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CHAPTER 12

Sale of Assets

**SECTION 33‑12‑101.** Sale of assets in regular course of business; mortgage or transfer of assets; approval of shareholders.

(a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber all, or substantially all, of its property whether or not in the usual and regular course of business.

(b) A public corporation, on the terms and conditions and for the consideration determined by the board of directors, may transfer any or all of its property to a corporation, all the shares of which are owned by the public corporation.

(c) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) or (b) is not required.

HISTORY: Derived from 1976 Code Section 33‑19‑20 [1962 Code Section 12‑12.2; 1952 Code Section 12‑631; 1942 Code Section 7705; 1932 Code Section 7705; 1926 (34) 1052; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑19‑40 [1962 Code Section 12‑21.4; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1998 Act No. 328, Section 7.

**SECTION 33‑12‑102.** Sale of assets other than in regular course of business.

(a) 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 corporation’s board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized, the:

(1) board of directors must recommend the proposed transaction 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

(2) shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders’ meeting in accordance with Section 33‑7‑105. The notice also must state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation require a different vote or the board of directors (acting pursuant to subsection (c)) requires a greater vote than that specified by this subsection or the articles of incorporation or a vote by voting groups, the transaction to be authorized must be approved by two‑thirds of all the votes entitled to be cast on the transaction.

(f) The articles of incorporation may require a lower or higher vote for approval than that specified in subsection (e) and may require a vote by voting groups, but the required vote must be at least a majority of all the votes entitled to be cast on the transaction.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(h) A transaction that constitutes a distribution is governed by Section 33‑6‑400 and not by this section.

HISTORY: Derived from 1976 Code Section 33‑19‑30 [1962 Code Section 12‑21.3; 1952 Code Sections 12‑631, 12‑632; 1942 Code Section 7705; 1932 Code Section 7705; 1926 (34) 1052; 1962 (52) 1996; 1963 (53) 327; 1964 (53) 1910; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑12‑103.** “Sale” defined.

Whenever used in this chapter, “sale” includes a sale, lease, exchange, or other disposition of property and assets of the corporation except a mortgage of or other security interest in the property and assets.

HISTORY: Derived from 1976 Code Section 33‑19‑10 [1962 Code Section 12‑21.1; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.