

RCW 23B.01.410 Notice. (1) A notice under this title must be in writing, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws. A notice includes material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under this title must be in English.

(2) A notice or other communication may be given by any method of delivery, except that electronic transmissions must be in accordance with this section. If the methods of delivery are impracticable, a notice or other communication may be given by means of a broad nonexclusionary distribution to the public, which may include a newspaper of general circulation in the area where published; radio, television, or other form of public broadcast communication; or other methods of distribution that the corporation has previously identified to its shareholders.

(3) A notice or other communication to a domestic or foreign corporation registered to do business in this state may be delivered to the corporation's registered agent or to the secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its foreign registration statement.

(4) Except to the extent otherwise provided in subsection (5) of this section, a notice or other communication may be given by electronic mail or other electronic transmission, subject to subsection (10) of this section if applicable. If a corporation previously gave notices under this title to a shareholder only by mail or other methods of delivery not involving electronic transmission, the corporation must notify the shareholder that it intends to give notices under this title to the shareholder by electronic transmission before the corporation first commences giving notice under this title to the shareholder by electronic transmission. The inadvertent failure to give this notice will not invalidate any meeting or other corporate action.

(5) A notice may not be given by electronic mail or other electronic transmission:

(a) To a shareholder after the shareholder notifies the corporation in writing of an objection to receiving notice by electronic mail or other electronic transmission; or

(b) To a shareholder or director after the corporation is unable to deliver two consecutive notices by electronic mail or other electronic transmission to the electronic mail address, network, or processing system for the shareholder or director, and the inability becomes known to the secretary or to the transfer agent, or other person responsible for the giving of notice or other communications. The inadvertent failure to discover this inability will not invalidate any meeting or other corporate action.

(6) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(a) If by electronic mail, it is directed to the recipient's electronic mail address, including, in the case of a shareholder, to the shareholder's electronic mail address as it appears in the corporation's records;

(b) If by posting on an electronic network, upon the later of:
(i) The posting; and

(ii) The delivery of separate notice to the recipient of such specific posting together with comprehensible instructions regarding how to obtain access to the posting on the electronic network; and

(c) If by any other electronic transmission, it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission and it is in a form capable of being processed by that system.

(7) Receipt of an electronic acknowledgment from an information processing system described in subsection (6)(c) of this section establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(8) An electronic transmission is received under this section even if no person is aware of its receipt.

(9) A notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(a) If in a physical form, the earliest of when it is actually received, or when it is left at:

(i) A shareholder's address as it appears in the corporation's records;

(ii) A director's residence or usual place of business; or

(iii) The corporation's principal office;

(b) If mailed to a shareholder, upon deposit in the United States mail with first-class postage prepaid and correctly addressed to the shareholder's mailing address as it appears in the corporation's records;

(c) If mailed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(i) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(ii) Five days after it is deposited in the United States mail with first-class postage prepaid and correctly addressed to the recipient;

(d) If sent by air courier, when dispatched and correctly addressed to a shareholder's mailing address as it appears in the corporation's records;

(e) If sent by electronic mail or any other electronic transmission, when it is received as provided in subsection (6) of this section; and

(f) If oral, when communicated.

(10) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(a) The electronic transmission is otherwise retrievable in perceivable form; and

(b) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(11) Notwithstanding anything to the contrary in this section or any other section of this title, when this title requires that a notice be given to shareholders, a public company may satisfy this requirement, by: (a) Posting the notice, and any material that this title or the corporation's articles of incorporation or bylaws requires to accompany the notice, on an electronic network (either

separate from, or in combination with or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice under (b) of this subsection is delivered to the public company's shareholders entitled to receive the notice, and (b) mailing to the public company's shareholders entitled to receive the notice a separate notice of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the notice and any accompanying material posted on the electronic network is deemed to have been delivered to the public company's shareholders at the time the separate notice required under (b) of this subsection is effective as provided in subsection (9) of this section. A public company that elects pursuant to this subsection to post on an electronic network any notice or any material that this title or the corporation's articles of incorporation or bylaws requires to accompany a notice to shareholders is required, at its expense, to provide a copy of the notice and the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(12) If this title prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of this title, those requirements govern. The articles of incorporation or bylaws may require delivery of notices of meetings of directors by electronic mail or other electronic transmission.

(13) In the event that any provisions of this title are deemed to modify, limit, or supersede the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., the provisions of this title will control to the maximum extent permitted by section 102(a)(2) of that federal act. [2021 c 84 § 2; 2020 c 57 § 40; 2015 c 176 § 2108; 2009 c 189 § 2; 2008 c 59 § 1; 2002 c 297 § 10; 1991 c 72 § 29; 1990 c 178 § 2; 1989 c 165 § 15.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Effective date—1990 c 178: See note following RCW 23B.01.220.