WEST VIRGINIA CODE CHAPTER 31e ARTICLE 13

WV Legislature

PART 1. VOLUNTARY DISSOLUTION.

§31E-13-1301. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not commenced activities 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) That the corporation has no member entitled to vote;

(4) That the corporation has not commenced the activities for which it was incorporated;

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

(6) That the net assets of the corporation remaining after winding up have been distributed as required by this chapter; and

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

WV Legislature

§31E-13-1302. Dissolution by board of directors and members.

(a) A corporation's board of directors may propose dissolution for submission to those members entitled to vote on the dissolution.

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

(1) The board of directors must recommend dissolution to the members 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 members; and

(2) The members 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 member entitled to vote of the proposed members' 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, adoption of the proposal to dissolve 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 exists.

(f) If the corporation has no members, or no members entitled to vote upon dissolution, dissolution must be authorized by resolution of the board of directors.

WV Legislature

§31E-13-1303. 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 members, a statement that the proposal to dissolve was duly approved by the members 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 said chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer 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.

WV Legislature

§31E-13-1304. 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 member 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 members, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If member action was required to revoke the dissolution, the information required by subdivision (3), subsection (a), section one thousand three 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 activities as if dissolution had never occurred.

WV Legislature

§31E-13-1305. Effect of dissolution.

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

(1) Adopting a plan providing for the distribution of assets under section one thousand three hundred eight of this article.

(2) Collecting its assets;

(3) Disposing of its properties that will not be distributed in kind pursuant to the plan of distribution consistent with the requirements of section one thousand three hundred eight of this article;

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

(5) Distributing its remaining assets in accordance with sections one thousand three hundred eight and one thousand three hundred nine of this article; and

(6) Doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a corporation does not:

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

(2) Prevent transfer of its transferable membership interests, if any, although the authorization to dissolve may provide for closing the corporation's membership 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 members; 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;

(7) Terminate the authority of the registered agent of the corporation; or

(8) Of itself, render the members liable for any liability or other obligations of the corporation or vest title to the property of the corporation in the members.

WV Legislature

§31E-13-1306. 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.

WV Legislature

§31E-13-1307. 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 conducts its affairs;

(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 three 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 member 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 member'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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§31E-13-1308. Adoption of plan for distribution of assets.

A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter is to be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which section one thousand three hundred nine of this article requires a plan of distribution, in the following manner:

(1) Where there are members of any class entitled to vote on dissolution, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission of the plan to a vote of each class of members entitled to vote. Written notice setting forth the proposed plan of distribution or a summary of the plan is to be given to each member entitled to vote in accordance with section seven hundred five, article seven of this chapter. The plan of distribution is to be adopted upon receiving the approval of a majority of the votes cast by each class of members voting as a class.

(2) Where there are no members entitled to vote on dissolution, a plan of distribution is to be adopted by resolution of the board of directors, or, if directors have not yet been appointed, by resolution approved by a majority of the incorporators.

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§31E-13-1309. Liquidating distribution of assets.

(a) The assets of a corporation in the process of dissolution are to be applied and distributed as follows: (1) All liabilities and other obligations of the corporation are to be paid, satisfied and discharged, or adequate provision made for their payment, satisfaction and discharge; (2) assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, are to be returned, transferred or conveyed in accordance with the conditions; (3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, are to be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in section one thousand three hundred eight of this article; (4) other assets, if any, are to be distributed pro rata among the members of the corporation except to the extent that the articles of incorporation determines the distributive rights of members, or any class or classes of members, or provides for distribution to others; and (5) any remaining assets may be distributed to persons, societies, organizations or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in section one thousand three hundred eight of this article.

(b) No final liquidating distribution of assets may be made by a dissolved corporation until the corporation has obtained a current statement or statements 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 said chapter eleven of this code, all business and occupation taxes, motor carrier and transportation privilege taxes, gasoline taxes, consumer 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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§31E-13-1320. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding under §31E-13-1321 of this code to administratively dissolve a nonprofit corporation if:

(1) The nonprofit 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 nonprofit 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 nonprofit 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 nonprofit entity;

(5) The nonprofit 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 nonprofit corporation pursuant to this chapter.

(b) A nonprofit 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 §31E-13-1322 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31E-13-1323 of this code.

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§31E-13-1321. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under §31E-13-1320 of this code for administratively dissolving a corporation, the Secretary of State shall notify the corporation by certified mail with written notice of the determination pursuant to §31E-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 §31E-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. The Secretary of State shall send electronic notice to the corporation with a copy of the certificate of dissolution if the Secretary of State has an email address on file for the corporation.

(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 §31E-13-1305 of this code and notify claimants pursuant to §31E-13-1306 and §31E-13-1307 of this code.

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

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§31E-13-1322. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under section one thousand three 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 activities as if the administrative dissolution had never occurred.

WV Legislature

§31E-13-1323. 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.

WV Legislature

PART 3. JUDICIAL DISSOLUTION.

§31E-13-1330. Grounds for judicial dissolution.

The circuit court may dissolve a corporation:

(1) In a proceeding by the Attorney General 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 member or director if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the activities and affairs of the corporation can no longer be conducted in accordance with the corporation's purpose, 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; or

(C) 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.

WV Legislature

§31E-13-1331. Procedure for judicial dissolution.

(a) It is not necessary to make members or directors 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 activities of the corporation until a full hearing can be held.

WV Legislature

§31E-13-1332. 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 activities 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 members 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 members, if any, and creditors.

(e) The circuit 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.

WV Legislature

§31E-13-1333. 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 three 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 activities and affairs in accordance with section one thousand three hundred five of this article and the notification of claimants in accordance with sections one thousand three hundred six and one thousand three hundred seven of this article.

WV Legislature

PART 4. MISCELLANEOUS.

§31E-13-1340. Deposit with State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member 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 member 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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