniform Common Trust Fund Act not adopted, but common fund investments by bank or trust company authorized in acting as fiduciary permitted in accordance with statutory regulations. (12-3307).

Foreign Banks.—Banking powers generally denied to foreign corporations. (8-379). However, under certain conditions, foreign banks may transact business in State. (5-1401). Foreign bank authorized by its charter and under laws of its state of organization may apply to State Banking Commissioner for certificate of authority to establish and maintain foreign bank agency. (5-1402, 1403). Such authorized foreign banks may engage in general banking business subject to statutory and administrative restrictions on authority to exercise fiduciary powers or engage in general deposit-taking business. (5-1404). Foreign bank’s ability to compete with existing banking institutions in state subject to restrictions. (5-1402, 1404).

Securities Powers.—Bank or trust company may engage directly or through subsidiary in sale, distribution and underwriting of, and dealing with, stocks, bonds, debentures, notes or other securities. (5-761). Such securities activity is not subject to investment limitations on banks and trust companies. (5-910).

Investments.—Bank or trust company may invest 50% of its capital, surplus, and undivided profit in real estate suitable for conduct of its business, excluding mortgages on real estate owned by bank or trust company, and including amounts invested in other organizations holding real estate for use in conduct of business including obligations of Federal National Mortgage Association, Federal Home Loan Mortgage Corp., and public housing authorities. (5-762, 910-911).

Bank or trust company authorized to act as fiduciary or agent with investment discretion may invest held funds in limited partnerships, joint ventures, open or closed end management-type investment companies or investment trusts. (12-3312).

Bank or trust company may not invest more than 25% of its total capital, surplus and undivided profits in stock, bonds or obligations of corporation or political subdivision, except obligations of or guaranteed by U.S., state or other political subdivision. (5-910).

Bank or trust company may acquire and own more than 10% of capital stock of another bank or trust company located in Delaware provided: (1) Acquired bank is newly established with no more than one public banking office in Delaware; (2) within one year of commencement target bank and its affiliates will employ at least 200 persons in Delaware; (3) acquired bank operates in manner and location not likely to attract customers from general public to detriment of
existing banks located in Delaware, except customers of parent or affiliate; and
(4) prior approval of State Banking Commissioner if acquired bank is owned by
subsidiary of out-of-state bank holding company. (5-769).

Acquisition of Existing Savings Banks.—Under certain conditions, out-of-
state savings institution, out-of-state savings and loan holding company or out-
of-state bank holding company (or any subsidiary of such institution) located in
any of several neighboring states may acquire existing Delaware savings bank,
Delaware savings and loan holding company or savings and loan holding com-
pany located in such neighboring state which owns or controls existing Dela-
ware savings bank. (5-832). Any institution proposing to make such acquisition
must apply to State Banking Commissioner for approval. (5-833).

Loans to person or association are limited to percentage of lender's total
capital, surplus, and undivided profits. Limit does not apply to loans secured or
guaranteed by U.S. or State obligations, or those secured by certain commercial
instruments or segregated deposit. Limit also does not apply to loans arising
from discount of commercial or consumer paper or to sale of federal funds to
F.D.I.C. insured banks or to purchase of securities under agreement to resell.
Bank or trust company may make loans to directors and executive officers after
borrowers submit statement of financial condition and loan is approved by two-
thirds vote of board of directors or empowered committee of board. (5-909).

Delaware and federal commercial banks may extend credit under revolving
credit plans, including credit card purchases and cash advances. (5-941, 942).
No borrower loan limits, unless imposed by charter or law. (5-942). Periodic
interest is charged pursuant to plan agreement (5-943), and bank may apply
variable interest rates to all outstanding balances (5-944). In addition to or in
lieu of interest, bank may impose membership fee, transaction charges, periodic
charge for period of outstanding credit, service fees, expensive reimbursements
or other fees incident to plan, returned payment charges, documentary evidence
charges, stop payment fees, over-limit charges and automated teller machine
charges (5-945), and different terms on purchase and loan balances (5-946). If
bank provides overdraft checking, customary charges resulting in negative bal-
cance chargeable to borrower's account as loan even if charge not mentioned
in plan agreement. (5-947). Bank may allow borrower to defer monthly install-
ments (5-948), require borrowers to obtain insurance (5-949), charge nonindi-
vidual borrower higher interest rate and any borrower late fee as interest for
delinquent installments (5-950), collect attorneys' fees and costs of collection,
whether or not in connection with collection proceeding (5-951), amend terms of
plan, and upon borrower's continued use, apply changes to entire outstanding
balance (5-952). Decreases in amount of payments, changes in schedule under
5-944 for variable rate plans if not increase, and change in periodic rates under
5-943 are not deemed amendments. (5-952[d]).

Delaware and federal banks may extend closed-end credit subject to bank
charter and legal limitations. (5-962). Periodic interest may be charged pursu-
ant to plan agreement (5-963), and variable interest rates may apply to all
outstanding balances (5-964). Bank may impose charges as interest in addition
to or in lieu of periodic interest on loan fees, points, finders' fees or other front-
end charges and fees for expenses incurred in services rendered by bank, but in
case of individual borrower, agreement must provide for such charges. (5-965).
Bank may permit borrower to defer installment payments and charge as interest
deferral charges (5-966), may require borrowers to obtain insurance (5-967),
charge nonindividual borrower greater interest rate and late fee for payments in
default; individual borrower pays late fee as interest only if loan so provides (5-
Bank may charge individual borrower for attorneys' fees and collection costs where agreement so provides, whether or not in connection with collection proceeding. (5-971). If individual borrower fully prepays loan bearing precomputed interest, bank refunds unearned interest as calculated under actuarial method; individual borrower not subject to prepayment charge except as provided in residential mortgage loan agreement. (5-969). Terms of loans to nonindividual borrowers regarding extended or deferred payment, prepayment and refinancing charges, late charges, attorneys' fees, and collection costs are matters of contract. (5-972).

Lender may charge any interest rate agreed upon. (5-2108).

All terms, conditions, and other provisions relating to plan or in agreement covering plan, other than those which are interest under revolving credit and closed-end credit subchapters, are deemed material terms. (5-955, 975).

Revolving credit plans between bank and individual borrower and agreement, bond, note, or other evidence of loan between bank and individual borrower are governed by Delaware law. (5-956, 976).

All fees and charges assessed in connection with bank revolving credit plans and closed-end credit are deemed interest, notwithstanding form of computation of payment. (5-941-945, 950-952, 962-971).

Taxation.—Franchise tax is imposed on taxable income of banks, trust companies and national banks. Taxable income is computed by formula which represents net income before taxes less net income of subsidiaries and income from certain international banking transactions and facilities. (5-1101). Rate of tax for taxable income in certain years is 8.7% of net income not exceeding $20,000,000; 6.7% on $20,000,000-$25,000,000; 4.7% for $25,000,000-$30,000,000; 2.7% in excess of $30,000,000. (5-1105). All banks, trust companies, and national banks are subject to franchise tax, but exempt from Delaware corporation income tax, occupational taxes, taxes on income, capital and assets; but real estate owned not exempt. (5-1108). Affiliated finance companies taxed on basis of their capital base. (30-6301-6306).

Building and loan associations subject to annual franchise tax of 8.7% net earnings after Federal taxes. (5-1801). Upon failure to pay tax, tax due becomes lien in favor of State on property and rights thereto. (5-1803).

Bank Holding Companies.—State Banking Commissioner is empowered to regulate Delaware bank holding companies. (5-855). Delaware corporation regulated under Federal Bank Holding Company Act or Federal Savings and Loan Holding Company Act may use "trust" in corporate name without being subject to regulation by State Banking Commission. (8-395).

Out-of-state bank holding company or subsidiary may acquire no more than 5% of voting shares or assets of bank located in Delaware, except that out-of-state bank holding company or subsidiary may acquire and hold all or most of voting shares of not more than two banks located in Delaware subject to five continuing conditions: (1) Bank or banks to be acquired are newly chartered in Delaware with no more than one public banking office each, located in Delaware; (2) at least one of acquired banks has minimum capital and surplus of $10,000,000 upon commencement of business in Delaware and $25,000,000 within one year; (3) first bank to be acquired must employ 100 persons in Delaware within one year of commencement, if second bank acquired, it and its affiliates must employ 200 persons in Delaware within one year of commencement; (4) target bank(s) operate in manner and location not likely to attract customers from general public to detriment of existing banks; (5) prior approval granted by State Banking Commissioner. (5-803). Commissioner may order
corporate compliance and subsequent divestiture, and latter is subject to review de novo in
Chancery Court. (5-807). Factors established for Commissioner to evaluate in
determining whether to grant application. (5-804). Out-of-state holding compa-
nny must file with Commission all reports required under §§13 or 15(d) of
Securities Exchange Act of 1934, excluding portions not available to public. (5-
805).

