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Delaware Law Update

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2026 Amendments to the Delaware General Corporation Law

Legislation to amend the Delaware General Corporation Law (the "DGCL") has been enacted. The legislation, which makes three targeted changes to Sections 242, 275, and 312 of the DGCL, will become effective on August 1, 2026.

Clarifications on the Effect of Section 242(b)(2) "Opt Out" Language on Section 242(d)'s "Votes Cast" Standard

The 2026 amendments revise Section 242 of the DGCL to clarify the effect of Section 242(b)(2) "opt out" language on Section 242(d)'s "votes cast" voting standard. Under Section 242(b)(2) of the DGCL, certain amendments, including amendments to increase or decrease the authorized shares of a class of stock, must be approved by a separate vote of the holders of the class, whether or not the holders are entitled to vote on the amendment by the certificate of incorporation. However, Section 242(b)(2) allows corporations to include in their certificate of incorporation an opt out clause providing that the number of authorized shares of a class may be increased or decreased by a vote of the holders of a majority in voting power of the outstanding shares entitled to vote on the amendment, without any separate vote of the holders of the affected class, irrespective of the provisions of Section 242(b)(2) that would otherwise require that separate class vote.

Section 242(d), which was added to the DGCL in 2023, provides that amendments to increase or decrease the authorized shares of a class of stock may be approved with a majority of the votes cast at a meeting, so long as the shares of the class are listed on a national securities exchange before and after the amendment, unless the certificate of incorporation otherwise provides. Recognizing that many certificates of incorporation in place at the time of Section 242(d)'s enactment included language reciting the pre-amendment stockholder vote requirements for amendments, the synopsis to the legislation enacting Section 242(d) made clear that a "general recitation in the certificate of incorporation of the vote generally required under [Section 242(b)] without a specific reference to the amendments specified in [Section 242(d)] is not sufficient" to opt out of Section 242(d)'s lower voting standard.

After the adoption of Section 242(d), a stockholder plaintiff filed suit against a corporation whose certificate of incorporation had, prior to the adoption of Section 242(d), included a Section 242(b)(2) opt out clause. The plaintiff alleged that the opt out clause, which provided that any amendment to increase or decrease the number of authorized shares of a class of stock could be approved by the holders of a majority in voting power of the outstanding stock entitled to vote on the amendment, functioned as an opt out of the class vote required under

Section 242(b)(2) but also effectively operated as an opt out of the lower voting standard in Section 242(d). In *Salama v. Simon*, 328 A.3d 356 (Del. Ch. 2024), *aff'd*, 342 A.3d 373 (Del. 2025), the Court of Chancery found the statutory language ambiguous but resolved the ambiguity in favor of the defendants, principally on the basis of the apparent statutory intent. "Given the potentially many charter provisions …that tracked the [statutory 242(b)(2) opt out language]," the Court stated, construing the defendant's specific 242(b)(2) opt out provision as an affirmative decision to opt out of the lower voting standard available under Section 242(d) "would handicap the ability of Section 242(d) to make increasing the number of authorized shares easier." In reaching its conclusion, the Court observed that the defendant had adopted its 242(b)(2) opt out in 2018, five years before Section 242(d)'s enactment, and that the drafters seemed to have intended Section 242(d) "to reset the voting regime for amendments relating to authorized shares" and "override pre-existing provisions" that opted out of Section 242(b)'s class vote to the extent they could be read as requiring a higher vote. The Court noted, by contrast, that there was no indication that Section 242(d) sought to override 242(b)(2) opt out provisions adopted after Section 242(d)'s enactment that continued to provide that amendments to increase or decrease the authorized shares of a class could be effected with the vote of the holders of a majority in voting power of outstanding shares entitled to vote thereon.

The 2026 amendments seek to resolve the ambiguity that the Court in *Salama* identified for corporations that include Section 242(b)(2) opt out provisions in their certificates of incorporation after Section 242(d) was adopted. The 2026 amendments make it clear that a provision of the certificate of incorporation reciting that the shares of a class may be increased or decreased by the affirmative vote of the holders of a majority of the stock (or votes of the stock), irrespective of Section 242(b)(2), whenever adopted, will not override Section 242(d). In order to override the lower voting standard provided by Section 242(d), the opt out provision must either state that the corporation elects not to be governed by Section 242(d) or require a greater or additional vote than is required by Section 242(b)(2) for any amendment that increases or decreases the authorized number of shares of the class (*e.g.*, 66 ⅔% of the outstanding voting stock for any amendment increasing or decreasing the authorized number of shares of the class of stock).

