

16-10a-1202 Sale of property requiring shareholder approval.

- (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, other than in the usual and regular course of business and other than pursuant to a court order, in connection with its dissolution is subject to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, that is pursuant to a court order is not subject to the requirements of this section.
- (2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property, with or without the good will, of another entity which it controls, and if the shares or other interests held by the corporation in the other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to the transaction only if the board of directors proposes and the shareholders approve the consent.
- (3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be authorized:
 - (a) the board of directors shall recommend the transaction or the consent to the shareholders 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 shareholders with the submission of the proposed transaction; and
 - (b) the shareholders entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in Subsections (5) and (6).
- (4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.
- (5) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice shall:
 - (a) state that the purpose, or one of the purposes, of the meeting is to consider:
 - (i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or
 - (ii) in the case of action pursuant to Subsection (2), the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, which shall be identified in the notice, the shares or other interests of which held by the corporation constitute all, or substantially all, of the property of the corporation; and
 - (b) contain or be accompanied by a description of the transaction, in the case of action pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the case of action pursuant to Subsection (2).
- (6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by each voting group entitled to vote on the transaction or the consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.

- (7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the corporation's board of directors subject to any contractual rights or other limitation on the abandonment, withholding, or revocation, without further shareholder action.
- (8) A transaction that constitutes a distribution is governed by Section 16-10a-640 and not by this section.

Amended by Chapter 378, 2010 General Session