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Corporations

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mortgages upon leasehold estates in improved property, only a few of which will be noted here. The leasehold estate no longer has to be an interest in real estate in a city with a population of more than one hundred thousand. The maximum period for such loan upon a leasehold interest in real estate is increased from ten to twenty years. The loan terms must now require payments which will extinguish the debt at least five years prior to the expiration date of the lease, rather than ten years as was formerly required. A loan may not be for more than two-thirds of the value of the leasehold estate and it may be made on a leasehold estate to be improved by a building which is to be constructed with the proceeds of the loan. The maximum amount which a mutual savings bank may invest in real estate contracts and mortgages and mortgages upon leasehold estates is increased from seventy to seventy-five per cent of its funds.⁸

ROBERT L. TAYLOR

CORPORATIONS

Fiduciary Security Transfers. The 1961 legislature added an act with the elaborate title, UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY TRANSFERS, to Washington's catalogue of uniform legislation.¹ The new act repeals and replaces a two-section act adopted in 1947.²

The fundamental purpose of the act is to protect corporations, their transfer agents and other persons concerned with the handling of transfers of corporate securities from the claims of persons challenging the right of a fiduciary to transfer such securities. In the absence of legislation, the corporation and others participating in the transfer of shares are put on inquiry as to the right of a known fiduciary to make the transfer. The result is that the fiduciary has traditionally been required to produce proof establishing his right to transfer. Such proof usually consists of the basic documents establishing the fiduciary relationship, such as wills, trust instruments or court appointments. If these basic documents alone do not completely demonstrate the right to transfer, additional supplementary documents such as record of qualification and special court orders for the particular transaction may be required.

The former Washington statute³ simply provided that there was no duty to inquire into the authority of the fiduciary. The corporation

⁸ Wash. Sess. Laws 1961, ch. 80, § 6.

¹ Wash. Sess. Laws 1961, ch. 150.

² RCW 21.16.010-020.

³ *Ibid.*

and those acting for it would be liable only where they had actual knowledge of a breach of trust or knowledge of such facts as would make their participation amount to bad faith.

In general the 1961 act gives the same protection to the corporation and transfer agents, but it goes into considerably greater detail and sets up some special requirements and procedures. If a fiduciary wants to transfer corporate securities which are *not* registered in the name of the fiduciary, he must produce a certified copy of his court appointment, if any. If not court appointed, the fiduciary must produce a copy of a document showing his appointment or a certificate issued by or on behalf of a "person reasonably believed . . . to be responsible" or in the absence of such a document or certificate, "other evidence reasonably deemed . . . to be appropriate." Corporations and transfer agents are permitted to adopt standards for such evidence provided the standards are "not manifestly unreasonable." The only other affirmative duty imposed on the corporation or transfer agent arises when a written claim is presented by someone claiming adversely to the fiduciary. Thereafter the corporation or transfer agent must notify the adverse claimant of any request made by the fiduciary and must defer transfer for thirty days to give the adverse claimant an opportunity to restrain transfer by court order.

The act contains the usual type of definition section found in uniform acts. The word "fiduciary" is defined by a catalogue of titles that includes essentially every type of person who might hold for the benefit of another person.

One significant specific provision of the act is that it does not affect any obligation of the corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by state law. In appropriate cases, a waiver might be necessary to overcome this provision.

The new act should prove to be a distinct improvement over the brief 1947 act which it replaces. Not only is it more detailed, but its status as a uniform act will make it peculiarly attractive in a field where interstate transactions are the rule rather than the exception.

Merger of Educational, Religious, Benevolent and Charitable Societies. Chapter 110¹ authorizes merger or consolidation of the types of nonprofit corporations which may be formed under RCW 24.08, one of several Washington acts authorizing organization of different types

¹ Wash. Sess. Laws 1961, ch. 110.

of nonprofit corporations. It is a fair observation that all of these statutes are inadequate, some more so than others. The lawyer attempting to advise a client concerning problems in the nonprofit corporation area is frequently troubled by the meagerness of the statutes. Further, there is so little litigation in this area that the gaps are not filled by judicial interpretation of the statute. As a consequence there is some inclination to solve particular problems by getting the legislature to amend or add to the statute. Chapter 110 doubtless originated in some such way. The mere addition of the quite technical and detailed provisions concerning merger and consolidation could hardly have occurred to someone seeking to improve the statute from an abstract point of view.

Basically chapter 110 follows the merger and consolidation provisions of the business corporation statute.² It was necessary to adapt the latter statute in some particulars. Since neither directors nor shareholders exist in nonprofit corporations, the requirement of approval by such groups has been eliminated. The combination is predicated simply upon a "joint agreement" signed by the presidents and secretaries of the constituent corporations. Such officers must also certify that they are authorized to sign the agreement. Upon proper filing of the documents the combination becomes complete.

