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Division of Corporations

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**MERGER OR SHARE EXCHANGE**

Mobix Communications, Inc.

Certificate of Status	0
Certified Copy	1
Page Count	<del>10</del> 21
Estimated Charge	\$78.75

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No. 1662 P. 2/22

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**ARTICLES OF MERGER**

Between

MOBIX COMMUNICATIONS, INC.  
(a Delaware Corporation)

and

MORIX, INC.  
(a Florida Corporation)

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

FILED

The following Articles of Merger (the "Articles") are made and entered into this 12<sup>th</sup> day of May, 2006, by and between Mobix Communications, Inc., a Delaware corporation (the "Surviving Corporation"), and Mobix, Inc., a Florida corporation (the "Merging Corporation"), in accordance with the Florida Business Corporation Act, pursuant to Section 607.1109, F.S.

**FIRST:** The Surviving Corporation is a corporation duly organized and existing under the laws of the State of Delaware, and is located at 1205 Lincoln Road, Suite 216, Miami Beach, Florida 33139.

**SECOND:** The Merging Corporation is a corporation duly organized and existing under the laws of the State of Florida, Document No. P06000002676.

**THIRD:** The Agreement and Plan of Merger (the "Plan") is attached hereto as Exhibit A.

**FOURTH:** The Plan was adopted by the board of directors of the Surviving Corporation on May 12, 2006, and by the shareholders of the Surviving Corporation on May 12, 2006.

**FIFTH:** The Plan was adopted by the board of directors of the Merging Corporation on May 12, 2006, and by the shareholders of the Merging Corporation on May 12, 2006.

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SLXTH: The Surviving Corporation appoints the Secretary of State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the Merging Corporation.

SEVENTH: The Surviving Corporation agrees to promptly pay to the dissenting shareholders of the Merging Corporation the amount, if any, to which they are entitled under Section 607.1302, Florida Statutes.

[Signatures are on the following page.]

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IN WITNESS WHEREOF, the Surviving Corporation and the Merging Corporation, pursuant to the approval and authority duly given by resolutions adopted by their respective Boards of Directors and shareholders, have caused these Articles of Merger to be executed by the President of each party hereto, as of the date first set forth above.

Dated: May 12, 2006

Mobix, Inc.

By:

Jeffrey Wolf  
Jeffrey Wolf

Print Name

Its:

President

Print Title

Dated: May 12, 2006

Mobix Communications, Inc.

By:

Jeffrey Wolf  
Jeffrey Wolf

Print Name

Its:

President

Print Title

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EXHIBIT A

AGREEMENT AND PLAN OF MERGER

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## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of May 12, 2006, between Mobix, Inc., a Florida corporation ("Mobix Florida"), and Mobix Communications, Inc., a Delaware corporation ("Mobix Delaware," collectively with Mobix Florida, the "Companies"). The following Agreement, which was adopted and approved by each party to the merger in accordance with Section 607.1107, is being submitted in accordance with Section 607.1108.

### RECITALS

1. Mobix Delaware is a wholly-owned subsidiary of Mobix Florida which has been duly organized and is existing under the laws of the State of Delaware.
2. Mobix Florida is a corporation duly organized and existing under the laws of the State of Florida having authorized capital stock consisting of 1,000,000 shares of Common Stock ("Mobix Florida Common Stock").
3. The issued and outstanding capital stock of Mobix Florida consists of 750,000 shares of Mobix Florida Common Stock, all of which are entitled to vote on the Merger (as defined below).
4. Mobix Delaware is a corporation duly organized and existing under the laws of the State of Delaware having authorized capital stock consisting of (i) 15,000,000 shares of Common Stock, \$.001 par value ("Mobix Delaware Common Stock"), (ii) 2,000,000 shares of Non-Voting Common Stock, \$.001 par value ("Mobix Delaware Non-Voting Common Stock"), and 10,000,000 shares of Preferred Stock, \$.001 par value per share ("Mobix Delaware Preferred Stock").
5. The issued and outstanding capital stock of Mobix Delaware consists of no shares of Mobix Delaware Preferred Stock, 100 shares of Mobix Delaware Common Stock, and no shares of Mobix Delaware Non-Voting Common Stock.
6. The Companies desire to merge under and pursuant to the applicable provisions of the laws of the State of Florida and the State of Delaware which respective laws permit such a merger.
7. The Board of Directors of each of the Companies have determined that it is in the best interest of each of the Companies to merge and such directors have duly approved and authorized the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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## **I. THE MERGER: EFFECTIVE TIME**

