Article 12.

Transfer of Assets.

§ 55A-12-01. Sale of assets in regular course of activities and mortgage of assets.

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

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

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

(b) Unless the articles of incorporation require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40; 1993, c. 398, s. 1.)

§ 55A-12-02. Sale of assets other than in regular course of activities.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless this Chapter, the articles of incorporation, bylaws, or the board of directors or members (acting pursuant to subsection (d) of this section) require a greater vote or voting by class, the proposed transaction to be authorized shall be approved:

(1) By the board;

(2) By the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the proposed transaction, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles of incorporation authorized by G.S. 55A-10-30 for an amendment to the articles of incorporation or bylaws.

(c) If the corporation does not have members entitled to vote thereon, the transaction shall be approved by a vote of a majority of the directors then in office. The corporation shall provide at least five days' written notice of any directors' meeting at which such approval will be considered. The notice shall 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, of the property or assets of the corporation and contain or be accompanied by a description of the transaction.

(d) The board may condition its approval of the proposed transaction, and the members entitled to vote thereon may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members entitled to vote thereon at a membership meeting, the corporation shall give notice of the membership meeting to those members in accordance with G.S. 55A-7-05. The notice shall 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, of the property or assets of the corporation and contain or be accompanied by a description of the transaction.

(f) If the board seeks to have the transaction approved by the members entitled to vote thereon by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a description of the transaction.

(g) A charitable or religious corporation shall give written notice to the Attorney General 30 days before it sells, leases, exchanges, or otherwise disposes of all, or a majority of, its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the charitable or religious corporation prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors. (1955, c. 1230; 1985 (Reg. Sess., 1986), c. 801, s. 40; 1993, c. 398, s. 1; 1999-204, s. 2.)