WEST VIRGINIA CODE: §31d-14-1434

§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.

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(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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