The new act will be of limited interest. It applies only to the types of corporations which can be formed under RCW 24.08. Its impact on the nonprofit corporations actually formed under other acts found in Title 24, RCW, is at best doubtful even though such corporations in many instances might have been formed under RCW 24.08. Probably the greatest significance of the statute is that it again calls to attention the helter-skelter, inadequate character of the maze of nonprofit corporation statutes in Washington. A comprehensive revision of these statutes is overdue. The MODEL NON-PROFIT CORPORATION ACT prepared by the Committee on Corporate Laws and the Committee on Non-Profit Associations of the American Bar Association should be considered as the prime possibility.

Restatement of Articles of Incorporation. After amendment of a corporation's articles of incorporation, the new articles consist of the original articles plus the amended articles. If, as is often the case, a number of amendments are adopted over a period of years, the effective articles consist of several successive documents. The expense of ob-

² RCW 23.01.460-500.

taining certified copies and the inconvenience involved in piecing the several documents together often make it desirable to restate the original articles and the amendments in the form of a single consolidated document. It is always possible to produce a single document for internal use by the corporation, but in the absence of enabling legislation the articles in the legal sense continue to be the collective documents. Consequently when the articles must be proved for any formal purpose, an informal composite document will be technically insufficient.

A possible alternative is to combine all past amendments with the original articles and adopt the consolidated articles as a single amendment. Even when this is done, however, the technical argument can be made that the articles still consist of the original articles plus all amendments including the final one. In order to eliminate this sort of fruitless debate and effort, the Washington legislature has enacted chapter 208,¹ which permits the filing of "restated" articles of incorporation. Similar provisions have already been adopted in several other states.

The new act authorizes the board of directors of a domestic corporation to take the necessary action to bring the original articles plus previously adopted amendments into a single document to be known as "Restated Articles of Incorporation." These restated articles are prepared in triplicate, authenticated by the officers as provided in the statute and delivered to the secretary of state. The secretary of state upon finding that the restated articles conform to law, proceeds in essentially the same manner as upon original incorporation by endorsing his approval on each of the three triplicate originals, filing one in his office and returning the other two to the corporation. The corporation in turn keeps one approved copy for its files and files the other copy in the office of the county auditor of the county in which its registered office is located. Thereafter the restated articles supersede the original articles and amendments thereto.

The statute cannot be used as a device to amend the articles. The procedure permits only a restatement of the articles as they then stand except that the restated articles shall set forth the names and addresses of directors in office at the time of the restatement rather than the time of original incorporation, and the names, addresses and number of shares subscribed by the original incorporators may be omitted.

The statute further contains a special provision under which a foreign corporation qualifying to do business in Washington may file re-

¹ Wash. Sess. Laws 1961, ch. 208.

stated articles permitted by the law of its domicile rather than original articles and amendments thereto as previously required.

The statute undoubtedly will prove to be very convenient and an effective time saver.

Shareholders' Consent in Lieu of Meeting. Chapter 160¹ permits effective shareholder action to be taken by unanimous written consent in all situations in which the law previously required a meeting and formal vote. Anyone acquainted with the practice in closely-held corporations is aware that a formal meeting is often useless and frequently fictional. The statute validates what, in effect at least, has been a general practice.

The statute probably is not broad enough to make a meeting unnecessary where the shareholders are divided but the result is inevitable. In such a case, the minority shareholders may wish to record an objection but will recognize the futility of attempting to persuade the majority at a meeting. The statute as drawn, however, refers to "consent" and this relates to "action . . . taken." The statute also gives the same effect to the consent as to "unanimous vote." Thus, while it might have been possible to have drawn a statute broadly enough to permit majority action while preserving minority dissent, the statute is cast more narrowly.

The statute does not apply to meetings of directors. While such meetings are also likely to be informal or fictional in closely-held corporations, the same freedom could be dangerous if the directors are not collectively the owners of all of the shares. If they do own all of the shares the statute could realistically cover director action, but in its present form it does not do so.

J. GORDON GOSE

INSURANCE

Credit Life, Accident and Health Insurance. Chapter 219¹ of the 1961 session laws is new. It relates to the regulation of credit life insurance and credit accident and health insurance and becomes a part of the Insurance Code of Washington.

It has long been recognized that a creditor has an insurable interest in the life of his debtor.² RCW 48.18.030(3)(b) defines "insurable

¹ Wash. Sess. Laws 1961, ch. 160.

² Wash. Sess. Laws 1961, ch. 219.

² See *Connecticut Mut. Life Ins. Co. v. Luchs*, 108 U.S. 498, 505 (1883); *Warnock*