Under certain conditions, out-of-state bank holding company located in any
of several neighboring states may acquire either existing Delaware bank, bank
holding company located in Delaware or bank holding company located in such
neighboring state which owns or controls existing Delaware bank. (5-843). Any
out-of-state bank holding company proposing to make such acquisition must
apply to State Banking Commissioner for approval. (5-844). No branching or
merging of banks across state lines is permitted. (5-843).

Bank Commissioner supervises and regulates business and industrial develop-
ment corporations licensed under Delaware Bidco Act. (5-3301, 3306). “Bidco”
is private corporation which provides financing and management assistance to
small business firms. (5-3322).

CORPORATIONS:

Incorporation is under general law, except for municipal or banking corpo-
rations, and those for charitable, penal, reformatory or educational purposes sus-
tained in whole or part by state. (8-101 et seq., Const., art. IX, §1). There are
special provisions applicable to public utility corporations operating in Dela-
ware. (26-201 et seq.). Corporations organized prior to 1897 must accept provi-
sions of present constitution before amending or renewing their charters
(Const., art. IX, §2). General Corporation Law, as amended to date (8-101 et
seq.), provides for incorporation of any lawful business except those prohibited
by law. Following provisions, unless otherwise noted, are from that law. (Model
Business Corporation Act not adopted.)

General Supervision.—Secretary of State, Corporation Dept., P.O. Box 898,
Dover, DE 19901, exercises general supervision over corporations.

Purposes.—See subhead Certificate of Incorporation.

Name.—For requirements as to corporate name, see infra, subhead Certificate
of Incorporation.

It is informal practice of Delaware Secretary of State to reserve corporate
name upon oral or written request, and without fee, for 30 days. If, during said
30 day period, another party should file certificate seeking reserved name, party
first reserving said name is accorded 24 hours within which to file his own
certificate of incorporation under reserved name. Reservation may be extended
for one additional 30 day period upon request.

Term of Corporate Existence.—Corporate existence begins when certificate is
filed, and fees and taxes are paid. (8-103[c], 106). Unless limited, corporate
existence is perpetual. (8-102[5]). If dissolved, existence continues three
years, or longer as Chancery directs, after dissolution for winding up its affairs.
(8-278).

Incorporators.—Any person, partnership, association or corporation, regard-
less of residence, domicile or state of incorporation may incorporate. (8-101). If
persons to serve as directors until first annual meeting not named in certificate of
incorporation, incorporators, until directors elected, may do whatever necessary
and proper to perfect organization, including adoption of by-laws and election of
directors. (8-107).
Certificate of incorporation must state name, which must distinguish it upon records in office of Secretary of State from names of other corporations organized, reserved or registered as foreign corporations under laws of Delaware and contain one of the following words: association, company, corporation, club, foundation, fund, incorporated, institute, society, union, syndicate or limited, or abbreviation co., corp., ltd. or inc., or words or abbreviations of like import in other languages in roman letters; address (including street, number, city and county) of registered office in state and name of registered agent; nature of business, "engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware" is sufficient; number of classes of stock; where there is more than one class of stock, number and par value of shares of each such class; powers, preferences, rights, qualifications, limitations, restrictions of any class or series of any class of stock, fixing of which by certificate of incorporation is desired; name and mailing address of incorporators; if power of incorporators to terminate upon filing of certificate of incorporation, names and mailing addresses of persons to serve as directors until first annual stockholder meeting or until successors elected and qualify. (8-102[a]).

Certificate of incorporation may state any provisions, not contrary to state law, for management of business and conduct of affairs of corporation and for creating, defining, limiting and regulating powers of corporation, directors and stockholders; any provision required or permitted in by-laws; authorization of binding compromise or arrangement of debts due creditors and rights of stockholders and agreement for reorganization on application to court by corporation, creditor, stockholders, receivers, or trustees in liquidation upon majority vote of three-fourths in value of class affected and approval by court; grant of preemptive rights to stockholders to subscribe to additional issues (otherwise, no preemptive rights exist); requirement for any corporate action of vote of larger portion of stock, any class or series, or any securities having voting power, or of larger number of directors than required by statute; limitation of corporation's existence to specified date (otherwise, corporation is perpetual); imposition of personal liability for debts of corporation on stockholders to specified extent and upon specified conditions (otherwise, stockholders not personally liable except as may be by reason of own conduct and acts); elimination or limitation of director's personal liability to corporation or stockholders for monetary damages for breach of fiduciary duty as director provided no such elimination or limitation for breach of director's duty of loyalty, for acts or omissions not in good faith or intentional misconduct or knowing violation of law, for liability under 8-174, for transactions where director derived improper personal benefit. (8-102[b]).

Certificate of incorporation need not state any powers conferred on corporations by General Corporation Law. (8-102[c]).

Corporations not for profit and without capital stock must state that they have no authority to issue stock and conditions of membership. (8-102[a][4]).

Copies.—Original and signed or conformed copy delivered to Secretary of State. (8-103[c][1]).

Signatures.—Incorporators. (8-103[a][1]).

Acknowledgment.—See topic Acknowledgments, subhead Forms, catchline Secretary of State.

Filing and Recording of Certificate.—Filed with Secretary of State. Certified
copy recorded in office of recorder of county in which registered office located. (8-103[c][5]). As to filing fee, see subhead Incorporation Tax or Fee, infra.

Correcting Filed, Inaccurate Documents.—Any document containing incorrect record of corporate action may be corrected by filing with Secretary of State a certificate of correction. (8-103[f]).

Incorporation Tax or Fee.—To Secretary of State on filing certificate of incorporation: For authorized par value stock, $1 per share up to 20,000; $0.50 per additional shares up to 200,000; $0.25 per additional share in excess of 200,000 shares. For authorized stock without par value, $0.50 for each share up to 20,000; $0.25 for each share in excess of 20,000 up to 2,000,000; $0.10 for each share in excess of 2,000,000; in no case less than $15. Par value stock defined in $100 units for purposes of taxation. (8-391[a][1]). Fee for receiving, filing and indexing certificate, $25. (8-391[a][7]). In addition to fees charged under 8-391(a) there shall be paid to Secretary of State for all services described in 8-391(a) additional $100 if same day service is requested or $50 if 24 hour period service is requested. (8-391[h]).

Fee for Certifying and/or Copying.—$10 for each document certified, plus $1 per page if Secretary of State provides copy of document. (8-391[a][10]).

Recording fee payable to recorder, according to length of certificate. In all counties, fees are established by ordinance. (9-9617, 9619). If certificate not recorded within 20 days of filing date, recording fee is increased 25%. (8-103).

Failure to Pay Fee or Tax.—In connection with filing any instrument or certificate with Secretary of State, failure to pay appropriate fee or tax may cause corporation to cease to be in good standing and to lose right to file subsequent instruments or certificates with Secretary of State. (8-391).

License to Do Business.—No provisions, as such. General licensing provisions for particular occupations actually transacting business in state appear in 30-cs. 21-43.

Organization meeting must be held by incorporator or incorporators or by board of directors if initial directors named in certificate of incorporation to adopt by-laws, elect directors (if meeting is of incorporators), elect officers (if meeting is of directors), do any other acts to perfect organization, and transact any business coming before meeting. Any action permitted at meeting may be taken without meeting if incorporators or directors sign instrument stating action taken. Two day written notice of meeting necessary. Notice need not be given anyone attending meeting or signing waiver. Meeting may be held anywhere. (8-108).

Paid-In Capital Requirements.—None.

Amendment of Certificate.—Certificate may be amended to change corporate name; change, enlarge or diminish nature of business or corporate powers and purpose(s); increase, decrease or reclassify authorized capital stock; cancel or change right of holders of any class shares to receive dividends which have accrued but have not been declared; create new classes of stock with rights and preferences prior and superior or subordinate and inferior to authorized stock; change period of duration; make any change provided that amended provisions are lawful and proper to insert in original certificate as of time of filing of amendment. If certificate requires greater vote by directors, or holders of any class or series of stock or securities with voting power than is required by any section of statute, such provision can be altered only by such greater vote. (8-242).
Amendment is effected by resolution of directors, followed by vote of a majority of outstanding voting shares at a meeting called by board of directors for purpose of voting on proposed amendment or at an annual meeting. In addition, class vote provided where any proposed amendment would adversely alter or change preferences, special rights or powers of one or more classes of stock or series of stock. Certificate setting forth amendment and its adoption must be filed with Secretary of State and recorded in county where original certificate is recorded. In case of corporations without capital stock, certificate may require approval of a specified percentage of members; otherwise procedure differs but slightly. (8-242).

Increase or Decrease of Authorized Capital Stock.—Directors may issue capital stock at any time within amount authorized in certificate. (8-161). Authorized capital stock may be increased by amendment of certificate. (8-242[a][3]). Authorized capital may be reduced, by resolution of board of directors, if assets remaining after such reduction are sufficient to pay any debts for which payment has not been otherwise provided. (8-244).

