

Chapter 23B.12 RCW
SALE OF ASSETS

Sections

- 23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors.
- 23B.12.020 Sale of property and assets other than in the usual and regular course of business.

RCW 23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors. (1) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders is not required:

(a) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's property and assets in the usual and regular course of its business; or

(b) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's property and assets, regardless of whether or not these actions are in the usual and regular course of its business.

(2) Unless the articles of incorporation provide otherwise, approval by a corporation's shareholders is not required to dedicate the corporation's property and assets to the repayment of its creditors through an assignment for the benefit of creditors in accordance with chapter 7.08 RCW that is approved by the board of directors, or by the appointment of a general receiver in a proceeding under chapter 7.60 RCW that is approved by the board of directors. The assumption of control over the corporation's property and assets by an assignee for the benefit of creditors or by a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's property and assets or the application of any property and assets or proceeds toward satisfaction of the claims of creditors. [2019 c 141 s 6; 2017 c 28 s 10; 2006 c 52 s 4; 1990 c 178 s 12; 1989 c 165 s 138.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

RCW 23B.12.020 Sale of property and assets other than in the usual and regular course of business. (1) Except as provided in subsection (11) of this section, a sale, lease, exchange, or other disposition of a corporation's property and assets, other than in the usual and regular course of its business, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity.

(2) A continuing business activity will be conclusively presumed to represent a significant continuing business activity if, for the corporation and its subsidiaries on a consolidated basis, it represented at least:

(a) Twenty-five percent of total assets at the end of the most recently completed fiscal year; and

(b) Either: (i) Twenty-five percent of income from continuing operations before taxes, or (ii) twenty-five percent of revenues from

continuing operations, in each case for the most recently completed fiscal year.

(3) No presumption that a disposition will leave the corporation without a significant continuing business activity will arise from the fact that the corporation's continuing business activity does not equal or exceed any of the percentages set forth in subsection (2) of this section.

(4) The determination of whether or not a continuing business activity constitutes a significant continuing business under subsection (2) of this section may be based either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or, in the case of subsection (2)(a) of this section, on a fair valuation or other method that is reasonable in the circumstances.

(5) For a disposition to be approved by a corporation's shareholders:

(a) The board of directors must approve the disposition and submit the proposed disposition for approval by the shareholders;

(b) The board of directors must recommend the proposed disposition to the shareholders unless (i) the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote on the proposed disposition must approve the proposed disposition as provided in subsection (8) of this section.

(6) The board of directors may condition its submission of the proposed disposition on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed disposition.

(7) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed disposition and contain or be accompanied by a description of the proposed disposition, including a summary of the material terms and conditions thereof and the consideration to be received by the corporation.

(8)(a) With respect to a corporation formed before August 1, 2024:

(i) Unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, require a different vote, shareholder approval of the proposed disposition requires (A) the approval of two-thirds of the votes entitled to be cast on the proposed disposition, and (B) the approval of two-thirds of the votes entitled to be cast on the proposed disposition by each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section; and

(ii) The articles of incorporation may require a different vote than that provided in this subsection, or a different vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed

disposition and of each other voting group entitled to vote separately on the proposed disposition.

(b) With respect to a corporation formed on or after August 1, 2024, unless the articles of incorporation, or the board of directors acting in accordance with subsection (6) of this section, requires a greater vote, the proposed disposition must be approved by a majority of the voting group comprising all the votes entitled to be cast on the proposed disposition, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed disposition, unless shareholder approval is not required under subsection (11) of this section.

(9) After a proposed disposition has been approved by the shareholders as required by this section, and at any time before the proposed disposition has been consummated, the board of directors may abandon the proposed disposition without further action by the shareholders, subject to any contractual rights of other parties relating thereto.

(10) A disposition that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

(11) Unless the articles of incorporation otherwise require, approval by the shareholders of a parent corporation is not required for the transfer of any or all of the parent corporation's property and assets to one or more subsidiaries all of the shares or interests of which are owned, directly or indirectly, by the parent corporation.

(12) The assets of a subsidiary are to be treated as the assets of its parent corporation for purposes of this section. [2024 c 22 s 21; 2019 c 141 s 7; 2017 c 28 s 11; 2011 c 328 s 7; 2009 c 189 s 40; 2003 c 35 s 8; 1989 c 165 s 139.]