**Section 1.1 The Merger.** Subject to the terms and conditions contained in this Agreement, at the Effective Time (as defined in Section 1.2) Mobix Florida shall be merged with and into Mobix Delaware and the separate corporate existence of Mobix Florida shall thereupon cease (the "Merger"). Mobix Delaware shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and shall continue to be governed by the laws of the State of Delaware, and the separate corporate existence of Mobix Delaware with all its rights, privileges, powers, immunities, purposes and franchises shall continue unaffected by the Merger.

**Section 1.2 Effective Time.** The Merger shall become effective at the time (the "Effective Time") of the filing of the Certificate of Merger in accordance with the Delaware General Corporation Law or the time of the filing of the Articles of Merger in accordance with the Florida Business Corporation Act ("FBCA") whichever shall occur later, or at such later time which the parties hereto shall have agreed upon and designated in such filings as the effective time of the Merger.

## **II. CERTIFICATE OF INCORPORATION AND BYLAWS OF THE SURVIVING CORPORATION**

**Section 2.1 Certificate of Incorporation.** The Certificate of Incorporation of Mobix Delaware, as so amended to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation, until duly amended in accordance with its terms and the Delaware General Corporation Law. The name of the surviving corporation shall remain "Mobix Communications, Inc.".

**Section 2.2 Bylaws.** The Bylaws of Mobix Delaware in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation, until duly amended in accordance with their terms and the Delaware General Corporation Law.

**Section 2.3 Capital Stock.** The total number of shares of and par value of each class of stock which Mobix Delaware shall be authorized to issue is 15,000,000 shares of Common Stock, \$.001 par value per share (the "Surviving Corporation Common Stock"), 2,000,000 shares of Non-Voting Common Stock, \$.001 par value per share (the "Surviving Corporation Non-Voting Common Stock") and 10,000,000 shares of Preferred Stock, \$.001 par value (the "Surviving Corporation Preferred Stock"). The description of each class, with the preferences, voting powers, qualifications, special or relative rights or privileges as to each class or series is as set forth in the Certificate of Incorporation of Mobix Delaware.

## **III. DIRECTORS AND OFFICERS OF THE SURVIVING CORPORATION**

The directors and officers of Mobix Delaware immediately prior to the Effective Time shall be the directors and officers of Mobix Delaware, from and after the Effective Time, until their

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respective successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal, all in accordance with Mobix Delaware's Certificate of Incorporation and Bylaws.

#### IV. CONVERSION OF SHARES IN THE MERGER; APPRAISAL RIGHTS

Section 4.1 Conversion of Shares of Mobix Florida. The manner of converting shares of capital stock of Mobix Florida in the Merger shall be as follows:

(a) At the Effective Time, each share of Mobix Florida Common Stock issued and outstanding immediately prior to the Effective Time, shall by virtue of the Merger and without the surrender of stock certificates or any other action by the holder of such shares, be converted into and exchangeable for four (4) share of fully paid and nonassessable shares of Surviving Corporation Common Stock. A number of shares of the Surviving Corporation Common Stock shall be reserved for issuance upon the exercise of options, warrants, conversion privileges and other derivative securities so reserved immediately prior to the Effective Time.

(b) Each share of Mobix Florida capital stock, if any, held in the treasury of Mobix Florida immediately prior to the Effective Time shall be canceled, and no shares of capital stock of Mobix Delaware shall be issued in respect thereof.