On filing of certificate of amendment increasing authorized capital stock, tax is payable equal to difference between tax originally paid and tax due if increase had been originally included, in no case less than $15. Tax for filing certificate of amendment reducing authorized capital stock is $15. (8-391[a][2-3]). In addition, regular filing and recording fees payable.

By-laws.—Original or other by-laws may be adopted, amended, or repealed by incorporators, by initial directors if named in certificate, or, before corporation has received any payment for any of its stock, by its board of directors. After corporation has received any payment for any of its stock, power to adopt, amend or repeal shall be in stockholders entitled to vote or in directors if authorized by certificate (latter does not divest stockholders of power to adopt, amend or repeal by-laws). They may contain any provision, not inconsistent with law or certificate, relating to business of corporation, conduct of its affairs, its rights or powers, or rights or powers of stockholders, directors, officers or employees. In nonstock corporation, power to adopt, amend, or repeal by-laws resides in members entitled to vote or in governing body if charter permits. (8-109).

Emergency by-laws for enemy attack, atomic disaster, catastrophe, or similar emergency conditions, are authorized. (8-110).

Stock.—Shares of stock are personal property, and if owned by nonresidents, are not taxable in Delaware. (Const., art. IX, §6).

Stock: common, preferred or special, may be with or without par value. (8-151). No-par value stock may be issued for such consideration as may be fixed by directors or by stockholders (if provided by certificate). (8-153[b]).

Stock: common, preferred or special, with or without par value, may be issued in classes or in series within classes, each class or series having such voting powers, preferences, rights, qualifications, limitations, or restrictions as stated in certificate of incorporation, amendment thereof or in resolution of directors providing for issue pursuant to authority expressly stated in certificate. (8-151[a]). If issued under resolution of directors, “certificate of designations” fully stating rights and privileges must be filed with Secretary of State and copy recorded in same manner as certificate of incorporation. (8-151[g]).

Stock entitled to preference upon any distribution of corporation’s assets may be made redeemable at option of corporation or stockholder. (8-151[b]). Only such stock may be made redeemable. (8-160). Any redeemable stock may be redeemed at such times and prices as are stated in certificate of incorporation or
resolution of directors providing for issue. Such stock may be redeemed for cash, property or rights, including securities of same or another corporation. (8-151[b]). Redeemed stock is not considered outstanding for voting purposes. (8-160[d]).

Stock may be purchased or otherwise acquired by corporation unless capital is or will thereby become impaired. Stock redeemable at option of corporation may not be purchased for a price greater than redemption price. Corporation may exchange a debt security for its stock as long as capital is not impaired. (8-160[a]).

Corporation may retire any shares of its capital stock that are issued but not outstanding. They resume status of authorized and unissued shares unless certificate of incorporation provides otherwise. If reissuance prohibited, certificate so stating must be filed in accordance with 8-103. (8-243). No reduction of capital may be made unless assets remaining are enough to pay debts. (8-244[b]).

Any stock of any class is convertible into or exchangeable for any other class or series of stock as stated in certificate or resolution of directors providing for issue. (8-151[e]).

Uncertificated Stock.—Any stock of any class or series may, by resolution of board of directors, be represented by uncertificated shares. However, every stockholder upon request is entitled to certificate, notwithstanding such resolution. (8-158).

Stock certificates must be signed by chairman or vice-chairman of board or president or vice-president and treasurer or assistant treasurer or secretary or assistant secretary of such corporation. Any or all of signatures may be facsimiles. (8-158).

Issuance of Stock.—Stock may be issued only for cash, labor done, personal property, real property or leases thereof. (Const., Art. IX, §3). Stock so issued is deemed fully paid and nonassessable if: (1) Par or stated value allocated to capital is paid in full by type of consideration named above; or (2) balance or “surplus” consideration is supported by binding obligation. Board of directors may issue stock as partly paid shares pursuant to 8-156. (8-152).

Directors may require payment on 30 days notice, and may sue for payment, or sell, or forfeit stock if payment is not made. (8-163-164).

Transfer of Stock.—Governed by Art. 8, Uniform Commercial Code. (6-8-101 et seq.). Record date may be not more than 60 nor less than ten days before meeting. If no record date fixed, date shall be at close of business on day next preceding day on which notice is given, or, if notice waived, at close of business on day next preceding day on which meeting is held. (8-213[a]).

For purposes other than meetings, record date shall not precede date upon which resolution fixing record date is adopted and which date shall not be more than ten days after resolution date. If no record date, date shall be when first written consent is received by corporation or if prior action taken by board, date shall be at close of business on day board adopts resolution taking such prior action. (8-213[b]).

Restrictions.—Written restriction on transfer of security is enforceable if noted conspicuously on security or in notice sent to holders of uncertificated shares pursuant to 8-151(f) and against any person with actual knowledge. Restriction may be imposed by certificate, by-laws, or agreement among security holders or among such holders and corporation. Restriction may obligate holder to offer security to corporation, other holders or any other person; may obligate corporation, any holder, or any person to purchase security; may require corpora-
tion's or holders' consent to transfer; or may prohibit transfer to designated persons. Other lawful restrictions on transfer or registration of transfer of securities may be allowed. (8-202).

Business Combinations with Interested Stockholders.—Person or entity owning 15% or more of corporation's voting stock is generally deemed "interested stockholder". Corporation may not engage in business combination with interested stockholder for three years following date such stockholder becomes interested stockholder, unless: (a) Prior to such date, board approved business combination or transaction by which stockholder became interested stockholder, (b) upon such date, interested stockholder owned 85% or more of outstanding voting stock at time transaction commenced (excluding shares owned by directors who are officers and by certain employee stock plans), or (c) upon or after such date, business combination is approved by board and authorized by vote at annual or special meeting, and not by written consent, of at least two-thirds of outstanding voting stock not owned by interested stockholder. Such restrictions shall not apply to corporation when: (a) Original certificate of incorporation expressly rejects restrictions, (b) within 90 days of Feb. 2, 1988 (effective date of statute), board permanently amends by-laws expressly rejecting restrictions, (c) majority of voting shares amends by-laws (which board cannot further amend) or certificate of incorporation expressly rejecting restrictions, though such amendment not effective until 12 months after its adoption and not applicable to business combination involving person or entity becoming interested stockholder on or prior to such date of adoption, (d) no class of voting stock is listed on national securities exchange, authorized for quotation on national interdealer quotation system, or held of record by more than 2,000 stockholders, unless any of foregoing results from act of interested stockholder or as result of transaction by which stockholder becomes interested stockholder, (e) stockholder becomes interested stockholder inadvertently and subsequently divests, and would not have been interested stockholder (except for inadvertent acquisition) for three year period before business combination involving such stockholder, or (f) business combination with interested stockholder is proposed subsequent to public announcement of, and prior to consummation or abandonment of, merger, sale of 50% or more of corporate assets, or tender offer for 50% or more of voting stock, if any of such latter transactions involves person or entity which was not interested stockholder during previous three years or which became interested stockholder with board approval, and if any of such latter transactions is approved or not opposed by majority of directors then in office who were directors prior to person or entity becoming interested stockholder during previous three years. For purposes of statute, "business combination" and "ownership" of voting stock are broadly defined. Chancery Court has exclusive jurisdiction over foregoing matters. (8-203).

Uniform Securities Ownership by Minors Act not adopted.

Uniform Simplification of Fiduciary Security Transfers Act adopted (12-c.43) and not repealed by Art. 8, Uniform Commercial Code (6-10-104[2]).

Uniform Commercial Code adopted. (Title 6). 6-8-317(1) changed to retain existing Delaware statutes as to attachment and sequestration of securities. See topic Commercial Code.

Stock Transfer Tax.—None.

Stockholders Actions.—Stockholder may recover from corporation amount paid by stockholder for any debt of corporation for which corporation is liable under Tit. 8. (8-326). In derivative action, stockholder must aver that he was
stockholder at time of transaction of which he complains or that stock thereafter devolved upon him by operation of law. (8-327). Complaint must allege demand upon directors or reason for no demand. Action may be settled or dismissed only with court approval. (Ch. Ct. Rule 23.1).

Stockholders' Liabilities.—Personal liability for debts of corporation to extent and upon conditions specified in certificate; otherwise not liable except as may be by reason of own conduct or acts. (8-102[b][6]). If stock not fully paid, stockholder liable up to sum necessary to complete amount of unpaid balance of consideration for which shares issued. (8-162[a]). No person holding unpaid shares as collateral security shall be personally liable but person pledging shares shall be liable. (8-162[d]). No reduction of capital shall release any liability of any stockholder whose shares have not been fully paid. (8-244[b]).

Stockholders' meetings may be held at such times and such places, either within or without state, as by-laws provide. (8-211[a]).

