WEST VIRGINIA CODE CHAPTER 31E ARTICLE 12

WV Legislature

§31E-12-1201. Disposition of assets not requiring member approval.

No approval of the members of a corporation is required, unless the articles of incorporation otherwise provide:

(1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(2) To mortgage, pledge, dedicate to the repayment of indebtedness with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business; or

(3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation.

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§31E-12-1202. Member approval of certain dispositions.

(a) If the corporation has members entitled to vote on the transaction, a sale, lease, exchange, or other disposition of assets, other than a disposition described in section one thousand two hundred one of this article, requires approval of the corporation's members if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains an activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing activity.

(b) A disposition that requires approval of the members under subsection (a) of this section must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of a resolution, the board of directors shall submit the proposed disposition to the members for their approval. The board of directors shall also transmit to the members a recommendation that the members approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation that the members approve the disposition, in which case the board of directors shall transmit to the members the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the members under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the members under subsection (a) of this section, and if the approval is to be given at a meeting, the corporation shall notify each member entitled to vote of the meeting of members at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and is to contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless this chapter or the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the members requires the approval of the members at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the members under subsection (b) of this section, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the members, subject to any contractual rights of other parties to the disposition.

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(g) A disposition of assets in the course of dissolution under article thirteen of this chapter is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary are to be deemed the assets of the parent corporation for the purposes of this section.

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