

## **IC 23-1-41**

### Chapter 41. Sale of Assets

#### **IC 23-1-41-1**

##### **Right to sell, lease, or otherwise dispose of corporate property; shareholder approval**

Sec. 1. The approval of the shareholders of a corporation is not required unless the articles of incorporation require the approval of the shareholders to:

- (1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the corporation's property in the usual and regular course of business;
- (2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's property whether or not in the usual and regular course of business; or
- (3) transfer any or all of the corporation's property to a corporation all the shares of which are owned by the corporation.

*As added by P.L.149-1986, SEC.25. Amended by P.L.133-2009, SEC.34.*

#### **IC 23-1-41-2**

##### **Sale, lease, or disposition of property other than in regular course of business**

Sec. 2. (a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 1 of this chapter, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for the fiscal year, in each case of the corporation and the corporation's subsidiaries on a consolidated basis, the corporation is conclusively considered to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for the shareholder's approval. The board of directors shall transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make the recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition the board of directors'

submission of a disposition to the shareholders under subsection (b) on any basis.

(d) If:

(1) a disposition is required to be approved by the shareholders under subsection (a); and

(2) the approval is to be given at a meeting;

the corporation shall notify each shareholder, whether the shareholder is entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval in accordance with IC 23-1-29-5. The notice must state that the purpose or one (1) of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, the disposition may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition that constitutes a distribution is governed by IC 23-1-28 and not by this section.

(h) A disposition of assets in the course of dissolution under IC 23-1-45, IC 23-1-46, IC 23-1-47, or IC 23-1-48 is not governed by this section.

(i) The assets of a direct or indirect consolidated subsidiary shall be considered the assets of the parent corporation for the purposes of this section.

*As added by P.L.149-1986, SEC.25. Amended by P.L.133-2009, SEC.35.*