Annual meeting is required by statute. Failure to hold meeting will not affect otherwise valid corporate acts or work a forfeiture or dissolution of corporation. Chancery may order holding of overdue meeting upon application of any stockholder or director. (8-211).

For record date, see subhead Transfer of Stock, supra.

Written notice required of any meeting at which stockholders required or permitted to take action. Notice must state place, date and hour of meeting and purpose(s) of special meeting. Notice must be given at least ten and not more than 60 days before meeting. (See also, however, subheads Sale or Transfer of Corporate Assets, and Merger and Consolidation, infra.) No notice necessary for adjourned meeting unless adjournment for more than 30 days, new record date fixed, or time and place of adjourned meeting not announced at meeting where adjournment taken. (8-222). Any notice required by statute, certificate of incorporation or by-laws may be waived in writing either before or after meeting. Attendance at a meeting is waiver of notice except attendance to object at beginning of meeting that it is not lawfully called or convened. Neither business to be transacted nor purpose of any regular or special meeting need be specified in any written waiver unless required by certificate of incorporation or by-laws. (8-229).

Meeting of stockholders or members of non-stock corporation, and vote on any particular action required or permitted to be taken, may be dispensed with if that number necessary to approve particular action at meeting consent thereto in writing. (8-228). No notice need be given to any person with whom communication is unlawful, or to any stockholder or member of non-stock corporation to whom notice has been mailed and returned undelivered of: (a) Two consecutive annual meetings and all notices of meetings and actions by written consent between such annual meetings, or (b) all and at least two dividend or interest payments during 12 month period. (8-230).

Stock ledger is only evidence of who are stockholders entitled to vote or to examine stock ledger. List of stockholders must be open for inspection by any stockholder, for any purpose germane to meeting, during business hours, in city where meeting to be held, at least ten days before meeting and during meeting. (8-219).

One vote allowed for each share unless otherwise provided. Voting may be by proxy. Irrevocable proxies recognized. (8-212). Certificate of incorporation may authorize cumulative voting for all elections of directors or for elections held under specified circumstances. (8-214).
Voting Trusts.—Stockholders may, by agreement in writing, create voting trust for any period not exceeding ten years. Within two years of expiration of original agreement, any of beneficiaries may agree in writing to a ten year extension, which, if consented to by trustees, binds all persons who are parties thereto. Validity of trust not affected during period of ten years after creation or last extension by fact that under its terms it will or may last beyond such ten year period. Copy of agreement and of any extension agreement must be filed in registered office of corporation in Delaware, open to inspection of any stockholder or beneficiary of agreement. Certificates of stock or uncertificated stock deposited under said agreement shall be cancelled and new certificates or uncertificated stock issued to voting trustees, in which certificates, if any, and on stock ledger, it must appear that they are issued under agreement. Voting trustees may vote in person or by proxy, but incur no liability as stockholder, trustee, or otherwise, except for individual malfeasance. Majority of voting trustees determine manner of voting, unless otherwise provided in agreement; if equally divided, vote shall be divided equally among trustees. (8-218).

Voting Agreements.—Signed and written agreement between stockholders, providing for shares to be voted as provided in agreement or as parties agree, is valid for period of not to exceed ten years. Within two years of expiration of agreement, it may be extended for additional ten year periods. (8-218[c]).

Directors.—Board of directors must consist of one or more members (as designated in certificate or bylaws). Directors need not be stockholders unless required by certificate of incorporation or by-laws. (8-141[b]). Directors may be divided into one, two or three classes with staggered terms. (8-141[d]). Directors may be removed by holders of majority of shares, with or without cause. Cause must be shown for: (a) Classified board unless certificate of incorporation provides otherwise, or (b) corporations having cumulative voting if votes cast against removal are sufficient to elect director. (8-141[k]).

Directors elected at annual meeting of stockholders. Election is by written ballot unless otherwise provided in certificate of incorporation. Failure to hold annual meeting or to elect sufficient directors to conduct business of corporation will not affect otherwise valid acts or work forfeiture or dissolution of corporation. Chancery may compel holding of annual meeting. (8-211). Unless otherwise provided in certificate of incorporation or by-laws, majority of directors in office, although less than a quorum, may fill vacancies or newly created directorships. If no directors in office, any officer, stockholder or executor, administrator, trustee, guardian or other fiduciary of a stockholder may call special stockholder meeting or apply to Chancery to order an election. (8-223).

Upon application of any stockholder, Chancery may appoint custodian to continue business of corporation or liquidate it if stockholders are so divided that they have failed to elect successors to directors whose terms have expired, if directors so divided that required vote for board action cannot be obtained, or if corporation has abandoned its business and failed to dissolve or liquidate. (8-226).

Directors' meetings may be held outside of state, unless otherwise restricted by certificate of incorporation or by-laws. (8-141[g]). Majority of total number of directors constitutes quorum unless certificate of incorporation or by-laws require greater number. Unless certificate provides otherwise, by-laws may provide for quorum of less than majority but in no case less than one-third of total number of directors except where board of one director authorized. (8-141[b]). Certificate of non-stock corporation may provide for quorum of less than one-
third. (8-141[j]). Vote of majority of directors present at meeting at which quorum is present is act of board unless certificate of incorporation or by-laws provides otherwise. (8-141[b]). Any action required or permitted to be taken at any meeting of board may be taken without meeting if all members consent in writing and writings filed with board minutes. (8-141[f]). Interested directors may be counted in quorum of meeting which authorized transaction. Participation of interested director in meeting will not void transaction if material facts as to his interest or relationship are disclosed or known and board or shareholders approve in good faith, or if transaction is fair as of time it is authorized. (8-144).

Powers and Duties of Directors.—Business of every corporation is managed by or under direction of board of directors except as provided in certificate. (8-141[a]). When authorized by majority vote of stockholders, directors may sell, lease or exchange all or substantially all corporate assets, including goodwill and franchise, for money or other property, including stock and securities. Notwithstanding stockholder authorization or consent, board of directors may abandon such proposed sale, lease or exchange without further action by stockholders, subject to rights, if any, of third parties under any contract relating thereto. (8-271). Except as certificate of incorporation provides otherwise, directors may mortgage or pledge assets without stockholder consent. (8-272).

Committees of one or more directors may, to extent provided in resolution of board or by-laws, exercise powers of board in management of business. Committees may not amend charter (but may adopt certificate of designation), adopt merger agreement, recommend asset sales, dissolution, or revocation of dissolutions or amend by-laws and may not authorize issuance of stock or declare dividend unless specifically authorized by by-laws, resolution appointing committee, or certificate of incorporation. (8-141[c]).

Liabilities of Directors.—Directors are fully protected in relying in good faith upon books of account or reports made to corporation by any officer, by independent certified public accountant, or by appraiser selected with reasonable care by board or in relying in good faith upon other corporate records. (8-141[e]). Directors jointly and severally liable for payment of unlawful dividend and for unlawful stock purchase or redemption unless dissent or absence from meeting is noted in minutes. (8-174[a]). Where certificate of incorporation so provides, liability for breach of duty of care may be limited or eliminated. (8-102[b][7]). See topic Process.

Indemnification of Directors and Officers.—Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in right of corporation), by reason of fact he is or was a director, officer, employee or agent of corporation or serving another corporation at request of corporation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him if he acted in good faith and in manner he reasonably believed to be in or not opposed to best interests of corporation and, with respect to criminal action or proceeding, had no reasonable cause to believe his conduct unlawful. Lack of good faith not presumed from settlement or nolo contendere plea. Indemnification of expenses (including attorney's fees) allowed in derivative actions except no indemnification in respect to any claim, issue or matter as to which any such person has been adjudged to be liable unless Chancery decides indemnification is proper. To extent any such person succeeds on merits or otherwise, he shall be indemnified against expenses (including
attorney's fees). Determination that person to be indemnified met applicable standard of conduct is made by board of directors by majority vote of quorum consisting of directors not party to such action, suit or proceeding or, if quorum not obtainable or disinterested quorum so directs, by independent legal counsel or by stockholders. Expenses may be paid in advance upon receipt of undertakings to repay by director if it is ultimately determined that he is not entitled to be indemnified by corporation. Corporation may purchase indemnity insurance. Right of indemnification provided by section continues as to person who has ceased to be director, officer or agent unless otherwise provided in authorization. (8-145).

Officers.—Any number of offices may be held by same person unless certificate of incorporation or by-laws provide otherwise. Corporation may have such officers as are desired, chosen in such manner and holding office for such terms as prescribed by by-laws or determined by directors. One officer shall record proceedings of stockholder and directors' meetings in book for that purpose. Vacancies are filled as provided in by-laws; otherwise by directors. Failure to elect officers annually will not dissolve corporation. (8-142).

Liabilities of Officers.—No statutory provisions respecting liability of officers.

