

## **IC 23-17-22**

### **Chapter 22. General Dissolution**

#### **IC 23-17-22-1**

##### **Corporations without members; corporations that have not commenced business; articles of dissolution; contents**

Sec. 1. A majority of the incorporators or initial directors of a corporation that has no members or has not commenced activities may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth the following:

- (1) The name of the corporation.
- (2) The date of the corporation's incorporation.
- (3) Either:
  - (A) that no membership in the corporation has been issued;
  - or
  - (B) that the corporation has not commenced business.
- (4) That no debt of the corporation remains unpaid.
- (5) That a majority of the incorporators or initial directors authorized the dissolution.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-22-2**

##### **Proposals by board; conditions for adoption; notice**

Sec. 2. (a) A corporation's board of directors may propose dissolution for submission to the members.

(b) For a proposal to dissolve to be adopted, the following conditions must be met:

- (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 the board should not make a recommendation and communicates the basis for the board's determination to the members.
- (2) The members entitled to vote must approve the proposal to dissolve as provided under subsection (f).
- (3) A person whose approval is required by articles of incorporation authorized under IC 23-17-17-1 for an amendment to the articles of incorporation or bylaws must approve the proposal to dissolve in writing.

(c) If a corporation does not have members, dissolution must be approved by a majority of the directors in office at the time dissolution is approved. The corporation shall provide notice to directors of a director's meeting where an approval for dissolution will be sought under IC 23-17-15-3. The notice must state that the purpose of the meeting is to consider the proposed dissolution.

(d) The board of directors may condition the board's submission of the proposal for dissolution on any basis.

(e) The corporation must notify each member, whether or not entitled to vote, of the proposed members' meeting under IC 23-17-10-5. The notice must state that the purpose of the meeting is to consider dissolving the corporation.

(f) Unless articles of incorporation or a board of directors acting under subsection (d) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by the members by a majority of the votes cast on the proposal.

(g) After a proposal for dissolution is adopted, the corporation must give the notices required under the following:

(1) IC 6-8.1-10-9.

(2) IC 22-4-32-23.

(3) IC 32-34-1-25.

*As added by P.L.179-1991, SEC.1. Amended by P.L.121-1994, SEC.1; P.L.31-1995, SEC.5; P.L.2-2002, SEC.75.*

### **IC 23-17-22-3**

#### **Articles of dissolution; contents**

Sec. 3. (a) After a dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth the following:

(1) The name of the corporation.

(2) The date dissolution was authorized.

(3) A statement that dissolution was approved by a sufficient vote of the board of directors.

(4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators.

(5) If approval by members was required, the following:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution.

(B) The total number of:

(i) votes cast for and against dissolution by each class entitled to vote separately on dissolution; or

(ii) undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(6) If approval of dissolution was by a person other than the members, a statement that approval under section 2(b)(3) of this chapter was obtained.

(b) A corporation is dissolved upon the effective date of the corporation's articles of dissolution.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-22-4**

#### **Revocation; authorization; articles of revocation; contents; effect**

Sec. 4. (a) A corporation may revoke the corporation's dissolution within one hundred twenty (120) days of the effective date of the dissolution.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless the authorization permitted revocation by action of the board of directors alone,

allowing the board of directors to revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, a corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of the corporation's articles of dissolution, that set forth the following:

- (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 or in conjunction with another person, a statement that revocation was permitted by action by the board of directors alone under that authorization.
- (6) If member or third person action was required to revoke the dissolution, the information required by section 3(a)(5) and 3(a)(6) of this chapter.

(d) Revocation of dissolution is effective upon the effective date specified in the articles of revocation of dissolution.

(e) When a revocation of dissolution is effective, the revocation relates back to and takes effect as of the effective date of the dissolution. The corporation resumes carrying on the corporation's activities as if dissolution had never occurred.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-22-5**

#### **Continued existence; winding up and liquidation; effect of dissolution**

Sec. 5. (a) A dissolved corporation continues the corporation's corporate existence but may not carry on activities except those appropriate to wind up and liquidate the corporation's affairs, including the following:

