

**18 GCA BUSINESS STRUCTURES & FUNCTION**  
**CH. 3 CORPORATE STOCK**

**CHAPTER 3**  
**CORPORATE STOCK**

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**ARTICLE 1**  
**STOCK & STOCKHOLDERS**

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**§ 3101. Division of Stock into Shares.**

Transfer of Personal Property. The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or clerk and sealed with the seal of the corporation, shall be issued in accordance with the bylaws. Shares of stock so issued are personal and may be transferred by delivery of the certificate endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.

**SOURCE:** CC § 323.

**§ 3102. Interest on Unpaid Subscriptions. Issue of Certificates.**

**Votes.** Subscribers for stock shall pay to the corporation quarterly, on all unpaid subscriptions, interest from the date of subscription at the rate of

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six (6) percentum per annum unless otherwise provided in the bylaws. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof has been paid by him to the corporation. Subscribed shares not fully paid up shall not be voted, and shares which have been pledged to the corporation as security for the payment of debt shall not be voted; provided, that shares paid for by note or other evidence of indebtedness shall not be considered fully paid up.

**SOURCE:** CC § 324; amended by P.L. 4-88 (7/14/58).

**§ 3103. Married Women Ownership, Powers.**

Shares of stocks in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a feme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband.

**SOURCE:** CC § 325.

**CROSS-REFERENCES:** See 19 GCA Chapter 6 for Guam's current *Community Property* law.

**§ 3104. Nonresident. Transferred Generally.**

When the shares of stock in a corporation are owned by parties residing out of Guam, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two (2) sureties, satisfactory to the officer of the corporation; or, if not so satisfactory, then one approved by a judge of the Superior Court, conditioned to protect the corporation against any liability to the legal representative of the owner of the shares in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

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**SOURCE:** CC § 326.

**§ 3105. Notices to Stockholders.**

All notices to stockholders in Guam shall be written or printed and delivered personally to each stockholder, unless otherwise provided in this Part, at least ten (10) days prior to any meeting or other action to which the notice applies. Service of said notices may be proved prima facie by the affidavit of the person serving the notice.

All notices to stockholders, absent from Guam, shall be written or printed and addressed to each stockholder at his place of residence as shown by the books of the corporation and registered and deposited so addressed in the post office with postage prepaid.

Service of said notices may be proved prima facie by the registered post office receipt. Unless all stockholders are served personally with any notice, copies thereof shall be posted in three (3) public places in the place where the principal office of the corporation is located, for a period of three (3) weeks prior to any meeting or other action to which the notice applies.

**SOURCE:** CC § 327.

**NOTE:** CC § 328, *Offer of stock to the public. Publication of financial statement required: penalty*, was repealed by P.L. 4-103, effective November 15, 1958. For current law regarding public sale of shares, see the Securities Law, now in the Government Code and which will be placed in Title 20, *Business Regulation*, of this Guam Code Annotated.

**§ 3106. Obligation of Corporation to Issue Fraction or Evidence of fraction of Share or to Permit or Recognize Transfers of Less than Whole Shares.**

In the absence of a contrary provision in the articles or bylaws, a corporation shall not be obligated (a) to issue either a fraction of a share or a scrip or other certificate evidencing such fraction if the corporation shall in lieu thereof pay to the person who would otherwise be entitled to such fraction the fair value thereof as determined by the Board of Directors, or (b) to permit or recognize transfers of less than a whole share if the corporation shall agree to purchase such fraction at the fair value thereof as determined by the Board of Directors. Such determination of fair value shall be conclusive in the absence of fraud.

**SOURCE:** CC § 328 added by P.L. 14-47:3 (7/7/77).

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**ARTICLE 2**  
**ASSESSMENT OF STOCK**

- § 3201. Directors may Levy.
- § 3202. Assessment Order. Limitation.
- § 3203. Notice of Order, Form.
- § 3204. Notice, How Served.
- § 3205. Notice of Delinquency and Sale. Form of.
- § 3206. Publication of Delinquent Notice.
- § 3207. Jurisdiction to Sell Delinquent Shares.
- § 3208. Extension of Time.
- § 3209. Time, Place and Method of Sale.
- § 3210. Legal Title.
- § 3211. Stock Recovery. Conditions Precedent.
- § 3212. Publication, Proof of. Affidavit.
- § 3213. Unpaid Subscriptions, Action to Collect.
- § 3214. Delinquent Stock. Nonvoting.

