# WEST VIRGINIA CODE CHAPTER 31D ARTICLE 14

WV Legislature

# PART 1. VOLUNTARY DISSOLUTION.

## §31D-14-1401. Dissolution by incorporators or initial directors.

A majority of the incorporators, or initial directors of a corporation, that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either: (A) That none of the corporation's shares has been issued; or (B) that the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

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**§31D-14-1402. Dissolution by board of directors and shareholders.**

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote, a greater number of shares to be present or a vote by voting groups, adoption of the proposal to dissolve requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

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## §31D-14-1403. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

(b) A corporation is dissolved upon the receipt by the corporation of a certificate of dissolution from the Secretary of State.

(c) The Secretary of State shall issue a certificate of dissolution to the corporation delivering articles of dissolution upon receipt by the Secretary of State of a notice from the Tax Commissioner and Bureau of Employment Programs to the effect that all taxes due from the corporation under the provisions of chapter eleven of this code, including, but not limited to, taxes withheld under the provisions of section seventy-one, article twenty-one of chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumers sales taxes and any and all license franchise or other excise taxes and corporate net income taxes, and employment security payments levied or assessed against the corporation seeking to dissolve have been paid or that the payment has been provided for, or until the Secretary of State received a notice from the Tax Commissioner or Bureau of Employment Programs, as the case may be, stating that the corporation in question is not subject to payment of any taxes or to the making of any employment security payments or assessments.

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**§31D-14-1404. Revocation of dissolution.**

(a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by subdivision (3), subsection (a), section one thousand four hundred three of this article.

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

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## §31D-14-1405. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except those appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;

(2) Disposing of its properties that will not be distributed in kind to its shareholders;

(3) Discharging or making provision for discharging its liabilities;

(4) Distributing its remaining property among its shareholders according to their interests; and

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(3) Subject its directors or officers to standards of conduct different from those prescribed in article eight of this chapter;

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(7) Terminate the authority of the registered agent of the corporation, if any.

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## §31D-14-1406. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

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**§31D-14-1407. Unknown claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or if the corporation had no principal office in this state, in any county where it transacts its business;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section one thousand four hundred six of this article;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his or her pro rata share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her.

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## §31D-14-1420. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding under §31D-14-1421 of this code to administratively dissolve a corporation if:

(1) The corporation does not pay within 60 days after they are due any fees, franchise taxes, or penalties imposed by this chapter or other law;

(2) The corporation does not notify the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(3) The corporation's period of duration stated in its articles of incorporation expires;

(4) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the corporation;

(5) The corporation is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(6) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the corporation pursuant to this chapter.

(b) A corporation administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31D-14-1422 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31D-14-1423 of this code.

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**§31D-14-1421. Procedure for and effect of administrative dissolution.**

(a) If the Secretary of State determines that one or more grounds exist under §31D-14-1420 of this code for dissolving a corporation, the Secretary of State shall notify the corporation by certified mail with written notice of the determination pursuant to §31D-5-504 of this code.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under §31D-5-504 of this code, the Secretary of State shall administratively dissolve the corporation by signing and filing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under §31D-14-1405 of this code and notify claimants pursuant to §31D-14-1406 and §31D-14-1407 of this code.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

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§31D-14-1422. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section one thousand four hundred twenty-one of this article may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of section four hundred one, article four of this chapter; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation pursuant to section five hundred four, article five of this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

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**§31D-14-1423. Appeal from denial of reinstatement.**

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he or she shall serve the corporation pursuant to section five hundred four, article five of this chapter with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the circuit court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(c) The circuit court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the circuit court considers appropriate.

(d) The circuit court's final decision may be appealed as in other civil proceedings.

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## PART 3. JUDICIAL DISSOLUTION.

### §31D-14-1430. Grounds for judicial dissolution.

The circuit court may dissolve a corporation:

(1) In a proceeding by the Attorney General pursuant to section one, article two, chapter fifty-three of this code if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under circuit court supervision.

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## §31D-14-1431. Procedure for judicial dissolution.

(a) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(b) A circuit court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the circuit court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

(c) Within ten days of the commencement of a proceeding under subdivision (2), section one thousand four hundred thirty of this article to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section one thousand four hundred thirty-four of this article and accompanied by a copy of section one thousand four hundred thirty-four of this article.

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**§31D-14-1432. Receivership or custodianship.**

(a) A circuit court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The circuit court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the circuit court, before appointing a receiver or custodian. The circuit court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The circuit court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The circuit court may require the receiver or custodian to post bond, with or without sureties, in an amount the circuit court directs.

(c) The circuit court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver: (A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the circuit court; and (B) may sue and defend in his or her own name as receiver of the corporation in all circuit courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The circuit court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing it is in the best interests of the corporation, its shareholders and creditors.

(e) The court, from time to time, during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his or her counsel from the assets of the corporation or proceeds from the sale of the assets.

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## §31D-14-1433. Decree of dissolution.

(a) If after a hearing the circuit court determines that one or more grounds for judicial dissolution described in section one thousand four hundred thirty of this article exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution and the clerk of the circuit court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the circuit court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section one thousand four hundred five of this article and the notification of claimants in accordance with sections one thousand four hundred six and one thousand four hundred seven of this article.

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**§31D-14-1434. Election to purchase in lieu of dissolution.**

(a) In a proceeding under subdivision (2), section one thousand four hundred thirty of this article to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may elect, to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under subdivision (2), section one thousand four hundred thirty of this article or at a later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days after the filing, give written notice to all shareholders other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (2), section one thousand four hundred thirty of this article may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit the discontinuance, settlement, sale or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings entered pursuant to subdivision (2), section one thousand four hundred thirty of this article and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (2), section one thousand four hundred thirty of this article was filed or as of another date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity;

provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded; and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest may be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under paragraph (B) or (D), subdivision (2), section one thousand four hundred thirty of this article, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him or her.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under section one thousand four hundred thirty of this article and the petitioning shareholder no longer has any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him or her by the order of the court which is enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) of this section must be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections one thousand four hundred two and one thousand four hundred three of this article, which articles must then be adopted and filed within fifty days. Upon filing of articles of dissolution, the corporation is to be dissolved in accordance with the provisions of sections one thousand four hundred five, one thousand four hundred six and one thousand four hundred seven of this article and the order entered pursuant to subsection (e) of this section no longer has any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of section six hundred forty, article six of this chapter.

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## PART 4. MISCELLANEOUS.

### §31D-14-1440. Deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them are to be reduced to cash and deposited with the State Treasurer or other appropriate state official for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or other appropriate state official shall pay him or her or his or her representative that amount.

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