



State of Alaska
Department of Commerce, Community and
Economic Development
Division of Banking and Securities
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INFORMATION FOR SHAREHOLDERS OF ANCSA CORPORATIONS

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Introduction

The State of Alaska Division of Banking and Securities has developed this booklet to provide shareholders of Alaska Native Corporations with information to assist them in their roles as owners of their corporations. Particularly, this booklet addresses issues a shareholder may encounter in seeking information about their corporation, or when deciding whether to run as a candidate for the board of directors. Although the Division of Banking and Securities cannot provide legal advice, we strive to make the laws and regulations that pertain to Alaska Native Corporations understandable to all those who wish to participate in their roles as corporate owners.

This pamphlet provides an overview of the Alaska statutes and regulations that govern ANCSA corporations and shareholders. In addition to these laws and regulations, each individual corporation may have adopted bylaws that further define and restrict the rights and requirements of its shareholders. Therefore, each shareholder should review their corporate bylaws and check with their corporation about what their bylaws permit, prohibit, or require.

The intent of this document is to be informative, but it is merely an overview of the applicable laws and regulations regarding ANCSA corporations. If you decide to run for the board of directors of your corporation, you will be required to follow all of the laws, regulations, and bylaws that apply to your proxy solicitation.

If you have any questions, please contact the Division of Banking and Securities at (907) 269-8140.

The Alaska Corporations Code

The Alaska Corporations Code (AS 10.06) provides the legal framework for how corporations are run and how various issues are handled. The statute addresses a wide range of topics from formation of the corporation through dissolution.

Articles of Incorporation and Bylaws

The articles of incorporation set forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation. The corporate bylaws are provisions adopted by an organization for its internal governance and its external dealings. For further information, see AS 10.06.205-233.

Some corporations have bylaws related to running for the board of directors and other proxy solicitations. Therefore, before a shareholder begins a proxy solicitation, it is important that they contact their corporation and review the bylaws to determine what they permit, prohibit, and require.

The Alaska Corporations Code also addresses annual meetings (AS 10.05.405), proxies (AS 10.06.418), voting of shares (AS 10.06.420), and many other areas too numerous to mention in this pamphlet.

AS 10.06.960-961 of the Alaska Corporations Code contains exceptions and provisions that apply only to corporations organized under ANCSA.

If you are interested in learning more about the statutes that govern your corporation, you may view the entire Alaska Corporations Code on the Division of Corporations, Business and Professional Licensing website, which may be accessed through Department of Commerce, Community and Economic Development website.

Books, Records, and Shareholder Mailing Lists

Shareholders own their corporations and have the right to review and copy the corporate books and records, including shareholder mailing lists.

Alaska Statute 10.06.430(a), requires corporations to keep correct books and records of account, minutes of proceedings, and a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

AS 10.06.430(b) requires corporations to make these documents reasonably available for inspection and copying by its shareholders, their agents, or attorneys.

A Shareholder's requests to copy corporate records must be in writing and must state the purpose for the request. A shareholder may not sell the shareholder mailing list or other corporate records. To protect shareholders and their corporations, records may only be inspected or obtained for a proper purpose.

The Alaska Securities Act

The Alaska Securities Act gives the State of Alaska, Division of Banking and Securities the authority to regulate various issues related to corporations formulated under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*

Who Must File?

AS 45.55.139 requires ANCSA corporations with 500 or more shareholders and over \$1,000,000 in assets to file their annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations with the Division of Banking and Securities.

Shareholders of these larger ANCSA corporations are required to file materials related to non-board solicitations as well.

What Must be Filed?

In addition to the documents specifically listed in AS 45.55.139, any other materials relating to proxy solicitations which are distributed, published, or made available to at least 30 Alaska resident shareholders of the larger ANCSA corporations must be filed with the Division. Therefore, not only solicitation materials distributed to shareholders through the mail must be filed with the Division, but also solicitation materials distributed via e-mail, on websites, in ads, as well as materials made available through other means, such as meetings, events and billboards, cell phones, etc.

When Must the Materials be Filed?

Any materials that are required to be filed with the Division must be mailed to the Division of Banking and Securities at the same time they are distributed, published, or made available to at least 30 Alaska resident shareholders.