**§ 3201. Directors may Levy.**

The board of directors or trustees of any stock corporation formed, organized, or existing under this Part may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscriptions as it may deem necessary.

**SOURCE:** CC § 331.

**§ 3202. Assessment Order. Limitation.**

The order of the board of directors declaring payable any unpaid subscriptions to the capital stock shall state what percentage of the unpaid subscription is due and payable when, where, and to whom payable, the date of delinquency, which must be subsequent to the full term of publication of the notice of call for unpaid subscriptions and not less than thirty (30) days nor more than sixty (60) days from the date of the order of the board calling for the payment of unpaid subscriptions, and the date on which the delinquent stock will be sold, which must not be less than fifteen (15) days nor more than sixty (60) days from the date the stock becomes delinquent.

**SOURCE:** CC § 332.

**§ 3203. Notice of Order, Form.**

Notice of the order declaring unpaid subscriptions to the capital stock due and payable shall be given by the secretary or clerk of the corporation substantially in the following form:

(Here insert name of corporation in full and location of principal office.)

Notice is hereby given that a meeting of the board of directors held on the \_\_\_\_\_ (date) \_\_\_\_\_ unpaid subscription to the capital stock of the corporation (or the percentage thereof declared due) were declared due and payable \_\_\_\_\_ (insert when, to whom and where) \_\_\_\_\_. All stock upon which the subscription, with interest accrued, has not been paid on \_\_\_\_\_ (date fixed for delinquency) \_\_\_\_\_ will be delinquent and advertised for sale at public auction, and unless payment of the subscriptions, with interest and costs accrued, is made before sale of the stock, same will be sold on the \_\_\_\_\_ (date fixed for sale) \_\_\_\_\_ to pay the amount of the subscription and accrued interest, together with the costs of advertising and expenses of sale.

\_\_\_\_\_  
[secretary or clerk]

\_\_\_\_\_  
[location of office]

SOURCE: CC § 333.

**§ 3204. Notice, How Served.**

Notice of the call for unpaid subscriptions must be served personally upon each stockholder resident in Guam. If absent from Guam such notice must be served upon each stockholder by depositing the notice in the post office, registered mail, postage prepaid, properly addressed to him at his place of residence as shown by the books of the corporation. The notice must also be posted for a period of three (3) weeks in three (3) public places at the place where the principal office of the corporation is located.

SOURCE: CC § 334.

CROSS-REFERENCES: See 1 GCA § 717 relative to mailing requirements.

**§ 3205. Notice of Delinquency and Sale. Form of.**

If the whole or any part of the subscription on unpaid capital stock with interest accrued is unpaid on the date of delinquency, such unpaid stock

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becomes subject to sale, and the secretary or clerk, unless otherwise ordered by the board of directors, must give notice of delinquency and sale substantially in the following form.

(Here insert name of the corporation in full and location of principal office.)

NOTICE

The following described stock is delinquent for nonpayment of the unpaid subscription thereon, with interest accrued, due and payable on the \_\_\_\_ (date) \_\_\_\_, in the amounts set opposite the names of the respective shareholders, as follows: \_\_\_\_\_ (insert names, number of each certificate unpaid, number of shares, amount due on unpaid subscription, date from which interest is accrued) \_\_\_\_\_.

Now, therefore, in accordance with law, so many shares of said stock belonging to the several owners as may be necessary will be sold at \_\_\_\_ (principal office of the corporation) \_\_\_\_ on the \_\_\_\_ (date) \_\_\_\_ at \_\_\_\_ (hour) \_\_\_\_ of said day, to pay the amount of the unpaid subscription thereon, together with interest, cost of advertising, and expenses of sale.

\_\_\_\_\_  
secretary or clerk

\_\_\_\_\_  
location of office

**SOURCE:** CC § 335.

**§ 3206. Publication of Delinquent Notice.**

Notices of delinquency and sale of stock must be served and publicly posted as provided in § 3105 of this Part.

