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1 A bill to be entitled
2 An act relating to notice of corporate dissolution;
3 amending s. 607.1406, F.S.; requiring a notice of
4 corporate dissolution to be published; providing
5 publication requirements; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 607.1406, Florida Statutes, is amended
10 to read:

11 607.1406 Claims against dissolved corporation.--

12 (1) A dissolved corporation or successor entity, as
13 defined in subsection (16)~~(15)~~, may dispose of the known claims
14 against it by following the procedures described in subsections
15 (2), (3), and (4).

16 (2) The dissolved corporation or successor entity shall
17 deliver to each of its known claimants written notice of the
18 dissolution at any time after its effective date. The written
19 notice shall:

20 (a) Provide a reasonable description of the claim that the
21 claimant may be entitled to assert;

22 (b) State whether the claim is admitted or not admitted,
23 in whole or in part, and, if admitted:

24 1. The amount that is admitted, which may be as of a given
25 date; and

26 2. Any interest obligation if fixed by an instrument of
27 indebtedness;

28 (c) Provide a mailing address where a claim may be sent;

29 (d) State the deadline, which may not be fewer than 120
30 days after the effective date of the written notice, by which



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31 confirmation of the claim must be delivered to the dissolved
32 corporation or successor entity;

33 (e) State that the corporation or successor entity may
34 make distributions thereafter to other claimants and the
35 corporation's shareholders or persons interested as having been
36 such without further notice.

37 (3) A dissolved corporation or successor entity may
38 reject, in whole or in part, any claim made by a claimant
39 pursuant to this subsection by mailing notice of such rejection
40 to the claimant within 90 days after receipt of such claim and,
41 in all events, at least 150 days before expiration of 3 years
42 following the effective date of dissolution. A notice sent by
43 the dissolved corporation or successor entity pursuant to this
44 subsection shall be accompanied by a copy of this section.

45 (4) A dissolved corporation or successor entity electing
46 to follow the procedures described in subsections (2) and (3)
47 shall also give notice of the dissolution of the corporation to
48 persons with claims contingent upon the occurrence or
49 nonoccurrence of future events or otherwise conditional or
50 unmatured, and request that such persons present such claims in
51 accordance with the terms of such notice. Such notice shall be
52 in substantially the form, and sent in the same manner, as
53 described in subsection (2).

54 (5) A dissolved corporation or successor entity shall
55 offer any claimant whose claim is contingent, conditional, or
56 unmatured such security as the corporation or such entity
57 determines is sufficient to provide compensation to the claimant
58 if the claim matures. The dissolved corporation or successor
59 entity shall deliver such offer to the claimant within 90 days
60 after receipt of such claim and, in all events, at least 150



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61 days before expiration of 3 years following the effective date
62 of dissolution. If the claimant offered such security does not
63 deliver in writing to the dissolved corporation or successor
64 entity a notice rejecting the offer within 120 days after
65 receipt of such offer for security, the claimant is deemed to
66 have accepted such security as the sole source from which to
67 satisfy his or her claim against the corporation.

68 (6) A dissolved corporation or successor entity which has
69 given notice in accordance with subsections (2) and (4) shall
70 petition the circuit court in the county where the corporation's
71 principal office is located or was located at the effective date
72 of dissolution to determine the amount and form of security that
73 will be sufficient to provide compensation to any claimant who
74 has rejected the offer for security made pursuant to subsection
75 (5).

76 (7) A dissolved corporation or successor entity which has
77 given notice in accordance with subsection (2) shall petition
78 the circuit court in the county where the corporation's
79 principal office is located or was located at the effective date
80 of dissolution to determine the amount and form of security
81 which will be sufficient to provide compensation to claimants
82 whose claims are known to the corporation or successor entity
83 but whose identities are unknown. The court shall appoint a
84 guardian ad litem to represent all claimants whose identities
85 are unknown in any proceeding brought under this subsection. The
86 reasonable fees and expenses of such guardian, including all
87 reasonable expert witness fees, shall be paid by the petitioner
88 in such proceeding.

89 (8) Any corporation dissolving pursuant to this section
90 shall, within 10 days of adopting the articles of dissolution,



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91 publish a "Notice of Corporate Dissolution." The notice shall
92 appear once a week for 2 consecutive weeks in a newspaper of
93 general circulation in any county in the state wherein the
94 corporation owns real or personal property. Such newspaper shall
95 meet the requirements as are prescribed by law for such
96 purposes. The notice shall contain:

97 (a) The name of the corporation.

98 (b) The date the dissolution was authorized and the
99 effective date of the dissolution.

100 (c) The name and mailing address of the person to notify
101 to make a claim against the corporation.