(c) After the Effective Time, all of the outstanding certificates which immediately prior to the Merger represented shares of Mobix Florida capital stock shall be deemed for all purposes to evidence ownership of and to represent an equal number of shares of the Surviving Corporation's capital stock. The registered owner on the books and records of the Surviving Corporation or its transfer agents of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends and other distributions upon, the shares of the Surviving Corporation's capital stock evidenced by such outstanding certificate as above provided.

Section 4.2 Conversion of Shares of Mobix Delaware. At the Effective Time, each share of Mobix Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the holder of such shares, be canceled and returned to the status of authorized but unissued shares.

Section 4.3 Appraisal Rights; Dissenting Shares. Mobix Florida Common Stock held by holders thereof who are entitled to vote on the Merger and who have not voted such Mobix Florida Common Stock in favor of the adoption of the Agreement and the Merger and with respect to which dissenters' rights shall have been properly exercised and perfected in accordance with Section 607.1320 of the FBCA (the "Dissenting Shares"), shall not be converted into the Mobix Delaware Common Stock which the holders of Mobix Florida Common Stock are entitled to receive pursuant to the Agreement, and holders of such Dissenting Shares shall be entitled to receive only the payment provided for by Section

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607.1320 of the FBCA, unless and until such holders fail to perfect or effectively withdraw or otherwise lose their rights to demand payment under the FBCA. If, after the Effective Time, any such holder fails to perfect or effectively withdraws or loses such right, such Dissenting Shares shall thereupon be deemed to have been converted into and have become exchangeable for, as of the Effective Time, as described in the Agreement, the right to receive Mobix Florida Common Stock. A copy of the information set forth on Annex A has been provided to the shareholders of Mobix Florida in accordance with Section 607.1320 of the FBCA.

## V. TERMINATION AND AMENDMENT

**Section 5.1 Termination by Mutual Consent.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, before or after the approval of this Agreement by the holders of shares of Mobix Florida Common Stock, or by the mutual consent of Mobix Florida and Mobix Delaware by action of their respective Boards of Directors.

**Section 5.2 Termination by Action of Stockholders of Mobix Florida.** This Agreement may be terminated and the Merger abandoned if any approval of the stockholders of Mobix Florida required for consummation of the Merger shall not have been obtained by reason of the failure to obtain the required vote at a duly held meeting of stockholders or at any adjournment or postponement thereof, or by written consent of such stockholders in lieu of a meeting.

**Section 5.3 Effect of Termination and Abandonment.** In the event of termination of this Agreement and abandonment of the Merger pursuant to this Article V, no party hereto (or any of its directors or officers) shall have any liability or further obligation to any other party to this Agreement, except that nothing herein will relieve any party from liability for any breach of this Agreement.

**Section 5.4 Amendment.** The Board of Directors of each Company may amend this Agreement at any time prior to the filing of Certificate of Merger with the Secretary of State of the State of Delaware and the Articles of Merger with the Secretary of State of the State of Florida, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either of the Companies shall not, without further approval by the stockholders, (i) alter or change the amount or kind of shares, securities, and/or rights to be received by Mobix Florida stockholders in exchange for or on conversion of all or any of the shares of any class or series of stock of Mobix Florida; (ii) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (iii) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of stock of Mobix Florida. This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

## VI. RULE 145 REPRESENTATION

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The sole purpose of this Merger is to change the domicile of Mobix Florida within the United States of America, to which end the securities of the Surviving Corporation into which the issued and outstanding securities of Mobix Florida are being converted are substantially identical to each other. Accordingly, the Merger shall not be deemed to involve the offer or sale of a security under authority of Rule 145(a)(2) of the Securities and Exchange Commission.

## VII. MISCELLANEOUS AND GENERAL

Section 7.1 Counterparts. For the convenience of the parties hereto, this Agreement may be executed in counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Section 7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 7.3 Entire Agreement etc. This Agreement (a) constitutes the entire agreement, and supersedes all other prior agreements and understanding, both written and oral, among the parties, with respect to the subject matter hereof, (b) is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder, and (c) shall not be assignable by operation of law or otherwise.