While the 2026 amendments are intended to address the ambiguity identified in *Salama* and do not, by their terms, apply to charter provisions other than Section 242(b)(2) opt outs, the 2026 amendments should not be construed to undermine the synopsis to the 2023 legislation that originally enacted Section 242(d). Thus, for charter provisions that merely recite the "majority of the outstanding" default vote otherwise generally required for charter amendments under Section 242(b), without expressly imposing a supermajority or other additional vote or expressly referencing the types of amendments specified in Section 242(d), it should remain the case that this "general recitation . . . is not sufficient" to opt out of Section 242(d)'s lower voting standard.

For corporations with 242(b)(2) opt out provisions in existing charters, the 2026 amendment to Section 242(d) should reduce uncertainty and litigation risk. Standing alone, standard 242(b)(2) opt out provisions will not prevent a corporation from relying on Section 242(d) where applicable. If a corporation wishes to forego those statutory mechanisms, that choice must be made explicitly in the charter by opting out of Section 242(d) or by specifying a vote requirement that exceeds what Section 242(b) contemplates. From a drafting perspective, this invites more precise language in future charter provisions that would truly opt out of Section 242(d), rather than relying on general class-vote modifications. Nevertheless, going forward, corporations that intend to opt out of Section 242(b)(2) but do not intend to opt out of Section 242(d) should consider drafting the opt out provision without reciting a voting standard to avoid the issue altogether.

Section 275 Dissolution, Registered Agents, and Service of Process

Section 275, which governs the dissolution of Delaware corporations, is being amended to address the duties and obligations of a corporation's registered agent after the corporation has dissolved and to provide a new mechanism for service of process on a dissolved corporation. First, the amendments to Section 275(d) (which relates to a board and stockholder approved dissolution) and Section 275(f) (which addresses a dissolution occurring by virtue of a charter-based limitation on the corporation's duration) require a corporation to include in the certificate of dissolution (i.e., the document the corporation files with the Delaware Secretary of State (the "Secretary") to commence its dissolution) an agreement that the corporation may be served with process in the State of Delaware by service on the Secretary, in accordance with the Secretary's rules and regulations, and to specify the address to which the Secretary will send copies of such process. Second, the amendments add new Section 275(h), which provides that the authority and responsibilities of the registered agent of a dissolved corporation terminate when the dissolution becomes effective, except with respect to service of process that the registered agent received before that time. Third, the amendments add new Section 275(i), which establishes a detailed framework for service of process on the Secretary as agent for a dissolved corporation after dissolution is effective. New Section 275(i) allows service by means of electronic transmission as prescribed by the Secretary, requires plaintiffs to serve process in duplicate and pay a fee (to be taxed as costs if the plaintiff prevails), obligates the Secretary promptly to forward the process to the dissolved corporation at the designated address by mail or courier with records of mailing and delivery, and requires the Secretary to maintain a record of such service for a minimum of five years.

As a result of these amendments, corporations and practitioners should take note of the additional information required to be included in the certificate of dissolution. In addition, plaintiffs and potential claimants should focus on the statutorily prescribed means of effecting service on a dissolved corporation.

Section 312(j) Revival of Nonstock Corporations

The 2026 amendments revise Section 312(j), which governs the revival of the certificate of incorporation of nonstock corporations whose charters have become forfeited or void due to the corporation's failure to file its franchise tax reports or pay its franchise taxes, to clarify that the corporation's governing body may authorize the revival without further authorization from the corporation's members. As currently drafted, Section 312 provides that the governing body of a nonstock corporation must perform the acts necessary for revival that a board of directors would perform for a stock corporation and further states that the members entitled to vote for the election of the governing body and any other members entitled to vote on a dissolution of the corporation must perform any acts for revival that stockholders of a stock corporation would perform. The amendment deletes the reference to the action of the "members entitled to vote for dissolution" of the nonstock corporation, and it clarifies that member action will be taken for revival only "if any" member action is necessary. The new language conforms to the existing provisions of Section 312(h), which address the identification of members of the governing body for purposes of the authorization of the revival and sets forth procedures for the election of members of the governing body in cases where none are available to initiate the revival.

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While largely technical in nature, the 2026 amendments to the DGCL reflect Delaware's commitment to maintaining a modern, flexible and enabling corporation statute.