

NONPROFIT CORPORATION ACT (EXCERPT)
Act 162 of 1982

450.2488 Agreement among members of corporation.

Sec. 488.

(1) Subject to subsection (11), an agreement among the members of a corporation that is organized on a membership basis, among the shareholders of a corporation that is organized on a stock basis, or among the directors of a corporation that is organized on a directorship basis that complies with this section is effective among the members, shareholders, or directors and the corporation even though it is inconsistent with this act in 1 or more of the following ways:

(a) It restricts the discretion or powers of the board.

(b) It governs the authorization or making of distributions permitted under section 301 whether or not in proportion to the membership interest or shares held, subject to limitations in sections 345 and 855 pertaining to the protection of creditors.

(c) It establishes who shall be directors or officers of the corporation, or the terms of office or manner of selection or removal of directors or officers of the corporation.

(d) In general or in regard to specific matters, it governs the exercise or division of voting power by or between the members or shareholders and directors or by or among any of the members, shareholders, or directors, including, but not limited to, use of weighted voting rights or restrictions on the voting rights of particular members, shareholders, or directors.

(e) It establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, shareholder, director, officer, or employee of the corporation or among the members, shareholders, directors, officers, or employees of the corporation.

(f) It transfers to 1 or more members, shareholders, or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including, but not limited to, the resolution of any issue about which there exists a deadlock among directors, members, or shareholders.

(g) It requires dissolution of the corporation at the request of 1 or more of the members, shareholders, or directors or if a specified event or contingency occurs.

(h) It establishes that shares or memberships may be assessable by the corporation, including the procedures for an assessment and the consequences of a failure by a shareholder or member to pay an assessment.

(i) It otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the members, the directors, and the corporation, or among any of the shareholders, members, or directors, and is not contrary to public policy.

(2) An agreement that is authorized under this section shall meet both of the following requirements:

(a) It is included in either of the following:

(i) A provision of the articles of incorporation or bylaws that is approved by all members or shareholders or all directors of a corporation that is organized on a directorship basis at the time of the agreement.

(ii) A written agreement that is signed by all members or shareholders or all directors of a corporation that is organized on a directorship basis at the time of the agreement and that is disclosed to the corporation.

(b) Is subject to amendment only by all members or shareholders or by all directors of a corporation that is organized on a directorship basis at the time of the amendment, unless the agreement provides otherwise or the amendment involves a provision of the articles of incorporation described in section 209(1)(f).

(3) A corporation shall conspicuously note the existence of an agreement authorized under this section on the face or back of any certificate of membership or for shares issued by the corporation or on the information statement required under section 336. If at the time of the agreement the corporation has memberships or shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. A failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken under the agreement.

(4) Any person that becomes a member of a corporation organized on a membership basis, a shareholder of a corporation organized on a stock basis, or a director of a corporation organized on a directorship basis and did not have knowledge of the existence of an agreement authorized under this section at the time the person became a member, shareholder, or director, may elect to resign as a member, shareholder, or director, may elect to rescind the transfer of any membership or shares, or may elect to maintain an action to terminate the agreement. For purposes of this subsection, a person is considered to have knowledge of an agreement authorized under this section if at the time the person becomes a member, shareholder, or director, the agreement is included in the articles of incorporation or bylaws, the agreement's existence is noted on the certificate or information statement provided under subsection (3), or a copy or a written summary of the agreement is furnished to the person before the person becomes a member, shareholder, or director. A person must commence an action to enforce a right of

rescission or to terminate the agreement within 90 days after discovery of the existence of the agreement or 2 years after the person becomes a shareholder, member, or director, whichever is earlier. In an action or suit to terminate the agreement, the court in which the action is brought shall terminate the agreement if the court determines that the agreement is materially inconsistent with or detrimental to carrying out the purposes of the corporation, materially impairs rights or interests the person that brought the action or suit would reasonably have expected to have acquired in becoming a member, shareholder, or director, or is inconsistent with 1 or more of the limitations under subsection (11).

(5) If an agreement authorized in this section ceases to be effective for any reason and is contained or referred to in the corporation's articles of incorporation or bylaws, the board may without shareholder or member action adopt an amendment to the articles of incorporation or bylaws to delete the agreement and any references to it.

(6) An agreement authorized under this section that limits the discretion or powers of the board shall relieve the directors of, and impose on the person or persons in which the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement. The person or persons in which the discretion or powers are vested are treated as a director or directors for purposes of any indemnification and any limitation on liability under section 209.

(7) The existence or performance of an agreement authorized under this section is not grounds for imposing personal liability on any member, shareholder, or other person for the acts or debts of the corporation or for treating the corporation as if it were a partnership or unincorporated entity, even if the agreement or its performance results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(8) Filing a certificate of dissolution under section 805 is required to implement a dissolution under an agreement authorized under subsection (1)(g).

(9) Incorporators or subscribers for memberships or shares may act as members or shareholders with respect to an agreement authorized under this section if the corporation has not issued memberships or shares at the time the agreement is made.

(10) A failure to satisfy the unanimity requirement of subsection (2) with respect to an agreement authorized under this section does not invalidate any agreement or any provision of the articles of incorporation or bylaws that would otherwise be valid.

(11) An agreement under this section is not effective to do any of the following:

(a) To authorize distributions that are not permitted under section 301.

(b) To allow property that is held for charitable or other public purposes to be used for private benefit, through the payment or excessive compensation for goods or services, or in any other manner.

(c) To allow the use of corporate property in a manner that is materially inconsistent with the purposes of the corporation or a valid restriction imposed by donors.

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