Registered Office.—Every corporation must maintain registered office in state. It need not be same as place of business. (8-131). Corporation may change registered office to any other place in state by resolution of board of directors. Certificate of change must be filed with Secretary of State and recorded in county in which new office located and in county of former office if different. (8-133).

Registered Agent.—Every corporation must maintain registered agent in state. Agent may be individual resident in state whose business office is identical with corporation's registered office or domestic corporation (which may be itself) or foreign corporation authorized to transact business in state which has business office identical with such registered office. (8-132). Corporation may change its registered agent to any other person or corporation including itself. Certificate of change must be filed with Secretary of State and recorded in county of new registered office and in county of former office if location of new office is different. (8-133). Registered agent may change its name or address of registered office by filing certificate with Secretary of State and recording it in county of new office and in county of former office if that is different. (8-134). Registered agent may resign and appoint successor by filing certificate with Secretary of State. Corporation must ratify and approve substitution. Change must then be recorded in county of new registered office and in county of former office if location of new office is different. (8-135). If registered agent resigns without appointing successor, resignation not effective for 60 days after filing of certificate. Certificate must include affidavit of registered agent that he notified corporation of resignation by certified or registered mail, sent to principal office of corporation outside state or, if unknown, to last known address of person at whose request such registered agent was appointed. Notification must be at least 30 days before filing. Resignation must be entered on margin of recorded certificate of incorporation. Corporation must appoint new registered agent within 60 days of filing of certificate of resignation by registered agent, or Secretary of State will declare its charter forfeited. If it is foreign corporation, Secretary of State will forfeit its authority to do business in state. If no new registered agent is designated as provided, service of legal process against corporation shall be upon Secretary of State. (8-136).
General Powers of Corporations.—Corporation has power to have perpetual succession by its corporate name, unless certificate of incorporation limits period of duration; to sue or be sued; to have corporate seal; to purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated; to appoint officers and agents and pay them: to adopt, amend and repeal by-laws; to wind up and dissolve itself; to conduct business and have offices in and out of state; to make donations for public welfare or for charitable, scientific or educational purposes; to be an incorporator, promoter or manager of other corporations; to participate with others in any corporation, partnership, limited partnership, joint venture or other association, or in any transaction, undertaking or arrangement which participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others; to do any lawful business in aid of governmental authority; to make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income; to lend money, invest and reinvest its funds, and take, hold and deal with real and personal property as security for payment of funds so invested; to pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any and all directors, officers and employees; to provide insurance for its benefit on life of any directors, officers or employees or on life of any stockholder to acquire at his death his shares of its stock (8-122); to indemnify its officers, directors, employees and agents and to purchase indemnity insurance (8-145); to lend money to or guarantee any obligation of any officer or employee; including officers and employees who are directors, with or without interest and security (8-143); to merge or consolidate (8-251); to deal in securities of other corporations or entities and exercise all rights of ownership, including right to vote (8-123). No act of a corporation and no conveyance or transfer of property is invalid by reason of fact corporation was without capacity or power to do such act. (8-124). Banking powers expressly denied. (8-126).

Dividends.—Subject to any restrictions in certificate of incorporation, directors may declare dividends out of surplus or, if no surplus available, out of net profits for fiscal year in which dividend is declared and/or preceding fiscal year. But no dividends may be declared while capital is impaired to extent that it amounts to less than aggregate amount of capital represented by issued and outstanding stock of all classes having preference on distribution of assets. (8-170). Dividends may be paid in cash, in property, or in shares of corporation's capital stock. If dividend is paid in shares of theretofore unissued capital stock, amount not less than aggregate par value of par value shares being declared as dividend (or amount determined by board of directors for shares without par value) must be transferred from surplus to capital account by resolution of board of directors. No such transfer is required if additional shares are distribut ed pursuant to stock split or division rather than as dividend. (8-173).

Unclaimed Dividends.—Part III, c. 11, subc. IV of Tit. 12. (12-1197). See topic Absentees, subhead Escheat.
Sale or Transfer of Corporate Assets.—Board of directors or governing body as authorized by affirmative vote of majority of voting stock at stockholders' meeting called upon at least 20 days notice or by written consent of majority of voting stock or by majority of members of non-stock corporation having right to vote for election of members of governing body may sell, lease or exchange all or substantially all of corporate assets. Consideration may include money or other property, including stock or securities of any other corporation. Notwithstanding stockholder authorization or consent to proposed sale, lease or exchange of corporation's property and assets, board of directors may abandon such proposed sale, lease or exchange without further action by stockholders or members, subject to rights, if any, of third parties under any contract relating thereto. (8-271). See also subhead Business Combinations with Interested Stockholders, infra.

Books and Records.—Any records maintained in regular course of business, including stock ledger, books of account, and minute books, may be kept by any information storage device if readily convertible into legible form. (8-224). Stockholder of record, in person or by attorney or agent, may, upon written demand under oath stating purpose, inspect for any proper purpose stock ledger, list of stockholders and other books and records and make copies and extracts. Proper purpose means purpose reasonably related to such person's interest as a stockholder. If corporation refuses inspection, stockholder may apply to Chancery to compel it. (8-220). Certificate of incorporation may confer upon bond and debenture holders same right of inspection. (8-221). Director may examine stock ledger, list of stockholders and other books and records for purpose reasonably related to his position as director. (8-220[d]).

Reports.—On or before 1st day in Mar., Delaware corporation must make annual franchise tax report on form designated by Secretary of State. Report must be signed by corporation's president, secretary, treasurer or other proper officer, or by any director, or by any incorporator if directors not yet elected. Individuals signature shall be prima facie evidence that he is authorized to certify report. Title or position of signor must be designated. Report must contain following information: Location of registered office in Delaware; name of agent upon whom process against corporation may be served; location of principal places of business of corporation without Delaware; names and addresses of all directors and officers of corporation and when their terms expire; date appointed for next annual meeting of stockholders for election of directors; number of shares and par value per share of each class of capital stock having par value and number of shares of each class of stock without par value which corporation is authorized to issue and number of shares of each class of stock actually issued, if any; and, if exempt from taxation for any cause, specific facts entitling corporation to exemption. If corporation fails to file report, Secretary of State determines amount of franchise tax and corporation must pay $50 in addition to tax. (8-502).

Corporate Bonds or Mortgages.—Corporation may issue bonds, and may secure any obligation by mortgage. (8-122[13]). Bondholders may be granted same rights as stockholders have to vote and to inspect corporate books, accounts and records. Certificate of incorporation may provide that holders of debt securities shall be deemed to be stockholders for any voting purposes and it may place exclusive power to vote in hands of bond holders (8-221) except as to class votes on charter amendments (8-242[b][2]). Usury may not be pleaded in
defense to any action on bonds. (8-330). Except to extent certificate of incorporation provides otherwise, authorization or consent of stockholders not necessary to mortgage or pledge corporate property or assets. (8-272).

Merger and Consolidation.—Any two or more Delaware corporations may merge pursuant to resolution of board of directors approved by vote of majority of total number of outstanding shares of capital stock of each corporation. Stockholder vote may be at annual or special meeting. Notice must be mailed to each stockholder at least 20 days prior to meeting. Certified agreement must be filed with Secretary of State and recorded in counties in which registered office of each such constituent corporation is located. In lieu of filing full agreement, surviving or resulting corporation may file certificate of merger or consolidation executed in accordance with 8-103. Agreement may contain provision permitting termination or certain modifications of agreement anytime prior to filing with Secretary of State by board of any corporation notwithstanding approval of stockholders. No vote of stockholders of surviving corporation necessary: (1) If agreement does not amend certificate of incorporation of surviving corporation, (2) if each share of surviving corporation outstanding prior to merger is to be identical or treasury share of surviving corporation after merger, and (3) either no shares of common stock of surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under plan of merger, or authorized unissued shares or treasury shares of common stock of surviving corporation to be issued or delivered under plan of merger plus those initially issuable upon conversion of any other shares, securities or obligations to be issued or delivered under plan do not exceed 20% of shares of common stock of constituent corporations outstanding prior to merger. No vote of stockholders is necessary if no shares of stock of such corporation have yet been issued. Cash, property, rights, or securities may be used as consideration in merger or consolidation. (8-251).

Surviving or resulting corporation possesses all rights, privileges, powers and franchises and is subject to all restrictions, disabilities and duties of each constituent corporation. All property and debts of each corporation are vested in surviving or resulting corporation. All rights of creditors and liens upon property survive. (8-259[a]). Merger does not abate actions against any constituent corporation. (8-261). Surviving or resulting corporation may issue bonds to cover payments or obligations in effecting merger and may mortgage its franchise, rights, privileges and property to secure bonds. (8-260).

