

CHAPTER 6. MEETINGS AND VOTING

SUBCHAPTER A. MEETINGS

Revised Law:

Sec. 6.001. LOCATION OF MEETINGS. (a) Meetings of the owners or members of a domestic entity may be held at locations in or outside the state as:

(1) provided by or fixed in accordance with the governing documents of the domestic entity; or

(2) agreed to by all persons entitled to notice of the meeting.

(b) If the location of meetings of the owners or members of the entity is not established under Subsection (a), the owners or members may hold meetings only at the registered office of the entity in this state or the principal office of the entity.

(c) The governing persons of a domestic entity, or a committee of the governing persons, may hold meetings in or outside the state as:

(1) provided by or fixed in accordance with:

(A) the governing documents of the domestic entity;

or

(B) the person calling the meeting; or

(2) agreed to by all persons entitled to notice of the meeting.

Source Law:

CAA 13(b)

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

CAA 21(d)

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

TBCA 2.24.A

A. Meetings of shareholders may be held at such place within or without this State as may be stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings shall be held at the registered office of the corporation.

TBCA 2.37.A

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

TLLCA 2.19.A & B

Art. 2.19. A. Except as otherwise provided in the articles of organization or the regulations, regular or special meetings of the members, managers, or any committee may be held either within or without this State.

B. Regular meetings of the managers or committees may be held with or without notice as prescribed in the regulations.

Special meetings of the managers or committees shall be held upon such notice as is prescribed in the regulations.

TNPCA 2.10.A(1)

A. If a corporation has members:

(1) Meetings of members shall be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

TNPCA 2.19.A

A. Meetings of the board of directors, regular or special, may be held either within or without this State.

TREITA 10.10(A)

Sec. 10.10. (A) Meetings of shareholders shall be held at such place, either within or without the state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the real estate investment trust.

TREITA 10.20(A)

Sec. 10.20. (A) Meetings of the trust manager(s), whether regular or special, may be held either within or without this State.

Revisor's Note:

By virtue of Section 6.301, none of Chapter 6 applies to a partnership, unless its governing documents so provide. Because of Section 252.017, none of Chapter 6 applies to unincorporated nonprofit associations.

Sections 6.001 to 6.053 set forth provisions relating to the location of and other matters relating to the calling and holding of meetings. These sections are derived in large part from the TBCA, TNPCA, TREITA and TLLCA. As a consequence of their derivation from the TLLCA, TBCA and TNPCA, the requirements of the revised law are incorporated in existing statutes for entities such as professional associations, cooperative associations and professional corporations.

The source law for Section 6.001 generally permitted the locations of meetings to be set by an entity's governing documents or to be held at the entity's registered or principal office if the governing documents were silent. The revised law, however, varies from the source law by also allowing all the persons entitled to notice of the meeting to set the location of the meeting.

Revised Law:

Sec. 6.002. ALTERNATIVE FORMS OF MEETINGS. (a) Subject to this code and the governing documents of a domestic entity, the owners, members, or governing persons of the entity, or a committee of the owners, members, or governing persons, may hold meetings by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting.

(b) If voting is to take place at the meeting, the entity must:

(1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified and

(2) keep a record of any vote or other action taken.

Source Law:

TBCA 9.10.C

C. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or by-laws, shareholders, members of the board of directors, or members of any committee designated by such board, may participate in and hold a meeting of such shareholders, board, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other,

TLLCA 2.23.C

C. Subject to the provisions required or permitted by this Act, unless otherwise provided in the articles of organization or the regulations, members, managers, or members of any committee may participate in and hold a meeting of the members, managers, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other. . . .

TNPCA 9.11.A

A. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or bylaws, members of a corporation, members of the board of directors of a corporation, or members of any committee designated by such board may participate in and hold a meeting of such members, board, or committee by means of:

(1) conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other; or

(2) another suitable electronic communications system, including videoconferencing technology or the Internet, only if:

(a) each member entitled to participate in the meeting consents to the meeting being held by means of that system; and

(b) the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant.

TREITA 10.30(C)

(C) Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the declaration of trust or bylaws, shareholders, trust manager(s), or members of any committee designated by such trust manager(s), may participate in and hold a meeting of such shareholders, trust manager(s) or committee by means of conference telephone or similar communications equipment by

means of which all persons participating in the meeting can hear each other,

Revisor's Note:

Section 6.002 is derived from provisions in the TBCA, TNPCA, TLLCA and TREITA which permit meetings to be held by conference telephone or other communications equipment so long as each participant can communicate with all other participants. The revised law is intended to permit flexibility in the manner of holding meetings consistent with developments in technology, but adds certain safeguards concerning identification and record keeping. Section 6.002 recognizes the continuing advancements in electronic communications technology and explicitly authorizes use of other suitable electronic communications systems including video conferencing or the Internet. This approach is consistent with recent amendments made to the Delaware corporation law permitting the use of new technologies to conduct shareholder meetings entirely by remote communication. Subsection (b) requires that a verification system be established to identify that the appropriate persons are voting at the meeting and to permit record keeping.