- (1) Preserving and protecting the corporation's assets and minimizing the corporation's liabilities.
- (2) Discharging or making provision for discharging the corporation's liabilities and obligations.
- (3) Disposing of the corporation's properties that will not be distributed in kind.
- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance that occurs by reason of the dissolution, in accordance with the condition.
- (5) Transferring, subject to any contractual or legal requirements, the corporation's assets as provided in or authorized by the corporation's articles of incorporation or bylaws.
- (6) If the corporation is a public benefit or religious corporation and no provision has been made in the corporation's articles of incorporation or bylaws for distribution of assets on dissolution,

transferring, subject to any contractual or legal requirement, the corporation's assets:

(A) to a person described in Section 501(c)(3) of the Internal Revenue Code; or

(B) if the dissolved corporation is not described in Section 501(c)(3) of the Internal Revenue Code, to a foreign or domestic public benefit or religious corporation.

(7) If the corporation is a mutual benefit corporation and no provision has been made in the corporation's articles of incorporation or bylaws for distribution of assets on dissolution, transferring the corporation's assets to the corporation's members or, if the corporation has no members, to those persons whom the corporation holds the corporation out as benefiting or serving.

(8) Doing any other act necessary to wind up the corporation's affairs and liquidate the corporation's assets, including the transfer of any escheated assets to the state under IC 23-17-30-1(b).

(b) Dissolution of a corporation does not do the following:

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

(2) Subject the corporation's directors or officers to standards of conduct different from those under this title.

(3) Change the following:

(A) Quorum or voting requirements for the corporation's board of directors or members.

(B) Requirements for selection, resignation, or removal of the corporation's directors or officers.

(C) Requirements for amending the corporation's bylaws.

(4) Prevent commencement of a proceeding by or against the corporation in the corporation's corporate name.

(5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(6) Terminate the authority of a registered agent.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-22-6**

#### **Claims against dissolved corporation; notice to claimants; limitation of actions**

Sec. 6. (a) A dissolved corporation may dispose of the known claims against the corporation by following the procedure described in this section.

(b) The dissolved corporation shall notify the corporation's known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must do the following:

(1) Specify the amount that the dissolved corporation believes will satisfy the claim.

(2) Inform the creditor that the creditor has the right to dispute the amount of the claim and describe the procedure for disputing the amount of the claim.

(3) Provide a mailing address where a dispute of the amount of

the claim may be sent.

(4) State the deadline, which may not be less than sixty (60) days after the effective date of the written notice, by which the dissolved corporation must receive the dispute of the amount of the claim.

(5) State that the claim will be fixed at the amount specified by the dissolved corporation if a dispute of the amount of the claim is not received by the deadline.

(c) If the amount of a claim is disputed, the claimant must notify the dissolved corporation of the dispute by the deadline. If the dissolved corporation rejects the disputed amount, the claimant must commence a proceeding to enforce the claim not later than ninety (90) days after the effective date of the dissolved corporation's rejection notice.

(d) The amount of the claim is fixed if:

(1) the claimant does not notify the dissolved corporation by the deadline; or

(2) the claimant who has notified the dissolved corporation of a dispute and has received a rejection notice does not commence a proceeding not later than ninety (90) days from the effective date of the rejection notice.

(e) Regardless of a dispute in the amount of a claim, the dissolved corporation must tender to the claimant the amount of the claim set forth by the dissolved corporation in the notice of claim not later than thirty (30) days after the earlier of the following dates:

(1) The date that the claim becomes fixed.

(2) The date that the claimant commences the proceeding to enforce the claim.

(f) 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.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-22-7**

#### **Claims against dissolved corporation; notice by publication; limitation of actions; enforcement**

Sec. 7. (a) A dissolved corporation may also publish notice of the corporation's dissolution and request that persons with claims against the corporation present the claims in accordance with the notice.

(b) The notice must do the following:

(1) Be published one (1) time in a newspaper of general circulation in the county where:

(A) the dissolved corporation's principal office is or was last located; or

(B) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within

two (2) years after publication of the notice.

(c) If a dissolved corporation publishes a newspaper notice under subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation not later than two (2) years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 6 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on.

(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 the corporation's undistributed assets; or

(2) if the assets have been distributed in liquidation, against a person, other than a creditor of the corporation, to whom the corporation distributed the corporation's property to the extent of the distributee's pro rata share of the claim or the corporation assets distributed to the person in liquidation, whichever is less.

The distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

*As added by P.L.179-1991, SEC.1.*