Delaware corporation may merge or consolidate with one or more foreign corporations if law of state of incorporation of foreign corporations permits. If surviving or resulting corporation is to be governed by laws of another state, it must consent to be served with process in Delaware in any proceeding for enforcement of any obligation of any constituent Delaware corporation or of any obligation of surviving or resulting corporation arising from merger, including suit for appraisal rights under 8-262. Process may be served on Secretary of State. Delaware corporation may merge or consolidate with non-U.S.A. corporation if surviving or resulting corporation is Delaware corporation. (8-252).

Parent company may merge with or into 90% or more owned subsidiary on filing certificate setting forth resolution of board of directors (8-253); but, if Delaware corporation party to merger is not wholly owned by parent, stockholders have appraisal rights under 8-262. (8-253[d]). (See subhead Appraisal.) And, if parent corporation is not surviving corporation, approval of majority of outstanding stock of parent is necessary. (8-253[a]). Unless forbid-
den by laws of state under which joint stock association was formed corporation may merge with joint stock companies on filing and recording of agreement, or on filing of certificate of merger or consolidation executed in accordance with 8-103. (8-254).

Two or more non-stock, nonprofit corporations may merge (8-255[a]) as may non-stock with stock corporations regardless of whether any is profit or nonprofit (8-257[a]). Domestic corporation may merge or consolidate with one or more limited partnerships, except for limited partnerships formed under laws of state which forbid such merger or consolidation. (8-263). Mergers of mutual insurance companies governed by 18-5521.

Filing Tax.—On filing of certificate of consolidation or merger, tax is equal to difference between tax computed on total authorized stock of corporation surviving merger or consolidation, and that computed on total authorized capital stock of both corporations, minimum tax being $20. (8-391[a] [4]). Secretary of State may permit extension of credit for taxes or fees so required. (8-391[e]). Secretary shall retain from taxes and fees collected sum sufficient at all times to provide fund of $500 to $1,500 out of which he may refund excess payments. (8-391[f]).

Dissolution.—If corporation has not issued shares or commenced business, majority of incorporators or directors, if they have been named or elected, may surrender corporation’s rights and franchises by filing with Secretary of State certificate that no shares of stock have been issued or business has not begun; that no part of capital has been paid or, if some has been paid, that amount less disbursements for necessary expenses has been returned; that if corporation has begun business but has not issued shares, all debts have been paid; that if corporation hasn’t begun business but has issued certificates that all issued stock certificates have been surrendered and cancelled; and that all rights and franchises of corporation are surrendered. Upon filing certificate, corporation is dissolved. (8-274).

Dissolution of any corporation may be effected by resolution of directors followed by approval of majority of voting stock at stockholder meeting for which notice has been mailed to each stockholder having voting power. Dissolution also effected in certain instances by unanimous written consent of shareholders. Certificate of dissolution must be filed with Secretary of State and recorded in county of registered office. (8-275).

Corporate existence continues for three years, or longer period as Chancery directs, after dissolution for prosecuting and defending suits, settling business, disposing of property, discharging liabilities and distributing assets to stockholders. (8-278). Chancery may appoint one or more directors as trustees or may appoint receivers to wind up business. (8-279). Pending suits and those arising within three years proceed against corporation. (8-278).

Joint Venture Having Two Stockholders.—If stockholders each own 50% of stock and are unable to agree on desirability of discontinuing venture, either stockholder may file with Court of Chancery petition and proposed plan for discontinuance along with certificate that petition and plan have been transmitted in writing to other stockholder. If within three months stockholders do not agree on plan and within one year do not file certificate that distribution of assets is completed, Court may dissolve corporation and appoint trustees or receivers to wind up affairs. Either or both periods may be extended by agreement of stockholders with certificate filed prior to expiration of period. (8-273).

Revocation.—At any time within three years, or such longer period as Court
may have directed, following voluntary dissolution, revocation thereof may be
affected by resolution of directors, affirmed at noticed special meeting by major-
ity vote of stockholders entitled to vote before dissolution. Certificate stating
name of corporation, names and addresses of officers and directors, and affirm-
ate vote of majority of stockholders or in lieu of vote written consent of stock-
holders must be acknowledged and filed with Secretary of State. Secretary of
State's certificate that corporation has revoked dissolution, must be recorded in
county of registered office. (8-311).

Insolvency and Receivers.—When corporation becomes insolvent Court of
Chancery, on application of any creditor or stockholder, may appoint one or
more persons to be receivers for corporation, to take charge of its affairs, to
collect debts and property due, to prosecute and defend all claims or suits, and
to appoint agents to act for corporation. (8-291). Appointed receivers are vested
with all title and rights of corporation. Receiver must file copy of appointment
within 20 days with recorder in each county in which corporation owns real
estate. (8-292). Receiver must file full itemized inventory in office of Register in
Chancery in county in which proceeding pending, complete inventory of all
assets and accounting of all debts due. (8-294).

All creditors must prove under oath respective claims against corporation and
cause same to be filed within time fixed by Rules of Court of Chancery. Credit-
ors failing to do so within time prescribed by this section or by order of Court
may be barred from participating in distribution of assets of corporation. Notice
of such time by publication may be required. (8-295). Within 30 days after
receiving notice of claim, receiver, if not satisfied with validity of claim, must
notify creditor of disputed claim. Receiver will require creditors whose claims
are disputed to submit themselves to examination in which creditors will pro-
duce books relating to claims as required. Creditors or claimants may appeal
from disallowance to Chancery within 30 days. (8-296).

Chancery may order receiver to sell property which is deteriorating and en-
cumbered by liens. (8-297). Chancery, before distributing assets, must first al-
low for reasonable compensation for receiver for services, administrative expen-
ses and court costs out of assets of insolvent corporation. (8-298). Receiver, upon
application to court, shall be substituted as party plaintiff in place of corpo-
ration. No action against receiver shall abate because of death, but shall be contin-
ued against successor or against corporation if no new receiver is appointed. (8-
299).

Employees of insolvent corporation have lien upon assets for wages due, not
exceeding two months wages, which will be paid prior to any other debt of
corporation. “Employee” not construed to include officers of corporation. (8-
300).

Liquidation of insolvent corporation may be discontinued if it is established
cause for liquidation no longer exists. Chancellor may dismiss proceedings and
direct receiver to redeliver all remaining assets to corporation. (8-301).

Reorganization.—Any plan of reorganization pursuant to any U.S. statute
confirmed by court of competent jurisdiction may be carried out pursuant to
said plan and decree or order without further action by directors or stockhold-
ners. (8-303).

Forfeiture of Charter.—Charter may be forfeited in Chancery for abuse, mis-
use or nonuse of its powers, privileges or franchise on motion of Attorney Gen-
eral or upon relation of proper party in Chancery. No proceeding for nonuse
may be brought during first two years of incorporation. (8-284). Charter may
also be revoked for failure to pay franchise tax for one year (8-511) or for failure to appoint new registered agent within 60 days of filing of certificate of resignation by registered agent (8-136[c]).

Renewal or Revival of Certificate of Incorporation.—Any corporation may, at any time before expiration of time limited for its existence, and any corporation whose certificate of incorporation has become inoperative for nonpayment of taxes, and any corporation whose certificate of incorporation has expired for failure to renew same or has been renewed invalidly or any corporation whose certificate of incorporation has expired due to nonappointment of successor registered agent when applicable, may at any time procure renewal or revival of its certificate of incorporation by filing with Secretary of State certificate stating: Name of corporation; name and office address of registered agent; whether renewal is to be perpetual, and, if not, length of its existence; in case of renewal before expiration of time limited for its existence, date when such renewal is to commence, which must be prior to date of expiration of old certificate of incorporation; that corporation was duly organized in Delaware; date when certificate would expire or other facts showing certificate has been forfeited or become void; that certificate is filed by authority of those on board at time certificate expired or those elected to replace such directors. Renewal or revival validates all lawful acts done before or during period when certificate of incorporation was inoperative or void. All franchise taxes, penalties and interest due at time certificate of incorporation became void or expired must be paid, but in case of corporation which has been inoperative for more than five years, it shall pay sum equal to twice amount of annual franchise tax that would be due and payable by such corporation for year in which renewal or revival is effected, computed at then current rates. (8-312).

Close Corporations.—If certificate of incorporation states in heading that it is a close corporation and provides that all issued stock is not to be held by more than thirty persons, that all issued stock is subject to one or more restrictions on transfer permitted by 8-202 and that corporation may not offer any stock at "public offering" within meaning of Securities Act of 1933, then corporation may be organized as close corporation. (8-342-343). Existing corporation may become close corporation by amending certificate of incorporation to comply with 8-342. Heading of amendment must state it is close corporation. Amendment must be approved by vote of two-thirds of outstanding shares of each class of stock. (8-344). Corporation may terminate status as close corporation by amending certificate of incorporation to delete provisions required by 8-342. Amendment must be approved by vote of two-thirds of outstanding shares of each class of stock. (8-346). If any of provisions required by 8-342 are breached, corporation's status as close corporation is terminated unless within 30 days of breach or within 30 days of its discovery, whichever is later, corporation files with Secretary of State executed and acknowledged certificate filed in accordance with 8-103 stating breached provision has ceased to be applicable, furnishing copy of this certificate to each stockholder, and taking steps necessary to correct situation threatening its status as close corporation, including refusal to register transfer of stock or suit in Chancery by corporation or stockholder to enjoin or set aside any act inconsistent with provisions required by 8-342. (8-348).