Revised Law:

Sec. 6.003. PARTICIPATION CONSTITUTES PRESENCE. A person participating in a meeting is considered present at the meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened.

Source Law:

TBCA 9.10.C

C. . . . and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

TLLCA 2.23.C

C. . . . Participation in a meeting pursuant to this Section constitutes presence in person at the meeting except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

TREITA 10.30(C)

(C) . . . and participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Revisor's Note:

No substantive change is intended.

(Sections 6.004-6.050 reserved for expansion)

SUBCHAPTER B. NOTICE OF MEETINGS

Revised Law:

Sec. 6.051. GENERAL NOTICE REQUIREMENTS. (a) Subject to this code and the governing documents of the entity, notice of a meeting of the owners, members, or governing persons of a domestic entity, or a committee of the owners, members, or governing persons, must:

(1) be given in the manner determined by the governing authority of the entity; and

(2) state:

(A) the date and time of the meeting; and

(B) the location of the meeting or, if the meeting is held by using a conference telephone or other communications system authorized by Section 6.002, the form of communication used for the meeting.

(b) Subject to this code and the governing documents of a domestic entity, notice of a meeting that is:

(1) mailed is considered to be delivered on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity; and

(2) transmitted by facsimile or electronic message is considered to be delivered when the facsimile or electronic message is successfully transmitted.

Source Law:

CAA 14

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. . . .

TBCA 2.25.A

A. Written or printed notice stating the place, day and hour of the meeting . . . shall be delivered . . . either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the share transfer records of the corporation, with postage thereon prepaid.

TBCA 2.37.B

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. . . .

TLLCA 2.19.B & E

B. Regular meetings of the managers or committees may be held with or without notice as prescribed in the regulations. Special meetings of the managers or committees shall be held upon such notice as is prescribed in the regulations.

* * *

E. If mailed, such notice to a member shall be deemed to be delivered when deposited in the United States mail addressed to the member at the member's address that appears on the records of the limited liability company, with postage prepaid.

TNPCA 2.11.A

A. In the case of a corporation other than a church, written or printed notice stating the place, day, and hour of the meeting . . . either personally, by facsimile transmission, or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon paid. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile.

TNPCA 2.19.B

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. . . .

Revisor's Note:

Section 6.051 permits each entity to choose the method of notice that it utilizes, sets out the type of information that must be included in the notice and establishes when notice is deemed to be delivered. This revised law expands on the source law to enable notice to be sent by electronic message or facsimile, which is partially provided in the TNPCA. Additionally, the source law provisions enabled regular meetings of governing persons to be held with or without notice as provided for in the governing documents. The revised law does not change this rule but only requires, as a default rule, notice for both regular and special meetings. The governing documents of the entity may specify that notice of a regular meeting is not required.

Revised Law:

Sec. 6.052. WAIVER OF NOTICE. (a) Notice of a meeting is not required to be given to an owner, member, or governing person of a domestic entity, or a member of a committee of the owners, members, or governing persons, entitled to notice under this code or the governing documents of the entity if the person entitled to notice signs a written waiver of notice of the meeting, regardless of whether the waiver is signed before or after the time of the meeting.

(b) If a person entitled to notice of a meeting participates in the meeting, the person's participation constitutes a waiver of notice of the meeting unless the person participates in the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not lawfully called or convened.

Source Law:

TBCA 2.37.B

B. . . . Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. . . .

TBCA 9.09

Art. 9.09. Waiver of Notice

A. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

TLLCA 2.19(F)

F. Attendance of a member, manager, or committee member at a meeting shall constitute a waiver of notice of such meeting, except where that member, manager, or committee member attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

TLLCA 8.08

Art. 8.08. A. Whenever any notice is required to be given to any managers or members of a limited liability company under the provisions of this Act or under the provisions of the articles of organization or regulations of the limited liability company, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

TNPCA 2.19.B

B. . . . Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. . . .

TNPCA 9.09

Art. 1396-9.09. Waiver of Notice

A. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

TREITA 21.10

Sec. 21.10. Whenever any notice is required to be given to any shareholder of a real estate investment trust under the provisions of this Act or under the provisions of the declaration of trust or bylaws of the real estate investment trust, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Revisor's Note:

Section 6.052 permits any person entitled to notice of a meeting to waive notice in writing or by participating in the meeting. The source law provisions in the TBCA, TNPCA or TREITA do not explicitly state that participation by

shareholders or members in the meeting would constitute waiver of notice of that meeting.

Revised Law:

Sec. 6.053. EXCEPTION. (a) Notice of a meeting is not required to be given to an owner or member of a filing entity entitled to notice under this code or the governing documents of the entity if either of the following is mailed to the person entitled to notice of the meeting to the person's address as it appears on the ownership or membership transfer records of the entity and is returned undeliverable:

(1) notice of two consecutive annual meetings and notice of any meeting held during the period between the two annual meetings; or

(2) all, but in no event less than two, payments of distribution or interest on securities during a 12-month period if the payments are sent by first class mail.

(b) Notice of a meeting is not required to be given to an owner or member entitled to notice under this code or the governing documents of a filing entity the notice requirements of which are subject to the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78a et seq.), if the person entitled to notice of the meeting is considered a lost security holder under that Act and the regulations adopted under that Act.

