

## **Part 14 Dissolution**

### **16-10a-1401 Authorization of dissolution prior to issuance of shares.**

If a corporation has not yet issued shares, a majority of its directors, or if no directors have been elected or if elected directors are no longer serving, a majority of its incorporators may authorize the dissolution of the corporation.

Enacted by Chapter 277, 1992 General Session

### **16-10a-1402 Authorization of dissolution after issuance of shares.**

- (1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in Subsection (2).
- (2) For a proposal to dissolve the corporation to be authorized:
  - (a) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
  - (b) the shareholders entitled to vote on the proposal must approve the proposal to dissolve as provided in Subsection (5).
- (3) The board of directors may condition the effectiveness of the dissolution on any basis.
- (4) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposal to dissolve the corporation.
- (5) The proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by that voting group, unless a greater vote is required by the articles of incorporation, the initial bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (3).

Amended by Chapter 378, 2010 General Session

### **16-10a-1403 Articles of dissolution.**

- (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the division for filing articles of dissolution setting forth:
  - (a) the name of the corporation;
  - (b) the address of the corporation's principal office or, if none is to be maintained, a statement that the corporation will not maintain a principal office, and, if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 16-10a-1409;
  - (c) the date dissolution was authorized;
  - (d) if dissolution was authorized by the directors or the incorporators pursuant to Section 16-10a-1401, a statement to that effect;
  - (e) if dissolution was approved by the shareholders pursuant to Section 16-10a-1402:
    - (i) the number of votes entitled to be cast on the proposal to dissolve by each voting group entitled to vote separately thereon; and

- (ii) either the total number of votes cast for and against dissolution by each voting group or the total number of undisputed votes cast for dissolution by each voting group and a statement that the number cast for dissolution was sufficient for approval; and
  - (f) any additional information the division determines is necessary or appropriate.
- (2) A corporation is dissolved upon the effective date of its articles of dissolution.

Enacted by Chapter 277, 1992 General Session

**16-10a-1404 Revocation of dissolution.**

- (1) A corporation may revoke its dissolution within 120 days after the effective date of the dissolution.
- (2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, in the case of authorization pursuant to Section 16-10a-1402, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
  - (a) the name of the corporation;
  - (b) the effective date of the dissolution that was revoked;
  - (c) the date that the revocation of dissolution was authorized;
  - (d) if pursuant to Subsection (2) the corporation's board of directors or incorporators revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;
  - (e) if pursuant to Subsection (2) the corporation's board of directors revoked a dissolution approved by the shareholders, a statement that the revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (f) if the revocation of dissolution was approved pursuant to Subsection (2) by the shareholders, the information required by Subsection 16-10a-1403(1)(e).
- (4) Revocation of dissolution is effective as provided in Subsection 16-10a-123(1). A provision may not be made for a delayed effective date for revocation pursuant to Subsection 16-10a-123(2).
- (5) 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 may carry on its business as if dissolution had never occurred.

Amended by Chapter 378, 2010 General Session

**16-10a-1405 Effect of dissolution.**

- (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
  - (a) collecting its assets;
  - (b) disposing of its properties that will not be distributed in kind to its shareholders;
  - (c) discharging or making provision for discharging its liabilities;
  - (d) distributing its remaining property among its shareholders according to their interests; and
  - (e) doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation does not:
  - (a) transfer title to the corporation's property;

- (b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (c) subject its directors or officers to standards of conduct different from those prescribed in Part 8, Directors and Officers;
- (d) change:
  - (i) quorum or voting requirements for its board of directors or shareholders;
  - (ii) provisions for selection, resignation, or removal of its directors or officers or both; or
  - (iii) provisions for amending its bylaws or its articles of incorporation;
- (e) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (g) terminate the authority of the registered agent of the corporation.

Amended by Chapter 189, 2014 General Session

**16-10a-1406 Disposition of known claims by notification.**

- (1) A dissolved corporation may dispose of the known claims against it by following the procedures described in this section.
- (2) A dissolved corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice shall:
  - (a) describe the information that must be included in a claim;
  - (b) provide an address to which written notice of any claim must be given to the corporation;
  - (c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved corporation must receive the claim; and
  - (d) state that unless sooner barred by any other state statute limiting actions, the claim will be barred if not received by the deadline.
- (3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved corporation is barred if:
  - (a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved corporation by the deadline; or
  - (b) the dissolved corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.
- (4) Claims which are not rejected by the dissolved corporation in writing within 90 days after receipt of the claim by the dissolved corporation shall be considered accepted.
- (5) The failure of the dissolved corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.
- (6) 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.

