WEST VIRGINIA CODE CHAPTER 31e ARTICLE 15

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PART 1. RECORDS.

§31E-15-1501. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members 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 members, if any, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order.

(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;

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

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section one thousand five 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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§31E-15-1502. Inspection of records by members.

(a) A member 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 five 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 member 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 member 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 members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of members.

(c) A member may inspect and copy the records described in subdivisions (1) and (2), subsection (b) of this section and may inspect the records described in subdivision (3), 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) A member may not copy the records described in subdivision (3), subsection (b) of this section unless provided for in the corporation's articles of incorporation or bylaws.

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

(f) This section does not affect:

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

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

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§31E-15-1503. Scope of inspection right.

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

(b) The right to copy records under section one thousand five 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 member.

The term "inspect" for purposes of section one thousand five hundred two of this article includes the making of extracts from the records reviewed.

(c) The corporation may comply at its expense with a member's demand to inspect the record of members under subdivision (3), subsection (b), section one thousand five hundred two of this article by providing the member with a list of members that was compiled no earlier than the date of the member'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 member. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

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§31E-15-1504. Circuit court-ordered inspection.

(a) If a corporation does not allow a member who complies with subsection (a), section one thousand five 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 member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c), section one thousand five 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 member'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 member 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 member.

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§31E-15-1505. 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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§31E-15-1506. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this chapter to any member, notice may not be required to be given if notice of two consecutive annual meetings, and all notices of meetings during the period between two consecutive annual meetings, have been sent to the member at the member's address as shown on the records of the corporation and have been returned undeliverable.

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

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PART 2. CORPORATE RECORDS.

§31E-15-1520. Financial statements for members.

(a) A corporation shall furnish its members 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, and an income statement for that year. 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 member within one hundred twenty days after the close of each fiscal year. On written request from a member who was not mailed the statements, the corporation shall mail him or her the latest financial statements.

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