(c) An action taken or a meeting held without giving notice to a person not entitled to notice under this section has the same force and effect as if notice had been given to the person.

(d) A certificate or other document filed with the secretary of state as a result of a meeting held or an action taken by a filing entity without giving notice of the meeting or action to a person not entitled to notice under this section may state that notice of the meeting or action was given to each person entitled to notice.

(e) Notice of a meeting must be given to a person not entitled to notice of the meeting under this section if the person delivers to the entity a written notice of the person's address.

Source Law:

TBCA 2.25.B

B. Any notice required to be given to any shareholder, under any provision of this Act or the articles of incorporation or bylaws of any corporation, need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to that person, addressed at his address as shown on the share transfer records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given and, if the action taken by the corporation is reflected in any articles or document filed with the Secretary of State, those articles or that document may state that notice was duly given to all persons to whom notice was required to be given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

TREITA 11.10(B) & (C)

(B) Any notice otherwise required to be given to any shareholder under this Act or the declaration of trust or bylaws of any real estate investment trust is not required for the shareholder if:

(1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, have been mailed to the shareholder at the address shown on the share transfer records of the real estate investment trust and the notice has been returned undeliverable; or

(2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to the shareholder at the address shown on the share transfer records of the real estate investment trust, and the payments have been returned undeliverable.

(C) Any action or meeting taken or held without notice to a shareholder described by Subsection (B) of this Section has the same force and effect as if the notice had been duly given to the shareholder. If the action taken by the real estate investment trust is reflected in any document filed with the secretary of state, that document may state that notice was duly given to all persons to whom notice was required to be given. If a shareholder described by Subsection (B) of this Section delivers to the real estate investment trust a written notice setting forth the shareholder's current address, the requirement that notice be given to the shareholder shall be reinstated.

Revisor's Note:

Section 6.053 is derived from provisions found in the TBCA and TREITA which enable an entity to have valid meetings without giving notice to an owner or member when certain previous notices or distributions mailed to that person's address have been returned undeliverable. The revised law in Section 6.053(b), however, incorporates by reference SEC rules that permit a publicly traded entity not to provide notice to a "lost security holder." This provision has been expanded to cover limited liability companies, cooperative associations and nonprofit corporations.

(Sections 6.054-6.100 reserved for expansion)

SUBCHAPTER C. RECORD DATES

Revised Law:

Sec. 6.101. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. (a) Subject to this code, the governing documents of a domestic entity may provide the record date, or the manner of determining the record date, for:

(1) determining the owners or members of the entity entitled to:

(A) receive notice of a meeting of the owners or members;

(B) vote at a meeting of the owners or members or at any adjournment of a meeting; or

(C) receive a distribution from the entity other than a distribution involving a purchase or redemption by the entity of the entity's own securities; or

(2) any other proper purpose other than for determining the owners or members entitled to consent to action without a meeting of the owners or members.

(b) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity, in advance, may provide a record date for determining the owners or members of the entity, except that the date may not be earlier than the 60th day before the date the action requiring the determination of owners or members is taken.

(c) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity may provide for the closing of the ownership or membership transfer records of the entity for a period of not longer than 60 days to determine the owners or members of the entity for a purpose described by Subsection (a).

(d) If the owners or members of an entity are not otherwise determined under this section, the record date for determining the owners or members of an entity is the date on which:

(1) notice of the meeting is mailed to the owners or members entitled to notice of the meeting; or

(2) with respect to a distribution, other than a distribution involving a purchase or redemption by the domestic entity of any of its own securities, the governing authority adopts the resolution declaring the distribution.

(e) The record date for a meeting applies to any adjournment of the meeting unless:

(1) the owners or members entitled to vote are determined under Subsection (c); and

(2) the period during which the transfer records are closed expires.

Source Law:

TBCA 2.26.B

B. Fixing Record Dates for Matters Other Than Consents to Action. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by a corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of shareholders), the board of directors of a corporation may provide that the share transfer records shall be closed for a stated period but not to exceed, in any case, sixty (60) days. . . . In lieu of closing the share transfer records, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be

not more than sixty (60) days . . . prior to the date on which the particular action requiring such determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such distribution or share dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

TNPCA 2.11.A

Art. 1396-2.11A. Record Date for Determining Members Entitled to Notice and Vote

A. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the by-laws do not fix and do not provide for fixing the record date, the board of directors may fix a future date as the record date. If a record date is not fixed, members at the close of business on the business day preceding the date on which notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of the meeting.

B. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the by-laws do not fix and do not provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The by-laws may fix or provide the manner for fixing a date as the record date for the purpose of determining the members entitled to exercise any rights regarding any other lawful action. If the by-laws do not fix and do not provide for fixing a record date, the board of directors may fix in advance a record date. If a record date is not fixed, members at the close of business on the date on which the board of directors adopts the resolution relating to the record date, or the 60th day before the date of the other action, whichever is later, are entitled to exercise those rights.