What is a Solicitation?

3 AAC 08.365(16) defines “solicitation” as: a request to execute or not to execute, or to revoke a proxy. A solicitation is also the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

False or Misleading Statements or Omissions

The Alaska Securities Act prohibits untrue statements in the materials that must be filed with the Division of Banking and Securities.

AS 45.55.160 states:

A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in

the light of the circumstances under which they are made, not misleading.

The issue of false or misleading statements or omissions in proxy solicitations is covered in more depth in regulation 3 AAC 08.315, which is discussed below.

Sanctions

AS 45.55.920 authorizes the Division of Banking and Securities to regulate violations of the Alaska Securities Act and regulations. If the Division determines that a person is in violation of the Act or regulations, the Division may issue a cease and desist order, require the person to file future materials 10 working days early, bring an action in superior court to enforce compliance with the law, or impose a fine.

This booklet only addresses a few sections of The Alaska Securities Act. You may view the full text of the Act on the Division of Banking and Securities website.

Alaska Native Claims Settlement Act Proxy Regulations

In addition to the statutes that govern the materials that must be filed with the Division of Banking and Securities, the State of Alaska has also adopted detailed regulations regarding proxy solicitations for ANCSA corporations and shareholders. *See* AS 45.55.950 and 3 AAC 08.305 - 3 AAC 08.365.

False or Misleading Statements

3 AAC 08.315(a) states:

A solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits

a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a proxy for the same meeting or subject matter, which has become false or misleading. A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required.

Examples of Misleading Statements or Omissions

The following are some examples of what, depending upon particular facts and circumstances, might be misleading within the meaning of 3 AAC 08.305 - 3 AAC 08.365:

- predictions as to specific future market values;
- material that directly or indirectly impugns character, integrity, or personal reputation, or directly or indirectly makes charges concerning improper, illegal, or immoral conduct or associations, without factual foundation;
- failure to identify a proxy statement, proxy, or other soliciting material so as to distinguish it clearly from the soliciting material of any other person soliciting for the same meeting or subject matter;

- claims made before a meeting regarding the results of a solicitation; and
- regarding the election of directors, failure to disclose the existence of an agreement or understanding among two or more nominees, proxyholders, or other participants with respect to voting of proxies, and failure to disclose the material provisions of such an agreement or understanding, in circumstances where such participants appear to solicit proxies independently or where there is no apparent affiliation among such participants.

Prohibition of Certain Solicitations

3 AAC 08.325 states that a person may not solicit

- an undated or postdated proxy;
- a proxy which provides that it is dated after the date on which it is signed by the shareholder;
- a proxy which fails to disclose the shareholders' meeting, or any adjournment of that shareholders' meeting, for which it is solicited;
- a proxy which confers authority to vote at more than one shareholders' meeting or any adjournment of that shareholders' meeting; or
- a proxy which authorizes a vote at any shareholders' meeting other than the one disclosed.

Requirements as to Proxy

3 AAC 08.335 requires that a proxyholder shall either attend the shareholders' meeting in person or execute a power of substitution so that the shares for which he has proxies are represented at the meeting. This regulation also requires that a proxyholder shall

vote in accordance with any choices made by the shareholder or in the manner provided by the proxy when the shareholder has not specified a choice.

3 AAC 08.335(c) states that a proxy must

- indicate that the proxy is solicited on behalf of the board or, if solicited other than by the board, indicate the identity of the persons on whose behalf the solicitation is made;
- provide a specifically designated blank space for dating the proxy; and
- provide a means for the shareholder to specify by boxes a choice between approval or disapproval of each matter or group of related matters identified in the proxy as intended to be acted upon, other than the election of directors.

A proxy may confer authority for matters on which a choice is not made by the shareholder if the proxy discloses how the shares represented by the proxy will be voted in each case.

A proxy that provides for the election of directors must set out the names of the nominees for whom the proxy is solicited; and clearly provide one of the following:

- a box opposite the name of each nominee which may be marked to indicate that authority to vote for that nominee is withheld;
- an instruction that the shareholder may withhold authority to vote for a nominee by lining through or otherwise striking out the name of that nominee;
- a "ballot" type of selection in which the shareholder is permitted to award votes to selected nominees of the shareholder's choosing.