102 (d) The deadline for notifying the corporation of the
103 claim made. This deadline may not be less than 120 days after
104 the date that the notice was first published.

105
106 Nothing in this subsection shall preclude or relieve the
107 corporation from its notification to claimants otherwise set
108 forth in this section.

109 ~~(9)(8)~~ The giving of any notice or making of any offer
110 pursuant to the provisions of this section shall not revive any
111 claim then barred or constitute acknowledgment by the dissolved
112 corporation or successor entity that any person to whom such
113 notice is sent is a proper claimant and shall not operate as a
114 waiver of any defense or counterclaim in respect of any claim
115 asserted by any person to whom such notice is sent.

116 ~~(10)(9)~~ A dissolved corporation or successor entity which
117 has followed the procedures described in subsections (2)-(7):

118 (a) Shall pay the claims admitted or made and not rejected
119 in accordance with subsection (3);



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120 (b) Shall post the security offered and not rejected
121 pursuant to subsection (5);

122 (c) Shall post any security ordered by the circuit court
123 in any proceeding under subsections (6) and (7); and

124 (d) Shall pay or make provision for all other obligations
125 of the corporation or such successor entity.

126

127 Such claims or obligations shall be paid in full, and any such
128 provision for payments shall be made in full if there are
129 sufficient funds. If there are insufficient funds, such claims
130 and obligations shall be paid or provided for according to their
131 priority and, among claims of equal priority, ratably to the
132 extent of funds legally available therefor. Any remaining funds
133 shall be distributed to the shareholders of the dissolved
134 corporation; however, such distribution may not be made before
135 the expiration of 150 days from the date of the last notice of
136 rejections given pursuant to subsection (3). In the absence of
137 actual fraud, the judgment of the directors of the dissolved
138 corporation or the governing persons of such successor entity as
139 to the provisions made for the payment of all obligations under
140 paragraph (d) is conclusive.

141 (11)~~(10)~~ A dissolved corporation or successor entity which
142 has not followed the procedures described in subsections (2) and
143 (3) shall pay or make reasonable provision to pay all claims and
144 obligations, including all contingent, conditional, or unmatured
145 claims known to the corporation or such successor entity and all
146 claims which are known to the dissolved corporation or such
147 successor entity but for which the identity of the claimant is
148 unknown. Such claims shall be paid in full, and any such
149 provision for payment made shall be made in full if there are



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150 sufficient funds. If there are insufficient funds, such claims
151 and obligations shall be paid or provided for according to their
152 priority and, among claims of equal priority, ratably to the
153 extent of funds legally available therefor. Any remaining funds
154 shall be distributed to the shareholders of the dissolved
155 corporation.

156 ~~(12)~~~~(11)~~ Directors of a dissolved corporation or governing
157 persons of a successor entity which has complied with subsection
158 ~~(10)~~~~(9)~~ or subsection ~~(11)~~~~(10)~~ are not personally liable to the
159 claimants of the dissolved corporation.

160 ~~(13)~~~~(12)~~ A shareholder of a dissolved corporation the
161 assets of which were distributed pursuant to subsection ~~(10)~~~~(9)~~
162 or subsection ~~(11)~~~~(10)~~ is not liable for any claim against the
163 corporation in an amount in excess of such shareholder's pro
164 rata share of the claim or the amount distributed to the
165 shareholder, whichever is less.

166 ~~(14)~~~~(13)~~ A shareholder of a dissolved corporation, the
167 assets of which were distributed pursuant to subsection ~~(10)~~~~(9)~~
168 is not liable for any claim against the corporation on which a
169 proceeding is not begun prior to the expiration of 3 years
170 following the effective date of dissolution.

171 ~~(15)~~~~(14)~~ The aggregate liability of any shareholder of a
172 dissolved corporation for claims against the dissolved
173 corporation may not exceed the amount distributed to the
174 shareholder in dissolution.

175 ~~(16)~~~~(15)~~ As used in this section, the term "successor
176 entity" includes any trust, receivership, or other legal entity
177 governed by the laws of this state to which the remaining assets
178 and liabilities of a dissolved corporation are transferred and
179 which exists solely for the purposes of prosecuting and



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180 defending suits by or against the dissolved corporation,
181 enabling the dissolved corporation to settle and close the
182 business of the dissolved corporation, to dispose of and convey
183 the property of the dissolved corporation, to discharge the
184 liabilities of the dissolved corporation, and to distribute to
185 the dissolved corporation's shareholders any remaining assets,
186 but not for the purpose of continuing the business for which the
187 dissolved corporation was organized.

188 Section 2. This act shall take effect July 1, 2003.