If stock certificate conspicuously notes qualifications or number of persons entitled to be holders of record and stock is issued or transferred in breach of qualifying conditions, person taking is presumed to have notice of ineligibility. Corporation may then refuse to register transfer unless all stockholders consent
to transfer or corporation amends certificate of incorporation as provided by 8-346. (8-347). If restriction on transfer shall be found not authorized by 8-202, corporation has option for 30 days after judgment is final to acquire restricted security at price agreed on by parties or at fair value as determined by Chancery. (8-349).

Agreement among majority of stockholders is not invalid on grounds of restricting discretion or powers of directors. Effect of agreement will place liability for managerial acts or omissions on stockholders, who are parties to agreement, rather than directors as long as agreement in effect. (8-350). Certificate of incorporation may provide business of corporation to be managed by stockholders. Unless context requires otherwise, stockholders are deemed directors for applying provisions of corporate law, and are subject to all liabilities of directors. Certificate of incorporation may be amended to include such provision if all incorporators and subscribers or all holders of record of stock with or without voting power so authorize. Amendment to delete such provision must be adopted by holders of majority of stock with or without voting power. If such provision in effect, it must be noted conspicuously on each stock certificate. (8-351).

No written agreement among stockholders or provision of certificate of incorporation or by-laws is invalid on grounds it is attempt to treat corporation as partnership. (8-354).

Certificate of incorporation may grant to any stockholder or to holders of any specified number or percentage of shares option to have corporation dissolved. Stockholder must give written notice of exercise of option to all other stockholders and 30 days thereafter dissolution shall commence. (8-355[a]).

Certificate may be amended to include such provision by affirmative vote of holders of all outstanding stock with or without voting power unless certificate authorizes such amendment by two-thirds vote. If such provision in effect, it must be noted conspicuously on each stock certificate. (8-355[b], [c]).

Chancery may appoint custodian if stockholders deadlocked or if petitioning stockholder has right of dissolution under 8-355. In lieu of custodian, Chancery may appoint provisional director. (8-352). Provisional director must be impartial and cannot be stockholder or creditor of corporation or affiliate. (8-353[c]).

Appraisal.—If proposed merger for which appraisal rights are provided is submitted at stockholder meeting, corporation must give at least 20 days notice to each stockholder entitled to appraisal, and must include copy of 8-262. Each stockholder electing appraisal must make written demand prior to vote on merger. Demand sufficient if it reasonably informs corporation of stockholder's identity and his intent to demand appraisal. (8-262[d]). Similar procedure for action where there is no meeting (8-228), or where appraisal rights are available where parent merges with or into 90% to 100% owned subsidiary if Delaware corporation is not wholly owned by parent (8-253). Appropriate notice must be given. (8-262[d]). Any stockholder who has complied with foregoing may, within 120 days after merger, petition Court of Chancery demanding valuation of stock of such stockholder, but stockholder may withdraw demand and accept offered terms within 60 days after merger. (8-262[e]). Upon application of stockholder, court may order expenses, including attorney's fees and expenses of experts, to be charged pro rata against value of shares entitled to appraisal. (8-262[j]). Appraisal not available to holders of shares of any class of stock which are registered on national securities exchange or held of record by more than 2,000 stockholders (8-262[b][1]) or to stockholders of corporation surviving merger if merger did not require vote of stockholders of surviving corporation as
provided in 8-251 (8-262[b][1]). (See subhead Merger or Consolidation, supra.) Above restrictions on appraisal not applicable to holders of class or series of stock of constituent corporation if under terms of merger or consolidation pursuant to 8-251, 252, 254, 257 and 258, such holders are required to accept for such stock anything except: (a) Stock of corporation surviving or resulting from merger or consolidation, (b) stock of any other corporation which at record date were either registered on national securities exchange or held of record by more than 2,000 stockholders, (c) cash in lieu of fractional shares of corporation described in (a) and (b), or (d) combination of stock and cash in lieu of fractional shares as set forth in (a), (b), and (c). (8-262[b][2]). Corporation in charter may provide for appraisal in transactions other than mergers. (8-262[c]).

Foreign Corporations.—No foreign corporation may do business in state until it files with Secretary of State a certificate evidencing its corporate existence and statement as to name and address of its registered agent, its assets and liabilities and business it proposes to do in this state, and pays fee of $50. (8-371[b]). Certificate of Secretary of State is prima facie evidence of company's right to do business in state. (8-371[c]).

Certificate containing all charter amendments and of all articles of merger or consolidation must be filed with Secretary of State within 30 days of amendment or merger. (8-372[a]-[b]).

Foreign corporation is not deemed to be doing business in state and need not comply with 8-371 and 8-372 if it is mail order business accepting orders outside state; if it employs salesmen in state but orders approved outside state, with all goods shipped from outside state, and no sales, repairs, or replacements made from stock in state; if it delivers into state under contract made outside state equipment whose installation requires skilled supervision and furnishes such supervision as provided by contract; if it is any other business operation wholly interstate in character; if it is insurance company doing business in state; if it creates, as borrower or lender, or acquires evidences of debt, mortgages or liens on real or personal property; if it secures or collects debt or enforces any rights in property by securing same. (8-373).

Annual report must be filed on or before June 30 each year with Secretary of State. Report must be signed by president, secretary, treasurer, or other authorized officer or by two directors or by any incorporator if directors not elected. Report must state address of registered office and name of registered agent; address of main or headquarters place of business outside state; names and addresses of all directors and officers and their terms; date of next annual stockholder meeting for election of directors; number of shares of each class of authorized capital stock and par value if any; number of shares of each class actually issued; amount of capital invested in real and other property in state and tax paid thereon; if exempt from tax in state, specific facts entitling exemption. (8-374). Filing fee $40. (8-391[a][8]). Failure to file report within any two year period may result in termination of right to do business in state. (8-375). Provision for retaliatory taxes and fees has not been enforced. (8-516).

Service of process upon qualified corporation may be made on registered agent or, if there is no such agent, on any officer, director or other agent of corporation then in state. If such service is impossible, service may be made upon Secretary of State. (8-376). Service of process upon non-qualifying corporation transacting business in state may be made on Secretary of State. Provisions of 8-373 shall not apply in determining whether any foreign corporation is transacting business in state for purpose of service of process. (8-382).
Unqualified foreign corporation, not excepted by 8-373, may not maintain any action or special proceeding in state until it has become authorized to do business in state and has paid state all fees, penalties and franchise taxes for period business done without authority. Failure to qualify will not prevent foreign corporation from defending any action or special proceeding in state or impair validity of any contract or act. (8-383).

Powers.—Foreign corporation with requisite certificate of incorporation or by-law authority may act as executor, guardian, trustee or other fiduciary under testamentary instrument probated in state when and to extent that laws of its state of organization confer like powers on corporation organized in Delaware. (8-380). No foreign corporation shall have banking powers. (8-379). Foreign corporation owning lands in state may exercise all rights and privileges of ownership to same extent as if incorporated in state. (25-305).

Withdrawal.—Foreign corporation qualified to do business in state may withdraw by filing with Secretary of State address to which process against corporation may be mailed and (1) certificate under corporate seal, signed by president or vice-president, attested by secretary or assistant secretary, surrendering authority; (2) certified copy of certificate of dissolution; or (3) certified copy of order or decree of dissolution. (8-381). Tax and fees of $10 must be paid. (8-391[a][6]).

Penalties.—Chancery may enjoin any foreign corporation from doing business in state if corporation not qualified or if certificate of authority secured by false or misleading representations. (8-384). Foreign corporation doing business of any kind in state without complying with provisions for foreign corporations subject to fine of $200 to $500 for each offense. Agent of any foreign corporation doing any business in state before corporation has complied subject to fine of $100 to $500 for each offense. (8-378).

Franchise Tax.—(Contained in 8-c.5). Every corporation must file annual franchise tax report with Secretary of State on or before first day of Mar. (8-502). For contents of report see subhead Reports, supra. Filing fee $10. (8-391[a][17]).

Following classes of corporations are exempt from general franchise tax: Banking corporation, savings bank, building and loan association, religious, charitable, educational, mutual benefit, or any corporation for drainage and reclamation of lowlands. (8-501). Railroad car, telephone, cable and telegraph, express, insurance and utility and pipeline companies are subject to franchise taxes. (8-501). Franchise tax is imposed on net income of banking organizations. (5-1101). See topic Banks and Banking, subhead Taxation.