D. A record date fixed under this section may not be more than sixty (60) days before the date of the meeting or action that requires the determination of the members.

E. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote. The board must fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than ninety (90)

days after the record date for determining members entitled to notice of the original meeting.

TREITA 11.20(C)

(C) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment of a meeting of shareholders, or shareholders entitled to receive a distribution by a real estate investment trust (other than a distribution involving a purchase or redemption by the real estate investment trust of any of its own shares) or a share dividend, or in order to make a determination of shareholders for any other proper purpose (other than determining shareholders entitled to consent to action by shareholders proposed to be taken without a meeting of shareholders), the trust managers of a real estate investment trust may provide that the share transfer records shall be closed for a stated period not to exceed 60 days. . . . In lieu of closing the share transfer records, the bylaws, or in the absence of an applicable bylaw, the trust managers, may fix in advance a date as the record date for the determination of shareholders. The record date for any such determination of shareholders may not be more than 60 days . . . before the date on which the particular action requiring the determination of shareholders is to be taken. If the share transfer records are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a distribution (other than a distribution involving a purchase or redemption by the real estate investment trust of any of its own shares) or a share dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the trust managers declaring such distribution or share dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made in the manner provided in this Section, the determination of shareholders shall apply to any adjournment of the meeting of shareholders except where the determination has been made through the closing of the share transfer records and the stated period of closing has expired.

Revisor's Note:

Additional record date provisions in the Code for for-profit corporations can be found in Sections 21.356 and 21.357.

The revised law omits the 90-day time limit on adjournments under the TNPCA to conform with the more modern provisions of the TBCA and TREITA, which do not contain a similar time limit.

Subchapter C does not cover limited liability companies by virtue of Section 6.302, but a limited liability company can adopt similar rules in its company agreement.

Revised Law:

Sec. 6.102. RECORD DATE FOR WRITTEN CONSENT TO ACTION. (a) Subject to this code and the governing documents of an entity, the governing authority of the entity may provide the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members unless a record date is provided under Section 6.101 for that action. The record date may not be earlier than the date the governing authority adopts the resolution providing for the record date.

(b) Subject to this code and the governing documents of an entity, the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members is the date a signed written consent to action stating the action taken or proposed to be taken is first delivered to the entity if:

(1) the governing authority of the entity does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is not required under this code.

(c) Subject to this code or the governing documents of an entity, the record date for determining the owners or members of the entity entitled to written consent to action without a meeting of the owners or members is at the close of business on the date the governing authority of the entity adopts a resolution taking prior action if:

(1) the governing authority does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is required by this code.

Source Law:

TBCA 2.26.C

C. Fixing Record Dates for Consents to Action. Unless a record date shall have previously been fixed or determined pursuant to this section, whenever action by shareholders is proposed to be taken by consent in writing without a meeting of shareholders, the board of directors may fix a record date for the purpose of determining shareholders entitled to consent to that action, which record date shall not precede, . . . the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors and the prior action of the board of directors is not required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation as provided in Section A of Article 9.10 of this Act. . . . If no record date shall have been fixed by the board of directors and prior action of the board of directors is required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the board of directors adopts a resolution taking such prior action.

TREITA 11.20(D)

(D) Unless a record date has previously been fixed or determined under this Section, when action by shareholders is proposed to be taken by written consent without a meeting of shareholders, the trust managers may fix a record date for the purpose of determining shareholders entitled to consent to that action. The record date may not precede . . . after the date on which the trust managers adopt the resolution fixing the record date. If no record date has been fixed by the trust managers and the prior action of the trust managers is not required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered . . . to the

real estate investment trust as provided by Subsection (A) of Section 10.30 of this Act. . . . If no record date shall have been fixed by the trust managers and prior action of the trust managers is required by this Act, the record date for determining shareholders entitled to consent to action in writing without a meeting shall be at the close of business on the date on which the trust managers adopt a resolution taking such prior action.

Revisor's Note:

No substantive change is intended, except that the revised law is expanded to apply to nonprofit corporations.

Revised Law:

Sec. 6.103. RECORD DATE FOR SUSPENDED DISTRIBUTIONS. (a) In this section, "distribution" includes a distribution that:

(1) was payable to an owner or member but not paid and was held in suspension by the entity making the distribution; or

(2) is paid or delivered by the entity making the distribution into an escrow account or to a trustee or custodian.

(b) A distribution made by a domestic entity shall be payable by the entity, or an escrow agent, trustee, or custodian of the distribution, to the owner or member determined on the record date for the distribution as provided by this subchapter.

(c) The right to a distribution under this section may be transferred by contract, by operation of law, or under the laws of descent and distribution.

Source Law:

TBCA 2.26.D

D. Distributions Held in Suspense. Distributions made by a corporation, including those that were payable but not paid to a holder of shares, or to his heirs, successors, or assigns, and have been held in suspense by the corporation or were paid or delivered by it into an escrow account or to a trustee or custodian, shall be payable by the corporation, escrow agent, trustee, or custodian to the holder of the shares as of the record date determined for that distribution as provided in Section B of this Article, or to his heirs, successors, or assigns.

