

IC 23-17-24

Chapter 24. Judicial Dissolution

IC 23-17-24-1

Judicial dissolution; when allowable; factors considered

Sec. 1. (a) A circuit court or superior court may dissolve a corporation as follows:

(1) In a proceeding by the attorney general if one (1) of the following is established:

(A) The corporation obtained the corporation's articles of incorporation through fraud.

(B) The corporation has continued to exceed or abuse the authority conferred upon the corporation by law.

(C) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted.

(D) The corporation is a public benefit corporation and is no longer able to carry out the corporation's purposes.

(2) Except as provided in the articles of incorporation or bylaws of a religious corporation, in a proceeding by fifty (50) members or members holding at least five percent (5%) of the voting power, whichever is less, or by a director or a person specified in articles of incorporation, if one (1) of the following is established:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break 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.

(C) The members have deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired.

(D) The corporate assets are being misapplied or wasted.

(E) The corporation is a public benefit or religious corporation and is no longer able to carry out the corporation's purposes.

(3) In a proceeding by a creditor if either of the following is established:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) In a proceeding by the corporation to have the corporation's voluntary dissolution continued under court supervision.

(b) Before dissolving a corporation, a court must consider the following:

(1) Reasonable alternatives to dissolution.

(2) If dissolution is in the public interest if the corporation is a public benefit corporation.

(3) If dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

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

IC 23-17-24-1.5

Remedies, assurance of voluntary compliance

Sec. 1.5. (a) This section applies to the following:

(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

(d) In addition to any remedies described in subsection (b), the attorney general may accept a written assurance of voluntary compliance with respect to:

(1) a past, an existing, or an imminent condition enumerated in section 1(a)(1) of this chapter; or

(2) any past, existing, or imminent violation of a duty under this article by a corporation, director, officer, member, trustee, or other corporate principal.

(e) An assurance of voluntary compliance described in subsection

(d) may include a stipulation for the voluntary payment by the person of:

(1) the costs of an investigation;

(2) an amount to be held in escrow pending the outcome of an action;

(3) an amount to be held in escrow pending the outcome of an action as restitution to an aggrieved nonprofit corporation or person; or

(4) both amounts described in subdivisions (2) and (3).

(f) An assurance of voluntary compliance described in subsection

(d):

- (1) must be filed with; and
- (2) is subject to the approval of;

the court having jurisdiction.

(g) An assurance of voluntary compliance described in subsection (d) is not considered an admission of a violation of any law.

(h) If the attorney general closes a matter by accepting an assurance of voluntary compliance described in subsection (d), the attorney general may reopen the matter for further proceedings within the period of the applicable statute of limitations.

As added by P.L.245-2005, SEC.4. Amended by P.L.65-2014, SEC.4.

IC 23-17-24-2

Venue; parties; judicial authority; notice to attorney general

Sec. 2. (a) Venue for a proceeding brought by the attorney general against a corporation or its officers or directors lies in Marion County. Venue for a proceeding brought by any other party named under section 1 of this chapter lies in the county where:

- (1) a corporation's principal office is or was last located; or
- (2) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(b) A director or a member does not have to be made a party to a proceeding to dissolve a corporation unless relief is sought against a director or a member individually.

(c) A court in a proceeding brought to dissolve a corporation may do the following:

- (1) Issue injunctions.
- (2) Appoint a receiver or custodian pendente lite with all powers and duties the court directs.
- (3) Take other action required to preserve the corporate assets wherever located.
- (4) Carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall give written notice without delay of the proceeding to the attorney general who may intervene.

As added by P.L.179-1991, SEC.1. Amended by P.L.245-2005, SEC.5.

IC 23-17-24-3

Receivers and custodians

Sec. 3. (a) A court in a judicial proceeding brought by the attorney general or by any other party named under section 1 of this chapter to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

- (1) receiver to wind up and liquidate; or
- (2) custodian to manage;

the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons

designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

(1) The receiver may do the following:

(A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.

(B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.

(2) The custodian may exercise all of the powers of the corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

As added by P.L.179-1991, SEC.1. Amended by P.L.245-2005, SEC.6.

IC 23-17-24-4

Decree of dissolution; winding up affairs

Sec. 4. (a) If after a hearing the court determines that a ground for judicial dissolution described in section 1 of this chapter exists, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certificate copy of the decree to the secretary of state, who shall file the certificate copy.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidating of the corporation's affairs in accordance with IC 23-17-22-5 and the notification of the corporation's claimants under IC 23-17-22-6 and IC 23-17-22-7.

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