



Ohio Revised Code

Section 1701.591 Close corporation agreement.

Effective: September 30, 2008

Legislation: House Bill 374 - 127th General Assembly

(A) In order to qualify as a close corporation agreement under this section, the agreement shall meet the following requirements:

(1) Every person who is a shareholder of the corporation at the time of the agreement's adoption, whether or not entitled to vote, shall have assented to the agreement in writing;

(2) The agreement shall be set forth in the articles, the regulations, or another written instrument;

(3) The agreement shall include a statement that it is to be governed by this section.

(B) A close corporation agreement that is not set forth in the articles or the regulations shall be entered in the record of minutes of the proceedings of the shareholders of the corporation and shall be subject to the provisions of division (C) of section 1701.92 of the Revised Code.

(C) Irrespective of any other provisions of this chapter, but subject to division (D)(2) of this section, a close corporation agreement may contain provisions, which shall be binding on the corporation and all of its shareholders, regulating any aspect of the internal affairs of the corporation or the relations of the shareholders among themselves, including the following:

(1) Regulation of the management of the business and affairs of the corporation;

(2) The right of one or more shareholders to dissolve the corporation at will or on the occurrence of a specified event or contingency;

(3) The obligation to vote the shares of a person as specified, or voting requirements, including the requirement of the affirmative vote or approval of all shareholders or of all directors, which voting requirements need not appear in the articles unless the close corporation agreement is set forth in the articles;



- (4) The designation of the persons who shall be the officers or directors of the corporation;
 - (5) The authority of any individual who holds more than one office of the corporation to execute, acknowledge, or certify in more than one capacity any instrument required to be executed, acknowledged, or certified by the holders of two or more offices;
 - (6) The terms and conditions of employment of an officer or employee of the corporation without regard to the period of employment;
 - (7) The declaration and payment of dividends or distributions or the division of profits;
 - (8) Elimination of the board of directors, restrictions upon the exercise by directors of their authority, or delegation to one or more shareholders or other persons of all or part of the authority of the directors;
 - (9) Conferring on any shareholder or agent of a shareholder the absolute right, without the necessity of stating any purpose, to examine and copy during usual business hours any of the corporation's records or documents to which reference is made in section 1701.37 of the Revised Code;
 - (10) Prohibition of or limitation upon the issuance or sale by the corporation of any of its shares, including treasury shares, without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares or unless other specified terms and conditions are met;
 - (11) Arbitration of issues on which the shareholders are deadlocked in voting power or on which the directors or other parties managing the corporation are deadlocked;
 - (12) Dispensing with the annual meeting of shareholders unless a shareholder, by written notice to the president or secretary either by personal delivery or by mail within thirty days after the end of the most recent fiscal year of the corporation, requests that the meeting be held.
- (D) Except as may be necessary to give effect to divisions (C)(3), (5), (8), (9), and (12) and division (I) of this section, any provision of a close corporation agreement that does either of the following



shall be invalid:

(1) Eliminates the filing with the secretary of state of any document required under this chapter or changes the required form or content of the document;

(2) Waives or alters the effect of any of the provisions of section 1701.03, 1701.18, 1701.24, 1701.25, 1701.30, 1701.31, 1701.32, 1701.33, 1701.35, 1701.37, 1701.38, 1701.39, 1701.591, 1701.91, 1701.93, 1701.94, 1701.95, or the first sentence of section 1701.64 of the Revised Code.

Unless otherwise provided in the close corporation agreement, the invalidity of a provision pursuant to this division does not affect the validity of the remainder of the agreement.

Any certificate that is required to be filed with the secretary of state with respect to the authorization or taking of any action pursuant to a close corporation agreement that would not be permitted under this chapter in the absence of division (C) of this section shall recite the existence of a close corporation agreement that authorizes the action.

(E)(1) Except as provided in division (E)(2) of this section, a close corporation agreement may be amended or terminated by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of all of the outstanding shares of each class or, as may be provided by the close corporation agreement, of the holders, then parties to the close corporation agreement, of a proportion of not less than four-fifths of the outstanding shares of each class. If a close corporation agreement is amended or terminated by the written consent of the holders of fewer than all of the shares, the secretary of the corporation shall mail a copy of the amendment or a notice of the termination to each shareholder who did not so consent. If a close corporation agreement set forth in the articles is amended, the amendment shall not be effective unless it is filed as an amendment to the articles pursuant to section 1701.73 of the Revised Code. No corporation with respect to which a close corporation agreement is in effect shall cause to occur any of the actions described in division (I)(1)(a), (b), or (c) of this section unless the action has been authorized by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of that proportion of shares of each class that is required to terminate the close corporation agreement.

(2) A close corporation agreement that was in existence on December 31, 1993, and that did not



specify on that date and that has not specified since that date the proportion of shares required to amend or terminate the close corporation agreement may be amended or terminated by the affirmative vote or written consent of the holders, then parties to the close corporation agreement, of four-fifths of the outstanding shares of each class.

(F) No close corporation agreement is invalid among the parties or in respect of the corporation on any of the following grounds:

- (1) The agreement is an attempt to treat the corporation as if it were a partnership or to arrange the relationship of the parties in a manner that would be appropriate only among partners;
- (2) The agreement provides for the conduct of the affairs of a corporation or relations among shareholders in any manner that would be inappropriate or unlawful under provisions of this chapter other than those set forth in division (D)(2) of this section or under other applicable law;
- (3) The agreement interferes with the authority or discretion of the directors;
- (4) The agreement has not been filed with the minutes as required by division (B) of this section.