TREITA 11.20(E)

(E) Distributions made by a real estate investment trust, including those distributions that were payable but not paid to a holder of shares or to the holder's heirs, successors, or assigns and have been held in suspense by the real estate investment trust or were paid or delivered by the real estate investment trust into an escrow account or to a trustee or custodian, shall be payable by the real estate investment trust, escrow agent, trustee, or custodian of the distributions to the holder of the shares as of the record date determined for that distribution as provided in Subsection (C) of this Section, or to the holder's heirs, successors, or assigns.

Revisor's Note:

No substantive change is intended. Although the revised law applies to nonprofit corporations, nonprofit corporations generally do not make any distributions.

(Sections 6.104-6.150 reserved for expansion)

SUBCHAPTER D. VOTING OF OWNERSHIP INTERESTS

Revised Law:

Sec. 6.151. MANNER OF VOTING OF INTERESTS. Subject to the title governing the domestic entity, voting of interests of a domestic entity must be conducted in the manner provided by the governing documents of the entity.

Source Law:

New

Revisor's Note:

Subchapter D is not applicable to partnerships or limited liability companies because of Subchapter G.

No substantive change is intended because the substance of the revised law is implicit in the various source laws for the Code. The revised law provides that the governing documents of the domestic entity, subject to the specific title of the revised law that governs the entity, may specify the manner in which voting of interests in the entity must be conducted.

Revised Law:

Sec. 6.152. VOTING OF INTERESTS OWNED BY ENTITY. (a) Except as provided by Subsection (b), an ownership interest owned by the entity that is the issuer of the interest, or by its direct or indirect subsidiary, may not be:

(1) directly or indirectly voted at a meeting; or

(2) included in determining at any time the total number of outstanding ownership interests of the entity.

(b) This section does not preclude a domestic or foreign entity from voting an ownership interest, including an interest in the entity, held or controlled by the entity in a fiduciary capacity or for which the entity otherwise exercises voting power in a fiduciary capacity.

Source Law:

TBCA 2.29.B

B. Shares of its own stock owned by a corporation or by another domestic or foreign corporation or other entity, if a majority of the voting stock or voting interest of the other corporation or other entity is owned or controlled by the corporation, shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares at any given time. Nothing in this section shall be construed as limiting the right of any domestic or foreign corporation or other entity to vote stock, including but not limited to its own stock, held or controlled by it in a fiduciary capacity, or with respect to which it otherwise exercises voting power in a fiduciary capacity.

TREITA 13.10(B)

(B) Shares of the stock of a real estate investment trust that are owned by another real estate investment trust or corporation, if a majority of the voting stock of the other real estate investment trust or corporation is owned or controlled by the real estate investment trust, may not be voted, directly or indirectly, at any meeting and may not be counted in determining the total number of outstanding shares at any given time. Nothing in this Subsection shall be construed as limiting the right of any real estate investment trust to vote stock, including voting its own stock, held or controlled by the real estate investment trust in a fiduciary capacity or with respect to which the real estate investment trust otherwise exercises voting power in a fiduciary capacity.

Revisor's Note:

No substantive change is intended. Portions of the source law provisions are replaced by the term "subsidiary," which is defined in Chapter 1. Sections 6.152-6.156 do not apply to non-profit corporations because those sections do not apply to "membership interests."

Revised Law:

Sec. 6.153. VOTING OF INTERESTS OWNED BY ANOTHER ENTITY. An ownership interest in an entity owned by another entity, whether a domestic or foreign entity, may be voted by the officer, agent, or proxy as authorized by:

- (1) the governing documents of the entity that owns the interest; or
- (2) the governing authority of the entity that owns the interest, if the governing documents do not provide for the manner of voting.

Source Law:

TBCA 2.29.E

E. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may authorize or, in the absence of such authorization, as the board of directors of such corporation may determine;

TREITA 13.10(F)

(F) Shares standing in the name of another real estate investment trust or corporation, domestic or foreign, may be voted by an officer, agent, or proxy that is authorized to vote those shares by the bylaws of the real estate investment trust or corporation or, in the absence of such authorization, by an officer, agent, or proxy as determined by the trust managers or board of directors of the real estate investment trust or corporation. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 6.154. VOTING OF INTERESTS IN AN ESTATE OR TRUST. (a) An administrator, executor, guardian, or conservator of an estate who holds an

ownership interest as part of the estate may vote the interest without transferring the interest into the person's name.

(b) An ownership interest in the name of a trust may be voted in person or by proxy by:

(1) the trustee; or

(2) a person authorized to act on behalf of the trust by the trust agreement or the trustee.

Source Law:

TBCA 2.29.F

F. Shares held by an administrator, executor, guardian, or conservator may be voted by him so long as such shares forming a part of an estate are in the possession and forming a part of the estate being served by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name as trustee.

TREITA 13.10(G)

(G) Shares held by a person who is an administrator, executor, guardian, or conservator may be voted by the person so long as the shares forming a part of an estate are in the possession and forming a part of the estate being served by the person, either personally or by proxy, without a transfer of such shares into the person's name. Shares standing in the name of a trustee may be voted by the trustee, either personally or by proxy, but a trustee is not entitled to vote shares held by the trustee without a transfer of those shares into the trustee's name as trustee.