Section 7.4 Captions. The captions and headings used herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

Section 7.5 Reorganization. The parties intend that this transaction shall be a reorganization within the mean of Section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended.

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[Signatures are on the next page.]

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IN WITNESS WHEREOF, this Agreement has been duly executed, sealed and delivered by the duly authorized officers of the parties hereto on the date first hereinabove written.

MOBIX, INC.,  
a Florida corporation

By: 

Jeffrey Wolf, President

MOBIX COMMUNICATION, INC.,  
a Delaware corporation

By: 

Jeffrey Wolf, President

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## **ANNEX A**

### **FLORIDA STATUTES GOVERNING APPRAISAL RIGHTS**

**607.1301 Appraisal rights; definitions.**--The following definitions apply to ss. 607.1302-607.1333:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(c) For a corporation with 10 or fewer shareholders, without discounting for lack of marketability or minority status.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) "Preferred shares" means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.

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

(8) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.

(9) "Shareholder" means both a record shareholder and a beneficial shareholder.

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**607.1302 Right of shareholders to appraisal.--**

(1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a conversion of such corporation pursuant to s. 607.1112 if shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion under ss. 607.1103 and 607.1112(6), or the consummation of a merger to which such corporation is a party if shareholder approval is required for the merger under s. 607.1103 and the shareholder is entitled to vote on the merger or if such corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, 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 shareholders within 1 year after the date of sale;

(d) An amendment of the articles of incorporation with respect to the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(e) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; or

(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;

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2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), and (d) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$10 million, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10 percent of such shares.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

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2. If there will be no meeting of shareholders, the close of business on the day on which the board of directors adopts the resolution recommending such corporate action.

(c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

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b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or

c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the recordholder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

(a) Was not effectuated in accordance with the applicable provisions of this section or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action; or

(b) Was procured as a result of fraud or material misrepresentation.

**607.1303 Assertion of rights by nominees and beneficial owners.--**

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(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

**607.1320 Notice of appraisal rights.--**

(1) If proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1333 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

(3) If the proposed corporate action described in s. 607.1302(1) is to be approved other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.

**History.**--s. 120, ch. 89-154; s. 35, ch. 93-281; s. 32, ch. 97-102; s. 24, ch. 2003-283.

**607.1321 Notice of intent to demand payment.--**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, or is submitted to a shareholder pursuant to a consent vote under s. 607.0704, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

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(a) Must deliver to the corporation before the vote is taken, or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder meeting, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment under this chapter.

**607.1322 Appraisal notice and form.--**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.
2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.

2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and form are sent, and state that the shareholder shall have

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waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

3. The corporation's estimate of the fair value of the shares.

4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.

5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

**607.1323 Perfection of rights; right to withdraw.--**

(1) A shareholder who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

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**607.1324 Shareholder's acceptance of corporation's offer.--**

(1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the corporation shall make such payment to the shareholder within 90 days after the corporation's receipt of the form from the shareholder.

(2) Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares.

**607.1326 Procedure if shareholder is dissatisfied with offer.--**

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

**607.1330 Court action.--**

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(2) The proceeding shall be commenced in the appropriate court of the county in which the corporation's principal office, or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(3) All shareholders, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their shares. The corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident shareholder party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as

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appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares, plus interest, as found by the court.

(6) The corporation shall pay each such shareholder the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the shareholder shall cease to have any interest in the shares.

**607.1331 Court costs and counsel fees.--**

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable 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 shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with ss. 607.1320 and 607.1322; or

(b) Against either the corporation or a shareholder demanding appraisal, 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 not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

**607.1332 Disposition of acquired shares.**—Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as

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authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the surviving corporation into which the shares of such shareholders demanding appraisal rights would have been converted had they assented to the merger shall have the status of authorized but unissued shares of the surviving corporation.

**607.1333 Limitation on corporate payment.--**

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:

(a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if it is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

(2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (b) by written notice filed with the corporation within 30 days after the corporation has given written notice that the payment for shares cannot be made because of the restrictions of this section. If the shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or her notice of intent to assert appraisal rights.