(G) If a close corporation agreement provides that there shall be no board of directors, both of the following apply:

- (1) The shareholders, for the purposes of any statute or rule of law relating to corporations, are deemed to be the directors and to have all of the liabilities, immunities, defenses, and indemnifications of directors with respect to any action or inaction of the corporation, except that any shareholder who is not permitted by the articles, the regulations, or the close corporation agreement to vote on or assent to an action or assent to an inaction shall not be liable as a director with respect to the action or inaction.
- (2) Except to the extent that the voting rights of the shares of a class are increased, limited, or denied by the articles, the regulations, or the close corporation agreement, each outstanding share regardless of class shall entitle its holder to one vote on each matter, including any matter normally voted on by directors, that is properly submitted to the shareholders for their vote, consent, waiver,



release, or other action.

(H) The existence of a close corporation agreement shall be noted conspicuously on the face or the back of every certificate for shares of the corporation and a purchaser or transferee of shares represented by a certificate on which such a notation so appears shall be conclusively considered to have taken delivery with notice of the close corporation agreement. Any transferee of shares by gift, bequest, or inheritance and any purchaser or transferee of shares with knowledge or notice of a close corporation agreement is bound by the agreement and shall be considered to be a party to the agreement.

(I)(1) A close corporation agreement becomes invalid under any of the following circumstances:

(a) Shares of the corporation are listed on a national securities exchange.

(b) Shares of the corporation are registered under section 12(g) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 781, as amended.

(c) Shares of the corporation have been included in a registration statement that has become effective pursuant to the "Securities Act of 1933," 84 Stat. 74, 15 U.S.C. 77a-77aa, and the corporation is required to file periodic reports and information pursuant to section 15(d) of the "Securities Exchange Act of 1934," 48 Stat. 892, 15 U.S.C. 77m, as amended.

(d) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement; that person delivers to the corporation a written rejection of the close corporation agreement within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier; and the corporation does not offer in writing, within thirty days after the date on which the corporation received the written rejection, to purchase the shares from that person for the full amount paid for the shares, or, having made an offer to purchase the shares for that amount, the corporation, upon that person's acceptance of the offer, does not purchase the shares in accordance with division (I)(3) of this section.



(2) A close corporation agreement does not become invalid and the person to whom the shares are transferred or issued is not entitled to any payment from the corporation pursuant to division (I)(3) of this section if both of the following apply:

(a) Shares of the corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement;

(b) That person does either of the following:

(i) Fails to deliver a written rejection of the close corporation agreement to the corporation within ninety days after the date on which that person first received notice of the existence of the close corporation agreement or within three years of the date of transfer or issuance, whichever is earlier;

(ii) Fails, within thirty days after the date on which that person receives a written offer by the corporation to purchase the shares from that person for the full amount paid for the shares, to accept the offer.

(3) If shares of a corporation are transferred or issued to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement and that person accepts an offer by the corporation to purchase the shares, the corporation shall pay to that person the full amount paid for the shares within seven days after that person delivers to the corporation the certificate for the shares and proof of payment of the amount paid for the shares. If the amount paid for the shares included property other than cash, the corporation, at its option, may return the property to that person or may pay to that person cash in an amount equal to the fair market value of the property on the date of transfer or issuance of the shares, as determined in good faith by the corporation. A shareholder who transfers shares to a person who takes delivery of the certificate for the shares other than by gift, bequest, or inheritance and without knowledge or notice of the close corporation agreement is liable to the corporation, upon the corporation's written demand made upon the shareholder within ninety days after the date on which the corporation made payment for the shares, for the full amount that the corporation paid for the shares. Upon receiving payment in that amount from the shareholder, the corporation shall transfer the shares to the shareholder.



(4) In the event of the invalidity of a close corporation agreement and unless otherwise provided in the close corporation agreement, any provision contained in the close corporation agreement that would not be invalid under any other section of this chapter or under other applicable law remains valid and binding on the parties to the close corporation agreement.

Any officer of the corporation who learns of the occurrence of any event causing the invalidity of the close corporation agreement shall immediately give written notice of the invalidity to all of the shareholders.

If a close corporation agreement set forth in the articles of the corporation is terminated or becomes invalid, the officers of the corporation shall promptly sign and file the certificate of amendment prescribed by section 1701.73 of the Revised Code, setting forth the reason for the termination or invalidity and deleting the close corporation agreement from the articles. If the officers fail to execute and file the certificate within thirty days after the occurrence of the event giving rise to the termination or invalidity, the certificate may be signed and filed by any shareholder and shall set forth a statement that the person signing the certificate is a shareholder and is filing the certificate because of the failure of the officers to do so.

(J) A close corporation agreement, in the sound discretion of a court exercising its equity powers, is enforceable by injunction, specific performance, or other relief that the court may determine to be fair and appropriate.

(K) This section shall not be construed as prohibiting any other lawful agreement among two or more shareholders.

(L) No corporation with respect to which a close corporation agreement is in effect, shall issue shares in uncertificated form, and any provision of the articles or regulations or any resolution of the directors of such a corporation, providing for the issuance of shares in uncertificated form, shall be ineffective during any period in which a close corporation agreement is in effect. The adoption of a close corporation agreement shall act as a transfer instruction to the corporation to replace uncertificated securities with appropriate certificated securities.



(M) If the annual meeting of the shareholders is dispensed with in accordance with a provision in the close corporation agreement authorized by division (C)(12) of this section, the annual financial statements required by section 1701.38 of the Revised Code shall be delivered to each shareholder on or before the last date upon which the annual meeting otherwise could have been held.

(N) The amendments to this section that are effective April 4, 1985, are remedial in nature and apply to all close corporation agreements created on or after November 17, 1981. The amendments to this section that are effective December 31, 1993, are remedial in nature and, except as those amendments otherwise provide, apply to all close corporation agreements created on or after November 17, 1981.