Revisor's Note:

Subsection (b) of the revised law permits trustees to vote ownership interests held by a trust even though not held in the trustee's name, which the source law requires. This change permits more flexibility for identifying trusts and trustees on certificates and ownership records and puts trustees on a par with receivers, administrators, executors, guardians and conservators.

Revised Law:

Sec. 6.155. VOTING OF INTERESTS BY RECEIVER. (a) A receiver may vote an ownership interest standing in the name of the receiver.

(b) A receiver may vote an ownership interest held by or under the control of the receiver without transferring the interest into the receiver's name if the court appointing the receiver authorizes the receiver to vote the interest.

Source Law:

TBCA 2.29.G

G. Shares standing in the name of a receiver may be voted by such a receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an

appropriate order of the court by which such receiver was appointed.

TREITA 13.10(H)

(H) Shares standing in the name of, held by, or under the control of a receiver may be voted by the receiver, without transferring the shares into the receiver's name, if authority to vote the shares is contained in an appropriate court order by which the receiver was appointed to serve as receiver.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 6.156. VOTING OF PLEDGED INTERESTS. A pledged ownership interest may be voted by:

(1) the owner of the pledged interest until the interest is transferred into the pledgee's name; and

(2) the pledgee after the pledged interest is transferred into the pledgee's name.

Source Law:

TBCA 2.29.H

H. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

TREITA 13.10(I)

(I) A shareholder whose shares are pledged is entitled to vote those shares until the shares have been transferred into the pledgee's name. After the shares have been transferred into the pledgee's name, the pledgee shall be entitled to vote the transferred shares

Revisor's Note:

No substantive change is intended.

(Sections 6.157-6.200 reserved for expansion)

SUBCHAPTER E. ACTION BY WRITTEN CONSENT

Revised Law:

Sec. 6.201. UNANIMOUS WRITTEN CONSENT TO ACTION. (a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity or at a regular, special, or other meeting of the governing authority of the entity or a committee of the governing authority.

(b) The owners or members or the governing authority of a filing entity, or a committee of the governing authority, may take action without holding a meeting, providing notice, or taking a vote if each person entitled to vote on the action signs a written consent or consents stating the action taken.

(c) A written consent described by Subsection (b) has the same effect as a unanimous vote at a meeting.

(d) A filing instrument filed with the filing officer may state that an action approved by written consent or consents has the effect of an approval by a unanimous vote at a meeting.

Source Law:

TBCA 9.10.A(1) & B

A. (1) Any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the shares entitled to vote with respect to the action that is the subject of the consent. . . .

B. Unless otherwise restricted by the articles of incorporation or by-laws, any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

TLLCA 2.23.B(1)

B. (1) Unless otherwise provided by the articles of organization or the regulations, any act required or permitted to be taken at any meeting of the members, the managers, or any committee may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the members, managers, or committee members, as the case may be, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all members, managers, or committee members, as the case may be, entitled to vote on the action were present and voted.

TNPCA 9.10.A & B

A. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee, as the case may be.

B. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

TREITA 10.30(A) & (B)

Sec. 10.30. (A) Unless otherwise provided by the declaration of trust or bylaws, any action required or permitted to be taken at a meeting of the shareholders of a real estate investment trust may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such action shall then have the same force and

effect as action taken at a meeting, and may be stated as such in any declaration of trust or document filed with the county clerk of the county of the principal place of business of the real estate investment trust.

(B) Unless otherwise provided by the declaration of trust or bylaws, any action required or permitted to be taken at a meeting of the trust manager(s) or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the trust managers or members of such committee, as the case may be. Such action shall then have the same force and effect as action taken at a meeting, and may be stated as such in any document or instrument filed with the county clerk of the county of the principal place of business of the trust.

Revisor's Note:

No substantive change is intended. Subchapter E does not apply to partnerships because of Subchapter G. Reference is made to Section 101.358 of the revised law for additional consent provisions governing limited liability companies.

Revised Law:

Sec. 6.202. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT. (a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity.

(b) Except as provided by this code, the certificate of formation of a filing entity may authorize the owners or members of the entity to take action without holding a meeting, providing notice, or taking a vote if owners or members of the entity having at least the minimum number of votes that would be necessary to take the action that is the subject of the consent at a meeting, in which each owner or member entitled to vote on the action is present and votes, sign a written consent or consents stating the action taken.

(c) A written consent or consents described by Subsection (b) must include the date each owner or member signed the consent and is effective to take the action that is the subject of the consent only if the consent or consents are delivered to the entity not later than the 60th day after the date the earliest dated consent is delivered to the entity as required by Section 6.203.

(d) The entity shall promptly notify each owner or member who did not sign a consent described by Subsection (b) of the action that is the subject of the consent.

