WEST VIRGINIA CODE CHAPTER 31d ARTICLE 12

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§31D-12-1201. Disposition of assets not requiring shareholder approval.

No approval of the shareholders 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;

(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; or

(4) To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

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§31D-12-1202. Shareholder approval of certain dispositions.

(a) 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 shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business 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 business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section must be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders 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 shareholders approve the disposition, in which case the board of directors shall transmit to the shareholders the basis for that determination.

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

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders 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 must 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 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 shareholders 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 on the disposition exists.

(f) After a disposition has been approved by the shareholders 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 shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under article fourteen of this chapter is

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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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