Amended by Chapter 378, 2010 General Session

**16-10a-1407 Disposition of claims by publication -- Disposition in absence of publication.**

- (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

- (2) The notice contemplated in Subsection (1) shall:
  - (a) be published:
    - (i) one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if it has no principal office in this state, in Salt Lake County; and
    - (ii) as required in Section 45-1-101;
  - (b) describe the information that must be included in a claim and provide an address at which any claim must be given to the corporation; and
  - (c) state that unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice.
- (3) If the dissolved corporation publishes a newspaper or website notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.
- (4)
  - (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.
  - (b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.
- (5) If a dissolved corporation does not publish a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within seven years after the date the corporation was dissolved.

Amended by Chapter 378, 2010 General Session

**16-10a-1408 Enforcement of claims against dissolved corporations.**

A claim may be enforced:

- (1) under Section 16-10a-1406 or 16-10a-1407 against the dissolved corporation, to the extent of its undistributed assets; or
- (2) against a shareholder of the dissolved corporation, if the assets have been distributed in liquidation; but a shareholder's total liability for all claims under this section may not exceed the total value of assets distributed to him, as that value is determined at the time of distribution. Any shareholder required to return any portion of the value of assets received by him in liquidation shall be entitled to contribution from all other shareholders. The contributions shall be in accordance with the shareholders' respective rights and interests and may not exceed the value of the assets received in liquidation.

Amended by Chapter 79, 1996 General Session

**16-10a-1409 Service on dissolved corporation.**

- (1) A dissolved corporation shall either:
  - (a) maintain a registered agent in this state to accept service of process on its behalf; or

- (b) be deemed to have authorized service of process on it by registered or certified mail, return receipt requested, to the address of its principal office, if any, as set forth in its articles of dissolution or as last changed by notice delivered to the division for filing or to the address for service of process that is stated in its articles of dissolution or as last changed by notice delivered to the division for filing.
- (2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:
  - (a) the date the dissolved corporation receives the process, notice, or demand;
  - (b) the date shown on the return receipt, if signed on behalf of the dissolved corporation; or
  - (c) five days after mailing.
- (3) Subsection (1) does not prescribe the only means, or necessarily the required means, of service on a dissolved corporation.

Enacted by Chapter 277, 1992 General Session

**16-10a-1420 Grounds for administrative dissolution.**

The division may commence a proceeding under Section 16-10a-1421 for administrative dissolution of a corporation if:

- (1) the corporation does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;
- (2) the corporation does not deliver a corporate or annual report to the division when it is due;
- (3) the corporation is without a registered agent in this state for 30 days or more;
- (4) the corporation does not give notice to the division within 30 days that its registered agent has been changed or that its registered agent has resigned; or
- (5) the corporation's period of duration stated in its articles of incorporation expires.

Amended by Chapter 364, 2008 General Session

**16-10a-1421 Procedure for and effect of administrative dissolution.**

- (1) If the division determines that one or more grounds exist under Section 16-10a-1420 for dissolving a corporation, it shall mail the corporation written notice of:
  - (a) the division's determination that one or more grounds exist for dissolving; and
  - (b) the grounds for dissolving the corporation.
- (2)
  - (a) If the corporation does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided by Subsection (1), the division shall administratively dissolve the corporation.
  - (b) If a corporation is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved corporation, stating the date of dissolution specified in Subsection (2)(d).
  - (c) The division shall mail a copy of the notice of administrative dissolution to:
    - (i) the last registered agent of the dissolved corporation; or
    - (ii) if there is no registered agent of record, at least one officer of the corporation.
  - (d) A corporation's date of dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).
  - (e) On the date of dissolution, any assumed names filed on behalf of the dissolved corporation under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

- (f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:
    - (i) transacting business in this state; or
    - (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.
  - (g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated in accordance with Section 16-10a-1422, the registration of the name of the corporation and any assumed names filed on its behalf are reinstated back to the date of dissolution.
- (3)
- (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence, but may not carry on any business except:
    - (i) the business necessary to wind up and liquidate its business and affairs under Section 16-10a-1405; and
    - (ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and 16-10a-1407.
  - (b) If the corporation is reinstated in accordance with Section 16-10a-1422, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.
- (4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.
- (5) A notice mailed under this section shall be:
- (a) mailed first-class, postage prepaid; and
  - (b) addressed to the most current mailing address appearing on the records of the division for:
    - (i) the registered agent of the corporation, if the notice is required to be mailed to the registered agent; or
    - (ii) the officer of the corporation that is mailed the notice, if the notice is required to be mailed to an officer of the corporation.