Source Law:

TBCA 9.10.A(1), (2) & (4)

(1) . . . The articles of incorporation may provide that any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders or shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent signed by the holders of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall bear the date of signature of each shareholder who signs the consent. No written consent signed by the holders of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall be effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this Article, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation

* * *

(4) Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

TLLCA 2.23(B)(1)

B. (1) Unless otherwise provided by the articles of organization or the regulations, any act required or permitted to be taken at any meeting of the members, the managers, or any committee may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the members, managers, or committee members, as the case may be, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all members, managers, or committee members, as the case may be, entitled to vote on the action were present and voted.

TNPCA 9.10.C(1), (2) & (3)

C. (1) The articles of incorporation may provide that any action required by this Act to be taken at a meeting of the members or directors of a corporation or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted.

(2) Each written consent shall bear the date of signature of each member, director, or committee member who signs the consent. A written consent signed by less than all of the members, directors, or committee members is not effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this article, a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation

(3) Prompt notice of the taking of any action by members, directors, or a committee without a meeting by less than unanimous written consent shall be given to all members, directors, or committee members who did not consent in writing to the action.

Revisor's Note:

No substantive change is intended. Reference is made to Section 101.358 of the revised law for additional consent provisions governing limited liability companies. Real estate investment trusts, professional corporations, professional associations and cooperative associations incorporate these rules currently into their governing statutes from the TBCA and TNPCA.

Revised Law:

Sec. 6.203. DELIVERY OF LESS THAN UNANIMOUS WRITTEN CONSENT. (a) A written consent signed by an owner or member of a filing entity as provided by Section 6.202, if the consent is not solicited on behalf of the entity or its governing authority, must be delivered by hand or certified or registered mail, return receipt requested, or by other means specified in the governing documents, to:

(1) the entity's registered office or principal executive office or place of business; or

(2) the managerial official or agent of the entity having custody of the entity's records of meetings of owners or members.

(b) A consent delivered to an entity's principal executive office or place of business under Subsection (a)(1) must be addressed to the chief managerial official of the entity or, if the entity does not have a chief managerial official, the governing authority of the entity.

Source Law:

TBCA 9.10.A(2)

(2) . . . a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent of the corporation having custody of the books in which proceedings of meetings of shareholders are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

TNPCA 9.10.C(2)

(2) . . . a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation at its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of members, directors, or committees are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

Revisor's Note:

Section 6.203 is derived from TBCA Art. 9.10.A(2) and TNPCA Art. 9.10.C(2) and specifies how a written consent of owners or

members that is less than unanimous must be delivered to the filing entity or its governing authority. The strict consent delivery requirements of Section 6.203 do not apply when the entity is soliciting the consent. This is a change from the source law. Presumably, in that situation, the filing entity is aware when a consent is signed. This section does not apply to non-filing entities, which tend to act with less formality in the governing of their affairs.

Revised Law:

Sec. 6.204. ADVANCE NOTICE NOT REQUIRED. Advance notice is not required to be given to take an action by written consent as provided by this subchapter.

Source Law:

TBCA 9.10.D

D. If action is taken with respect to a particular matter by the holders of shares of a class or series by means of a written consent in compliance with Section A of this Article, any provision of this Act that requires advance notice of a meeting or of the proposed action will not apply as to that class or series for such action.

TREITA 10.30(D)

(D) If action is taken with respect to a particular matter by the holders of shares of a class or series by means of a written consent in compliance with Subsection (A) of this Section, any provision of this Act that requires advance notice of a meeting or of the proposed action does not apply as to that class or series for that action.

Revisor's Note:

This section has no explicit counterpart in the TNPCA and TLLCA. The revised law is based on the more modern provisions contained in the TBCA and TREITA and are implicit in the provisions of the TNPCA and TLLCA.

(Sections 6.205-6.250 reserved for expansion)

SUBCHAPTER F. VOTING TRUSTS AND VOTING AGREEMENTS

Revised Law:

Sec. 6.251. VOTING TRUSTS. (a) Except as provided by this code or the governing documents, any number of owners of an entity may enter into a written voting trust agreement to confer on a trustee the right to vote or otherwise represent ownership or membership interests of the entity.

(b) An ownership or membership interest that is the subject of a voting trust agreement described by Subsection (a) shall be transferred to the trustee named in the agreement for purposes of the agreement.

(c) A copy of a voting trust agreement described by Subsection (a) shall be deposited with the entity at the entity's principal executive office or registered office and is subject to examination by:

(1) an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity; and

(2) a holder of a beneficial interest in the voting trust, whether in person or by the holder's agent or attorney, at any reasonable time for any proper purpose.

Source Law:

TBCA 2.30.A

A. Any number of shareholders of a corporation may enter into a written voting trust agreement for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent shares of the corporation. The shares that are to be subject to the agreement shall be transferred to the trustee or trustees for purposes of the agreement, and a counterpart of the agreement shall be deposited with the corporation at its principal place of business or registered office. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

TREITA 13.20(A)

Sec. 13.20. (A) Any number of shareholders of a real estate investment trust may enter into a written voting trust agreement to confer on a trustee or trustees the right to vote or otherwise represent shares of the real estate investment trust. The shares that are to be subject to the agreement shall be transferred to the trustee or trustees for purposes of the agreement, and a counterpart of the agreement shall be deposited with the real estate investment trust at its principal place of business or registered office. The counterpart of the voting trust agreement deposited with the real estate investment trust shall be subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent or attorney, as are the books and records of the real estate investment trust and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Revisor's Note:

Sections 6.251 and 6.252 contain provisions relating to voting trusts and voting agreements. These provisions are materially the same as those found in the TBCA and TREITA, but are new for limited liability companies. The TLLCA does not contain a similar provision. These sections do not apply to nonprofit corporations because nonprofit corporations do not have "owners."