**SOURCE:** CC § 335a.

**§ 3207. Jurisdiction to Sell Delinquent Shares.**

From and after the publication of the notices of delinquency and sale of stock for unpaid subscriptions, the corporation acquires jurisdiction to sell and convey all of the stock described in the notices of sale, but the corporation must sell no more of the stock mentioned in the notices than is necessary to pay the amount of the subscription due, with interest accrued, and the expenses of advertising and the costs of sale.

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**SOURCE:** CC § 335b.

**§ 3208. Extension of Time.**

The dates fixed, in any call for unpaid subscription or in any notice of delinquency and sale of stock for unpaid subscription, published according to the provisions of this Chapter, may be extended from time to time for a period of not more than thirty (30) days, by order of the board of directors entered upon the records of the corporation, but no order extending the time for the performance of any act specified in such notice is effectual unless the notice of such extension or postponement is appended to the notice to which the order relates, and is thereafter published with the notice.

**SOURCE:** CC § 335c.

**§ 3209. Time, Place and Method of Sale.**

(1) On the day and the place and hour of sale specified in the notices of delinquency and sale of stock for unpaid subscription, the secretary or clerk shall, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder, for cash, so many shares of the stock described in the notice as may be necessary to pay the amount due on the subscription, with interest accrued, expenses of advertising, and the costs of sale.

(2) The person offering at such sale to pay the unpaid subscription, with interest accrued, together with expenses of advertising and costs of sale, for the smallest number of shares or fraction of a share, shall be the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the amount due on the unpaid subscription, together with the expense of advertising and costs of sale.

If at the sale of the stock for unpaid subscription no bidder offers to pay the amount due with the expenses of advertising and costs of sale, the same may be bid in by the corporation, through the secretary or clerk or president or any shareholder thereof, and the amount of subscription due, together with the expenses of advertising and costs of sale, shall be credited as paid in full on the books of the corporation and entry of the transfer of the stocks to the corporation made.

**SOURCE:** CC § 336.

**§ 3210. Legal Title.**

The legal title to all stock purchased by the corporation at sales of stock for unpaid subscription is vested in the corporation, and the stock so purchased may be disposed of by the stockholders in accordance with law and the bylaws of the corporation by majority vote of all the remaining shares.

**SOURCE:** CC § 337.

**§ 3211. Stock Recovery. Conditions Precedent.**

No action can be sustained to recover stock sold for delinquent unpaid subscription upon the ground of irregularity or defect in the calls for such unpaid subscription, or irregularity or defect in the notice of delinquency and sale, or in the sale itself of stock for unpaid subscription, unless the party seeking to maintain such action first pays or tenders to the party holding the stock the sum for which the same was sold, together with all subsequent calls which may have been paid upon the stock so sold, with interest from the date of payment at the rate of seven (7) per centum, and no such action shall be maintained unless it is commenced by the filing of a complaint and the issuance of summons within six (6) months from date of sale.

**SOURCE:** CC § 338.

**§ 3212. Publication, Proof of. Affidavit.**

The posting of the notices of call for unpaid subscriptions and notices of delinquency and sale of stock for unpaid subscriptions may be proved prima facie by affidavit of the secretary or clerk or other officer of the corporation, and the publication of such notices may be proved to the same extent by the affidavit of persons posting such notices. The time and place of sale of the stock, the quantity of the stock sold, its particular description, the person to whom the stock was sold, the price for which it was sold, and the amount of the purchase money paid may be proved prima facie by the affidavit of the auctioneer or of the secretary or clerk or of the treasurer of the corporation.

The affidavits mentioned in this section must be filed in the office of the corporation, and copies thereof, certified to be true and correct by the secretary of the corporation, may be received by the courts and others as prima facie evidence of the facts therein stated.

**SOURCE:** CC § 339.

**§ 3213. Unpaid Subscriptions, Action to Collect.**



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Nothing in this Part shall prevent the directors from collecting, by action in any court of proper jurisdiction, the amount due on any unpaid subscription, together with accrued interest and costs and expenses incurred.

**SOURCE:** CC § 340.

**§ 3214. Delinquent Stock. Nonvoting.**

No stock delinquent for unpaid subscription shall be voted or entitled to a vote or representation at any stockholders' or directors' meeting, or for any corporate purpose whatever.

**SOURCE:** CC § 341.

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**ARTICLE 3**  
**RIGHT TO DISSENT AND OBTAIN PAYMENT FOR SHARES**

**SOURCE:** This article added by P.L. 28-180:7 (Jan. 29, 2007).

§ 3301. Definitions.