Failure to file report subjects corporation to tax amount deemed most practicable by Secretary of State, plus penalty of $50. (8-502[e]).

If corporation fails to make annual report and to pay franchise tax, Secretary of State may investigate and refer matter to Attorney General for proceedings under 8-283 for revocation of charter. (8-502[e]).

If corporation neglects or refuses for period of one year to pay franchise taxes assessed against it, charter of corporation shall be void and all powers conferred by law upon corporation are declared inoperative, unless Secretary of State had given further time for good cause shown. (8-510).

Domestic corporations pay annual franchise tax to Secretary of State based on whichever of two following formulas results in smaller tax: (1) Where authorized capital stock does not exceed 3,000 shares, $30; where authorized capital stock exceeds 3,000 shares but is not more than 5,000 shares, $35; where autho-
rized capital stock exceeds 5,000 shares but is not more than 10,000 shares, $70; and further sum of $35 on each 10,000 shares or part thereof; (2) $30, where assumed no-par capital of corporation does not exceed $300,000; $35 where assumed no-par capital exceeds $300,000 but is not more than $500,000; $70, where such assumed no-par capital exceeds $500,000 but is not more than $1,000,000; and further sum of $35 for each $1,000,000 or part thereof of such additional assumed no-par capital. "Assumed no-par capital" is determined by multiplying number of authorized shares of capital stock without par value by $100. To tax attributable to assumed no-par capital add tax of $140 on each $1,000,000 or fraction thereof in excess of $1,000,000 of assumed par value capital for par value shares; this is assumed par value capital being arrived at by dividing total assets by total number of issued shares of all denominations, and multiplying resulting quotient by number of authorized par shares. When quotient is less than stated par value of any class of authorized par value shares, "assumed par value capital" is determined by multiplying number of shares of each class by par value and number of authorized shares having par value to be multiplied by quotient shall be reduced by number of shares whose par value exceeds quotient; and where, to determine assumed par value capital, it is necessary to multiply class of classes of shares by quotient and also to multiply class or classes of shares by par value of shares, assumed par value capital of corporation shall be sum of products of multiplications. If total assumed par value capital is less than $1,000,000, tax bears same relation to $140 as assumed par value capital bears to $1,000,000. (8-503[a]). Minimum tax is $30, maximum $130,000. (8-503[c]). "Total assets" are defined as those reported on IRS Form 1120 Schedule L. (8-503[i]).

Regulated investment company may compute its tax under (1) or (2) above or on basis of $200 per $1,000,000 of average gross assets or fraction thereof, whichever is least, but in no case is tax to exceed $65,000. (8-503[h]).

Inactive companies which have stated in their annual reports that they are "not engaged in any business" pay only one-half of usual tax for inactive period. (8-503[f]).

Taxes become payable on Mar. 1, except corporations whose current estimated franchise tax liability exceeds $5,000 in which case return and tax payable quarterly based on preceding year's liability, and if unpaid on that date bear interest at 1% per month thereafter. (8-504). Failure to pay taxes within one year voids charter. Secretary of State may allow extension of time for payment where good cause shown in which case certificate must be filed. (8-510).

Where entire assets of corporation are in country from which it is impossible to remove them or withdraw income or with which communication is illegal, tax may be abated at Secretary of State's discretion. (8-518).

Income Tax.—See topic Taxation.

Professional Corporations.—May be formed by persons performing personal services to public which require obtaining of a license or other legal authorization and which formerly by reason of law could not be performed by a corporation. Such persons may include architects, certified or other public accountants, chiropractors, chiropractors, dentists, doctors of medicine, ophthamals, professional engineers, veterinarians, and, subject to Supreme Court Rules, attorneys. (8-601-603). Such corporations are subject to annual franchise tax. (8-618).

Deeds.—See topic Deeds.

Model Non-Profit Corporation Act not adopted.
JOINT STOCK COMPANIES:

Business Trusts.—Recognized by statute as alternative form of business organization designed primarily as means of protecting and managing property. (12-3801). Substantial contractual flexibility permitted in structuring of governing instrument. At least one trustee must be resident of State or have principal place of business in State. (12-3807). Each business trust must file certificate of trust with Secretary of State, signed by all trustees, containing name of trust and name and address of resident trustee. (12-3810, 3811). Filing fee is $100. (12-3813). Certificate cancelled upon completion of winding up and termination of trust, and certificate of cancellation must be filed with Secretary of State. (12-3810). Name of trust may be reserved. (12-3814). Common law business trust created before effective date of statute may elect to be governed by statute if consistent with such trust's governing instrument. (12-3815). Effective date of statute is Oct. 1, 1988.

PARTNERSHIP:

Uniform Partnership Act has been adopted. (6-c.15).

Registration of General Partnership Name.—See topic Trademarks and Tradenames.

Limited Partnerships.—Revised Uniform Limited Partnership Act adopted with certain modernizing modifications. (6-c.17). Limited partnership ("LP") may engage in any business in which general partnership may engage, except granting policies of insurance, assuming insurance risks, and banking. (6-17-106). LP may indemnify partners or other persons subject to provisions of LP agreement. (6-17-108).

LP agreement may be written or oral, and may provide that person may be admitted as limited partner or may become assignee of LP interest, and become bound by LP agreement, by execution of LP agreement or any writing evidencing intent to be bound by LP agreement, or by compliance with conditions for becoming limited partner or assignee in LP agreement and request that LP records reflect such admission or assignment. Such request may be made orally, in writing or by other act such as payment for LP interest. (6-17-101).

Certificate of LP must be executed by all general partners. Limited partners need not execute certificate. Certificate must state name of LP, address of registered office, name and address of registered agent for service of process, and name and address of each general partner. (6-17-201).

Merger or consolidation of domestic LP with one or more LPS or other business entities is permitted, pursuant to agreement of merger or consolidation. Surviving entity must file certificate of merger or consolidation with Secretary of State. (6-17-211).

Broad voting rights may be exercised by limited partners, under statutory "safe harbors" or pursuant to LP agreement or other agreement, without limited partners being deemed as participating in control of business of LP. (6-17-303). Limited partner has right, enforceable by Chancery Court, to LP information reasonably related to interest as limited partner, except that trade secrets or other confidential information may be withheld by general partners. (6-17-305). Classes or groups of limited partners, with varying rights and powers, permitted pursuant to LP agreement. (6-17-302).

Admission of general partner requires consent of all partners, unless LP agreement provides otherwise. (6-17-401). General partner ceases to be general partner upon occurrence of statutorily-defined "event of withdrawal". (6-17-402).
General partner may contractually modify liability to other partners and to LP. (6-17-403). Classes or groups of general partners, with varying rights and powers, permitted pursuant to LP agreement. (6-17-405). General partner may withdraw from LP with written notice, though LP may recover against such partner if withdrawal violates LP agreement. (6-17-602).

Failure to make required contribution to LP may result in penalty to partner's interest in LP, or in specific performance against partner, pursuant to LP agreement. (6-17-502). Contribution may be cash, property, services rendered, or obligation to contribute same. (6-17-501). LP agreement may provide for allocations of profits and losses, and distributions of cash and assets to partners. (6-17-503, 504).

Wrongful distribution to partner who knew that distribution violated statute makes partner liable to LP for amount of distribution. (6-17-607).

Assignment of LP interest, in whole or in part, may be governed by LP agreement. (6-17-702). Assignee may become limited partner pursuant to LP agreement or if all partners consent. (6-17-704).

Dissolution of LP may occur pursuant to LP agreement, by consent of all partners, by event of withdrawal of general partner, or by entry of decree of judicial dissolution. (6-17-801, 802). Liquidating trustee may be appointed by Chancery Court for purpose of winding up business. (6-17-803). Dissolved LP must pay, or establish reasonable reserves for payment of, all claims and obligations. (6-17-804). Certificate of cancellation of LP must be filed with Secretary of State. (6-17-203).

Foreign LP must register with Secretary of State before doing business in State. (6-17-106, 901, 902). Foreign LP or other foreign business entity is not deemed to be doing business in State solely by reason of its being partner in domestic LP. (6-17-902).

Derivative action may be brought in Chancery Court by limited partner if general partners have refused to bring action or effort to cause general partners to bring action is futile. (6-17-1001).

Annual tax of S100 required of each domestic LP and foreign LP registered to do business in State. Failure to pay tax may result in loss of good standing, right of access to courts, and right to transact business in State. (6-17-1109).
Unreported Cases

INTRODUCTION

UNREPORTED CASES is a continuing feature of The Delaware Journal of Corporate Law. All unreported cases of a corporate nature that have not been published by a reporter system will be included. The court’s opinions are printed in their entirety, exactly as received.

To expedite the attorney’s research, all cases are headnoted according to the National Reporter key number classification system. Indices are provided for case names, statutes construed, rules of court, and key numbers and classifications for this issue.

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