Revised Law:

Sec. 6.252. VOTING AGREEMENTS. (a) Except as provided by this code or the governing documents, any number of owners of an entity, or any number of owners of the entity and the entity itself, may enter into a written voting agreement to provide the manner of voting of the ownership interests of the entity. A voting agreement entered into under this subsection is not part of the governing documents of the entity.

(b) A copy of a voting agreement entered into under Subsection (a):

(1) shall be deposited with the entity at the entity's principal executive office or registered office; and

(2) is subject to examination by an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the entity.

(c) A voting agreement entered into under Subsection (a) is specifically enforceable against the holder of an ownership interest that is the subject of the agreement, and any successor or transferee of the holder, if:

(1) the voting agreement is noted conspicuously on the certificate representing the ownership interests; or

(2) a notation of the voting agreement is contained in a notice sent by or on behalf of the entity, if the ownership interest is not represented by a certificate.

(d) Except as provided by Subsection (e), a voting agreement entered into under Subsection (a) is specifically enforceable against any person, other than a transferee for value, after the time the person acquires actual knowledge of the existence of the agreement.

(e) An otherwise enforceable voting agreement entered into under Subsection (a) is not enforceable against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer, or any subsequent transferee, without regard to value, if the voting agreement is not noted as required by Subsection (c).

(f) Section 6.251 does not apply to a voting agreement entered into under Subsection (a).

Source Law:

TBCA 2.30.B

B. Any number of shareholders of a corporation, or any number of shareholders of a corporation and the corporation itself, may enter into a written voting agreement for the purpose of providing that shares of the corporation shall be voted in the manner prescribed in the agreement. A counterpart of the agreement shall be deposited with the corporation at its principal place of business or registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation. The agreement, if noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, if notation of the agreement is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the agreement, shall be specifically enforceable against the holder of those shares or any successor or transferee of the holder. Unless noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, unless notation of the agreement is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the agreement, the agreement, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer or against any subsequent transferee (whether or not for value), but the agreement shall be specifically enforceable against any other person who is not a transferee for value from

and after the time that the person acquires actual knowledge of the existence of the agreement. A voting agreement entered into pursuant to this Section B is not subject to the provisions of Section A of this Article.

TREITA 13.20(B)

(B) Any number of shareholders of a real estate investment trust, or any number of shareholders of a real estate investment trust and the real estate investment trust itself, may enter into a written voting agreement for the purpose of providing that shares of the real estate investment trust must be voted in the manner prescribed in the agreement. A counterpart of the agreement shall be deposited with the real estate investment trust at its principal place of business or registered office and shall be subject to the same right of examination by a shareholder of the real estate investment trust, in person or by agent or attorney, as are the books and records of the real estate investment trust. The agreement is specifically enforceable against the holders of those shares or any successor or transferee of the holder, if the agreement is noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, if notation of the agreement is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the shares that are subject to the agreement. Unless noted conspicuously on the certificate representing the shares that are subject to the agreement or, in the case of uncertificated shares, unless notation of the agreement is contained in the notice sent pursuant to Subsection (D) of Section 7.20 of this Act with respect to the shares that are subject to the agreement, the agreement, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the agreement at the time of the transfer or against any subsequent transferee, whether or not for value. The agreement is specifically enforceable against any other person who is not a transferee for value from and after the time that the person acquires actual knowledge of the existence of the agreement. A voting agreement entered into pursuant to this Subsection is not subject to Subsection (A) of this Section.

Revisor's Note:

See Revisor's Note to Section 6.251.

(Sections 6.253-6.300 reserved for expansion)

SUBCHAPTER G. APPLICABILITY OF CHAPTER

Revised Law:

Sec. 6.301. APPLICABILITY OF CHAPTER TO PARTNERSHIPS. This chapter does not apply to a general partnership or a limited partnership except to the extent its governing documents specify.

Source Law:

New

Revisor's Note:

No substantive change is intended. Existing partnership statutes do not have provisions similar to those in Chapter 6.

Partnerships were excluded from this Chapter to take into account their often informal nature; however, partners may elect to adopt these provisions by agreement.

Revised Law:

Sec. 6.302. APPLICABILITY OF SUBCHAPTERS C AND D TO LIMITED LIABILITY COMPANIES. Subchapters C and D do not apply to a limited liability company except to the extent its governing documents specify.

Source Law:

New

Revisor's Note:

No substantive change is intended. The TLLCA does not have provisions similar to those of Subchapters C and D. Limited liability companies were excluded from Subchapters C and D to take into account their more informal nature; however, members may elect to adopt these provisions by agreement.