§ 3302. Right to Dissent.

§ 3303. Dissent by Nominees and Beneficial Owners.

**§3301. Definitions.**

In this Chapter:

(a) “Beneficial stockholder” means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record stockholder.

(b) “Corporation” means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(c) “Dissenter” means a stockholder who is entitled to dissent from a corporate action under § 3302 and who exercises that right when and in the manner required by §§ 3401 through 3409 of this Chapter.

(d) “Fair value,” with respect to a dissenter’s shares, means the value of the shares immediately before effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action.

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(e) “Interest” means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if there are no loans, at a rate that is fair and equitable under all the circumstances.

(f) “Record stockholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(g) “Stockholder” means the record stockholder or the beneficial stockholder.

**§ 3302. Right to Dissent.**

(a) A stockholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(A) If stockholder approval is required for the merger by 18 GCA § 9103 or the Articles of Incorporation and the stockholder is entitled to vote on the merger; or

(B) If the corporation is a subsidiary that is merged with its parent under 18 GCA § 9104;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the stockholder is entitled to vote on the plan;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business *if* the stockholder is entitled to vote in the sale or exchange, including a sale in dissolution, but *not* including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the stockholders within one (1) year after the date of sale;

(4) An amendment of the Articles of Incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

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(A) Alters or abolishes a preferential right of the shares;

(B) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(E) Reduces the number of shares owned by the stockholder to a fraction of a share if the fractional share so created is to be acquired for cash under § 3106 of this Chapter; or

(5) Any corporate action taken pursuant to a stockholder vote to the extent the Articles of Incorporation, Bylaws, or a Resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

(b) A stockholder entitled to dissent and obtain payment for his shares under this Chapter may *not* challenge the corporate action creating his entitlement *unless* said action is unlawful or fraudulent with respect to the stockholder or the corporation.

**§ 3303. Dissent by Nominees and Beneficial Owners.**

(a) A record stockholder may assert the dissenter's right as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by anyone (1) person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this Subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different stockholders.

(b) A beneficial stockholder may assert dissenters' rights as to shares held on his behalf only if.

(1) He submits to the corporation the record stockholder's written consent to the dissent not later than the time the beneficial stockholder asserts dissenters' rights; and

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(2) He does so with respect to all shares of which he is the beneficial stockholder or over which he has power to direct the vote.

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**ARTICLE 4**  
**PROCEDURE FOR EXERCISE OF DISSENTERS' RIGHTS**

**SOURCE:** This article added by P.L. 28-180:8 (January 29, 2007).

- § 3401. Notice of Dissenters' Rights.
- § 3402. Notice of Intent to Demand Payment.
- § 3403. Dissenters' Notice.
- § 3404. Duty to Demand Payment.
- § 3405. Share Restrictions.
- § 3406. Payment.
- § 3407. Failure to Take Action.
- § 3408. After-Acquired Shares.
- § 3409. Procedure if Stockholder Dissatisfied with Payment of Offer.

**§ 3401. Notice of Dissenters' Rights.**

(a) If proposed corporate action creating dissenters' rights under § 3302 is submitted to a vote at a stockholders' meeting, the meeting notice must state that stockholders are or may be entitled to assert dissenters' rights under Articles 3 and 4 of this Chapter and be accompanied by a copy of §§ 3301 through 3502 of this Chapter.

(b) If corporate action creating dissenters' rights under § 3302 is taken without a vote of the stockholders, the corporation shall notify in writing all stockholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' rights notice described in §3403 of this Article.

**§ 3402. Notice of Intent to Demand Payment.**

(a) If proposed corporate action creating dissenters' rights under § 3302 of this Chapter is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenters' rights:

(l) Must deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

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(2) Must *not* vote his shares in favor of the proposed action.

(b) A stockholder who does *not* satisfy the requirements of Subsection (a) of this Section is *not* entitled to payment for his shares under Articles 3 and 4 of this Chapter.

**§ 3403. Dissenters' Notice.**

(a) If proposed corporate action creating dissenters' rights under § 3302 of this Chapter is authorized at a stockholders' meeting, the corporation shall deliver a written dissenters' notice to all stockholders who satisfied the requirements of § 3402 of this Article.

