# WEST VIRGINIA CODE CHAPTER 31d ARTICLE 16

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# PART 1. RECORDS.

## §31D-16-1601. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section one thousand six hundred twenty of this article; and

(6) A list of the names and business addresses of its current directors and officers.

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## §31D-16-1602. Inspection of records by shareholders.

(a) A shareholder of a corporation is entitled to inspect, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e), section one thousand six hundred one of this article if he or she gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect.

(b) A shareholder of a corporation is entitled to inspect, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) of this section and gives the corporation written notice of his or her demand at least five business days before the date on which he or she wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a), section one thousand six hundred two of this article;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(1) His or her demand is made in good faith and for a proper purpose;

(2) He or she describes with reasonable particularity his or her purpose and the records he or she desires to inspect; and

(3) The records are directly connected with his or her purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under section seven hundred twenty, article seven of this chapter or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a circuit court, independently of this chapter, to compel the production of corporate records for examination.

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(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

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**§31D-16-1603. Scope of inspection right.**

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under section one thousand six hundred two of this article includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under subdivision (3), subsection (b), section one thousand six hundred two of this article by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

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**§31D-16-1604. Court-ordered inspection.**

(a) If a corporation does not allow a shareholder who complies with subsection (a), section one thousand six hundred two of this article to inspect and copy any records required by that subsection to be available for inspection, the circuit court may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with subsections (b) and (c), section one thousand six hundred two of this article may apply to the circuit court for an order to permit inspection and copying of the records demanded. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If the circuit court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the circuit court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

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## §31D-16-1605. Inspection of records by directors.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The circuit court may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to inspection rights. The circuit court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the circuit court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

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**§31D-16-1606. Exception to notice requirement.**

(a) Whenever notice is required to be given under any provision of this chapter to any shareholder, notice may not be required to be given if:

(1) Notice of two consecutive annual meetings and all notices of meetings during the period between two consecutive annual meetings have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(2) All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any shareholder delivers to the corporation a written notice setting forth the shareholder's then-current address, the requirement that notice be given to the shareholder is to be reinstated.

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## PART 2. REPORTS.

### §31D-16-1620. Financial statements for shareholders.

(a) Unless unanimously waived by the shareholders, a corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his or her report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. On written request from a shareholder who was not mailed the statements, the corporation shall mail him or her the latest financial statements.

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