Amended by Chapter 386, 2009 General Session

**16-10a-1422 Reinstatement following dissolution.**

- (1) A corporation dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to the division for reinstatement under the corporation's same corporate name at any time after the effective date of dissolution if the corporation's corporate name is available and the corporation delivers to the division for filing an application for reinstatement that:
- (a) states:
    - (i) the effective date of the corporation's dissolution;
    - (ii) the corporation's corporate name as of the effective date of dissolution;
    - (iii) that the grounds for dissolution either did not exist or have been eliminated;
    - (iv) the corporate name under which the corporation is being reinstated;
    - (v) that the name stated in Subsection (1)(a)(iv) satisfies the requirements of Section 16-10a-401;
    - (vi) that the corporation has paid all fees or penalties imposed under this chapter or other applicable state law;
    - (vii) that the corporation:
      - (A) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

- (B) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission;
  - (viii) the address of the corporation's registered office in this state;
  - (ix) the name of the corporation's registered agent at the office stated in Subsection (1)(a)(viii);
  - (x) the federal employer identification number of the corporation; and
  - (xi) any additional information the division determines to be necessary or appropriate; and
  - (b) includes the written consent to appointment by the designated registered agent.
- (2) A corporation administratively dissolved under Section 16-10a-1403 or 16-10a-1421 on or after May 1, 2019, but before May 1, 2024, may apply for reinstatement under the corporation's same corporate name if the corporation's name is available and the corporation delivers to the division for filing an application for reinstatement that satisfies the requirements of Subsections (1)(a)(i), (1)(a)(ii), (1)(a)(iv) through (xi), and (1)(b).
- (3) A corporation administratively dissolved under Section 16-10a-1403 or 16-10a-1421 retains the corporation's corporate name and assumed name, as described in Section 42-2-6.6, for five years after the day on which the dissolution is effective.
- (4)
- (a) After receiving a corporation's application for reinstatement, the division shall:
    - (i) provide the State Tax Commission with the corporation's federal employer identification number; and
    - (ii) request that the State Tax Commission certify that the corporation is in good standing.
  - (b) The State Tax Commission shall certify that a corporation is in good standing if the corporation:
    - (i) has paid all taxes, fees, and penalties the corporation owed to the State Tax Commission; or
    - (ii) is current on a payment plan with the State Tax Commission for all taxes, fees, and penalties the corporation owes to the State Tax Commission.
  - (c) If a corporation is not in good standing as described in Subsection (4)(b), the State Tax Commission shall:
    - (i) notify the division, stating that the corporation is not in good standing; and
    - (ii) notify the corporation, explaining in detail why the corporation is not in good standing.
- (5)
- (a) The division shall revoke the administrative dissolution if:
    - (i) the division determines that the application for reinstatement contains the information required under Subsection (1) or (2);
    - (ii) the division determines that the information in the application is correct; and
    - (iii) the State Tax Commission certifies that the corporation is in good standing as described in Subsection (4)(b).
  - (b) The division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice of:
    - (i) the revocation; and
    - (ii) the effective date of the revocation.
- (6)
- (a) When the reinstatement is effective, the reinstatement relates back to the effective date of the administrative dissolution.
  - (b) Upon reinstatement:
    - (i) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and
    - (ii) the corporation may carry on the corporation's business, under the name provided in the application for reinstatement, as if the administrative dissolution had never occurred.

Amended by Chapter 232, 2024 General Session

**16-10a-1423 Appeal from denial of reinstatement.**

If the division denies a corporation's application for reinstatement under Section 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice:

- (1) setting forth the reasons for denying the application; and
- (2) stating that the corporation has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 386, 2009 General Session

**16-10a-1430 Grounds and procedure for judicial dissolution.**

- (1) The attorney general or the division director may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a corporation 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 the corporation by law.
- (2) A shareholder may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a corporation if it is established that:
  - (a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, 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;
  - (c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
  - (d) the corporate assets are being misapplied or wasted.
- (3) A creditor may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve a corporation if it is established that:
  - (a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or
  - (b) the corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.
- (4) A corporation may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to dissolve the corporation by voluntary dissolution continued under court supervision.
- (5) If an action is brought under this section, it is not necessary to make shareholders parties to the action to dissolve a corporation unless relief is sought against them individually.
- (6) In a proceeding under this section, a court may:
  - (a) issue injunctions;
  - (b) appoint a receiver or custodian pendente lite with all powers and duties the court directs; or