A proxy may confer discretionary authority to vote only with respect to the following:

- matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting;
- approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at that meeting;
- the election of a person to an office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;
- a proposal omitted from the proxy statement and proxy, if solicited for an annual meeting by participants other than the board; or
- matters incident to the conduct of the meeting.

If action is to be taken on the election of directors and if the shareholders have cumulative voting rights, a proxy may confer discretionary authority to cumulate votes.

Board Solicitations

3 AAC 08.345 provides a list of requirements for board-endorsed candidates and solicitations. The requirements of board solicitations are so extensive as to be impractical to list in a booklet of this length. However, these requirements may be viewed on the Division of Banking and Securities website, which may be accessed through Department of Commerce, Community and Economic Development website.

Non-Board Solicitations

Under 3 AAC 08.355, a non-board solicitation must be preceded or accompanied by a dated, written proxy statement including, but not limited to, the following:

(1) the name of the corporation in respect to which proxies are being solicited;

(2) the name and address of each participant, including each proxyholder, who has joined or proposes to join in the solicitation;

(3) a statement indicating whether any of the participants in the solicitation has an arrangement or understanding with an entity for future employment by the corporation or future financial transactions to which the corporation will or may become a party, and a description listing the terms of and the parties to each arrangement or understanding;

(4) if action is to be taken on the election of directors, a description of each nominee of the participant who has consented to act if elected; each description must include, if applicable

- name, age and address;
- all positions and offices presently held with the corporation;
- remaining term in office as director and all other periods of service as a director;
- percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which he served, if he attended fewer than 75 percent of the aggregate of these meetings;

- the nature of any family relationship with any director, nominee or executive officer of the corporation and its subsidiaries;
- business experience during the past five years, including principal employment or occupation and employer; and
- any of the following events which occurred during the past five years which are material to an evaluation of ability or integrity:
 1. voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver,
 2. conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses,
 3. and the entry of any final judgment, order or decree, not subsequently reversed or vacated, that he engaged in unethical or illegal business practices or violated securities laws;

A shareholder who decides to run for the board of directors is responsible for knowing their own record. Failure to disclose any of the items required by these statutes and regulations may result in the imposition of sanctions pursuant to AS 45.55.920.

- Under 3 AAC 08.355, a non-board solicitation must also include a brief description of financial transactions by the corporation with any entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with any entity if

(A) the transactions in the aggregate exceed \$20,000; and

(B) the participant in the solicitation or a member of his family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

- a brief description of all legal proceedings to which each participant in the solicitation is a party with interests adverse to the corporation or its subsidiaries;

- a brief description of the methods to be employed to solicit proxies, if other than by the use of the mail; and a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies;

- a statement indicating who will bear the expense of solicitation, and the amount each participant in the solicitation has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;

- a statement indicating whether reimbursement for solicitation expenses will be sought from the corporation; and

- if the proxy statement relates to any matter requiring notice to shareholders by law or to a special shareholders' meeting for which any participant in the solicitation sought shareholder signatures on a document calling for the special meeting

(A) a description of each matter which is to be submitted to a vote of the shareholders and a statement of the vote required for its approval; and

(B) a description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant in the solicitation in any matter to be acted upon at the meeting, unless the participant owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class.

Definitions Relating to Solicitation of Proxies

3 AAC 08.365, sets out the definitions that apply to the regulations regarding ANCSA proxy solicitations:

(1) "annual report" means a summary by the corporation of its business activities, results of operations, and financial condition for the last fiscal year, including consolidated financial statements, which meet the requirements of 43 U.S.C. § 1606(o), effective December 18, 1971, and 43 U.S.C. § 1625, effective January 2, 1976;

(2) "board" means the board of directors of the issuer of shares for which a proxy is solicited;

(3) "contest" means an issue in which the board expects one or more solicitations to be made which will be subject to 3 AAC 08.355;

(4) "corporation" means the issuer of shares with respect to which a proxy is solicited;

(5) "entity" means an individual, sole proprietorship, partnership, joint venture, trust, association, firm, corporation, or other organization, whether or not operated for profit, which is not a wholly owned subsidiary of the corporation;