(b) The dissenters' notice must be sent *no later than* ten (10) days after the corporate action was taken, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment that includes the date of the first announcement to news media or to stockholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;

(4) Set a date by which the corporation must receive the payment demand, which date may *not* be fewer than thirty (30) *nor more than* sixty (60) days after the date the Subsection (a) notice is delivered; and

(5) Be accompanied by a copy of §§ 3301 through 3502 of this Chapter.

**§ 3404. Duty to Demand Payment.**

(a) A stockholder sent a dissenters' notice described in § 3403 of this Article must demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to § 3403 (b) (3), and deposit his certificates in accordance with the terms of the notice.

(b) The stockholder who demands payment and deposits his shares under Subsection (a) of this Section retains all other rights of a stockholder *until* their rights are canceled or modified by the taking of the proposed

corporate action.

(c) A stockholder who does *not* demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is *not* entitled to payment for his shares under Articles 3 and 4 of this Chapter.

**§ 3405. Share Restrictions.**

(a) The corporation may restrict the transfer of un certificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under § 3407 of this Article.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a stockholder until these rights are canceled or modified by the taking of the proposed corporate action.

**§ 3406. Payment.**

(a) Except as provided in § 3408 of this Article, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with §3404 the amount the corporation estimates to be the fair value of his shares, plus interest, in cash.

(b) The payment must be accompanied by:

(1) The corporation's balance sheet as of the end of a fiscal year ending *not more than* sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in stockholders' equity for that year and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under § 3409; and

(5) A copy of §§ 3301 through 3502 of this Chapter.

**§ 3407. Failure to Take Action.**

(a) If the corporation does *not* take the proposed action within sixty

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(60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If, after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under § 3403 of this Article and repeat the payment demand procedure.

**§ 3408. After-Acquired Shares.**

A dissenter who was *not* the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to stockholders of the terms of the proposed corporate action waives his right to demand payment with respect to such shares under § 3301 through § 3502 of this Chapter, unless the plan of merger or share exchange expressly provides for such payment.

**§ 3409. Procedure if Stockholder Dissatisfied with Payment of Offer.**

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate less any payment under §3406 of this Article, or reject the corporation's offer under § 3408 and demand payment of the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount paid under § 3406 or offered under § 3408 is *less than* the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under § 3406 within sixty (60) days after the date set for demanding payment; or

(3) The corporation, having failed to take the proposed action, does *not* return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this Section unless he notifies the corporation of his demand in writing under Subsection (a) of this Section within thirty (30) days after the corporation made or offered payment for his shares.

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ARTICLE 5  
JUDICIAL APPRAISAL OF SHARES

SOURCE: This article added by P.L. 28-180:9 (January 29, 2007).

§ 3501. Court Action.

§ 3502. Court Costs and Counsel Fees.

**§ 3501. Court Action.**

(a) If a demand for payment under § 3409 of this Chapter remains unsettled, the corporation shall petition the Superior Court within sixty (60) days after receiving the payment demand to determine the fair value of the shares and accrued interest. If the corporation does *not* commence said proceeding within the sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall make all dissenters, whether or not residents of Guam, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(c) The jurisdiction of the Superior Court is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(d) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation; or

(2) For the fair value, elected to withhold payment under § 3408 of this Chapter.

**§ 3502. Court Costs and Counsel Fees.**

(a) The court in an appraisal proceeding commenced under § 3501 shall determine all costs of the proceeding, including the reasonable



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compensation and expenses of appraisers appointed by the court. The Court shall assess the costs against the corporation, except that the Court may assess costs against all or some of the dissenters, in amounts the Court finds equitable, to the extent the Court finds the dissenters acted arbitrarily, vexatiously, or in bad faith in demanding payment under § 3409 of this Chapter.

(b) The Court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the Court finds equitable:

(1) Against the corporation and in favor of any or all dissenters *if* the Court finds the corporation did *not* substantially comply with the requirements of § 3401 through § 3409 of this Chapter; and

(2) Against either the corporation or a dissenter in favor of any other party, *if* the Court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or in bad faith with respect to the rights provided by this Chapter.

(c) If the Court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should *not* be assessed against the corporation, the Court may award to said counsel reasonable fees to be paid out of the amount awarded the dissenters who were benefited.

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