- (c) take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

Amended by Chapter 401, 2023 General Session

**16-10a-1432 Receivership or custodianship.**

- (1) A 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 business and affairs of the corporation. The court shall hold a hearing, after giving notice to 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 its property wherever located.
- (2) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state 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.
- (3) The 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:
  - (a) the receiver:
    - (i) 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 court; and
    - (ii) may sue and defend in its own name as receiver of the corporation in all courts of this state; or
  - (b) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.
- (4) 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, its shareholders, and its creditors.
- (5) The 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 the custodian's or receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

Enacted by Chapter 277, 1992 General Session

**16-10a-1433 Decree of dissolution.**

- (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 16-10a-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the division for filing.
- (2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 16-10a-1405 and the giving of notice to its registered agent, or to the division if it has no registered agent, and to claimants in accordance with Sections 16-10a-1406 and 16-10a-1407.
- (3) The court's order may be appealed as in other civil proceedings.

Enacted by Chapter 277, 1992 General Session

**16-10a-1434 Election to purchase in lieu of dissolution.**

- (1) In an action under Subsection 16-10a-1430(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase all shares of the corporation owned by the petitioning shareholder, at the fair value of the shares, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.
- (2)
- (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the action under Subsection 16-10a-1430(2) or at any later time as the court in its discretion may allow. If the corporation files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase all shares of the corporation owned by the petitioning shareholder, the corporation shall purchase the shares in the manner provided in this section.
  - (b) If the corporation does not file an election with the court within the time period, but an election to purchase all shares of the corporation owned by the petitioning shareholder is filed by one or more shareholders within the time period, the corporation shall, within 10 days after the later of:
    - (i) the end of the time period allowed for the filing of elections to purchase under this section; or
    - (ii) notification from the court of an election by shareholders to purchase all shares of the corporation owned by the petitioning shareholder as provided in this section, give written notice of the election to purchase to all shareholders of the corporation, other than the petitioning shareholder. The notice shall state the name and number of shares owned by the petitioning shareholder and the name and number of shares owned by each electing shareholder. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase shares in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.
  - (c) Shareholders who wish to participate in the purchase of shares from the petitioning shareholder shall file notice of their intention to join in the purchase by the electing shareholders, no later than 30 days after the effective date of the corporation's notice of their right to join in the election to purchase.
  - (d) All shareholders who have filed with the court an election or notice of their intention to participate in the election to purchase the shares of the corporation owned by the petitioning shareholder thereby become irrevocably obligated to participate in the purchase of shares from the petitioning shareholders upon the terms and conditions of this section, unless the court otherwise directs.
  - (e) After an election has been filed by the corporation or one or more shareholders, the action under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other disposition.
- (3) If, within 60 days after the earlier of:
- (a) the corporation's filing of an election to purchase all shares of the corporation owned by the petitioning shareholder; or
  - (b) the corporation's mailing of a notice to its shareholders of the filing of an election by the shareholders to purchase all shares of the corporation owned by the petitioning shareholder,

the petitioning shareholder and electing corporation or shareholders reach agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the court shall enter an order directing the purchase of petitioner's shares, upon the terms and conditions agreed to by the parties.

- (4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party the court shall stay the proceedings under Subsection 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the day before the date on which the action under Subsection 16-10a-1430(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.
- (5)
  - (a) Upon determining the fair value of the shares of the corporation owned by the petitioning shareholder, the court shall enter an order directing the purchase of the shares upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of shares among shareholders if the shares are to be purchased by shareholders.
  - (b) In allocating the petitioning shareholders' shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different share classes to the extent practicable. The court may direct that holders of a specific class or classes may not participate in the purchase. The court may not require any electing shareholder to purchase more of the shares of the corporation owned by the petitioning shareholder than the number of shares that the purchasing shareholder may have set forth in his election or notice of intent to participate filed with the court as the maximum number of shares he is willing to purchase.
  - (c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.
  - (d) If the court finds that the petitioning shareholder had probable grounds for relief under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.
- (6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the action to dissolve the corporation under Section 16-10a-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.
- (7)
  - (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days after notice.
  - (b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of

Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously asserted on behalf of the corporation.

- (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Section 16-10a-640.

Amended by Chapter 401, 2023 General Session

**16-10a-1440 Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Amended by Chapter 198, 1995 General Session