(6) "executive officer" means the president, secretary, treasurer, a vice president in charge of a principal business function, such as sales, administration, or finance, or any other person who performs similar policy-making functions for the corporation;

(7) "family" means an individual's spouse, parents, children, or siblings by blood or adoption;

(8) "financial transaction" means

- the buying, selling, or leasing of real or personal property or of an interest in real or personal property, including, but not limited to, an option, right of first refusal, or joint venture interest;
- the buying or selling of services;
- the loaning or borrowing of money or a preliminary commitment to that transaction; or
- any other transaction which is substantially similar in nature to those listed in this paragraph, excluding distributions mandated by 43 U.S.C. § 1606(j), effective December 18, 1971;

(9) "last fiscal year" means the fiscal year of the corporation most recently completed before the date of the meeting for which proxies are to be solicited;

(10) "nominee" means a person who has consented to being named in a proxy statement and who has agreed to serve if elected.

Who is a Participant?

3 AAC 08.365(11) defines "participant" to include:

- the board and the corporation;
- a nominee for whose election as director proxies are solicited;
- a committee or group which solicits proxies or a member of the committee or group;
- a person who finances, directly or indirectly, the solicitation of proxies, except a person who contributes not more than \$500 and who is not otherwise a participant;

- **a person who solicits proxies;**

The term “participant” does not include

(i) a person or organization retained or employed by a participant to solicit shareholders whose activities are limited to the performance of his duties in the course of his employment;

(ii) a person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) a person employed by a participant in the capacity of attorney, accountant, or as an advertising, public relations, or financial adviser, whose activities are limited to the performance of his duties in course of his employment; or

(iv) a person regularly employed as an officer or employee of a participant who is not otherwise a participant.

What is a Proxy?

3 AAC 08.365(12) defines "proxy" as a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder.

"Proxyholder" means a person to whom a proxy or power of substitution is given.

"Proxy statement" means a letter, publication, press release, advertisement, radio/television script or tape, or other communication of any type which is made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

"Shareholder" means one who is the holder of record of a share in the corporation.

What is a Solicitation?

3 AAC 08.365(16) defines “solicitation” as:

- (A) a request to execute or not to execute, or to revoke a proxy; or
- (B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

A shareholder who is considering running for the board of directors or beginning a proxy solicitation should review these definitions thoroughly. Failure to follow all of the statutes and regulations may result in sanctions pursuant to AS 45.55.920.

To view the full text of the Alaska Native Claims Settlement Act Proxy Solicitation Regulations, please visit the Division of Banking and Securities website.

Filing a Request for Investigation

If you believe one or more of the statutes or regulations referenced in this booklet have been violated, you may file a request for investigation with the Division of Banking and Securities. Your request must be submitted on the ANCSA Request for Investigation Form, or contain the same information as that form. 3 AAC 08.360 sets out the process and information needed for a Request for Investigation.

The ANCSA Request for Investigation Form is located on the Division of Banking and Securities website. If you do not have access to the internet, or are having difficulty downloading the form from the website, you may call or write to the Division and we will send you a copy of the correct form.

Once you have completed the Request for Investigation Form, you must sign it, date it, and mail it to the Division of Banking and Securities. The Division will review your request and determine

whether further information is required from you or from the person or persons identified in your request.

Conclusion

The statutes, regulations, and bylaws relating to ANCSA corporations and shareholders are intended to promote transparency in the solicitation process and the fairness of elections. They are also intended to help protect shareholders and corporations from unscrupulous individuals.

Pursuant to 3 AAC 08.315(b),

The fact that a proxy statement, proxy, or other soliciting material has been filed with or examined by the administrator under AS 45.55.139 is not a finding by the administrator that the material is accurate or complete or not false or misleading, or that the administrator has passed upon the merits of or approved any statement contained in the solicitation or any matter to be acted upon by shareholders. No representation to the contrary may be made.

Again, this booklet is merely an overview. Shareholders are required to comply with all laws, regulations and bylaws applicable to their proxy solicitations or campaigns.

If you have any questions, please contact the Division of Banking and Securities at (907) 269-8140.

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