

NONPROFIT CORPORATION ACT (EXCERPT)
Act 162 of 1982

450.2753 Disposition of property and assets of corporation; disposal of all or substantially all of property; presumption that corporation retains significant continuing business activity; "consideration" defined; recommendation of proposed transaction; exceptions; submission to shareholders or members; approval; notice of meeting; statement; authorization; fixing term or condition and consideration; voting; abandonment; distribution.

Sec. 753.

(1) Except as provided in section 751, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, with or without the goodwill, in a transaction that is not in the usual and regular course of its business, on any terms and conditions and for any consideration that is authorized under this section. A corporation has not disposed of all or substantially all of its property and assets under this subsection if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation and its subsidiaries reported on a consolidated basis continue to conduct an activity that represented at least 25% of total revenues or 25% of total assets at the end of the most recently completed fiscal year or at least 25% of total program expenditures for that fiscal year. As used in this subsection, "consideration" may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other domestic corporation, domestic business corporation, foreign corporation, or foreign business corporation.

(2) The board of a stock or membership corporation must recommend a proposed transaction described in subsection (1) to the shareholders or members, unless any of the following apply:

(a) The board determines that because of a conflict of interest, events that occur after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation.

(b) The power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488.

(c) Section 529 applies.

(3) If 1 or more of the exceptions in subsection (2) apply, the board must communicate the basis for not making a recommendation to the shareholders or members.

(4) The board may condition its submission to shareholders or members under subsection (2) on any basis.

(5) If a corporation is organized on a stock or membership basis, the corporation must submit a proposed transaction described in subsection (1) for approval at a meeting of shareholders or members. The corporation shall give notice of the meeting to each shareholder or member of record, whether or not that person is entitled to vote at the meeting, within the time and in the manner provided under this act for the giving of notice of meetings of shareholders or members. The notice shall include or be accompanied by a statement that summarizes the principal terms of the proposed transaction or a copy of any documents that contain the principal terms.

(6) At a meeting described in subsection (5), the shareholders or members may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any term or condition and the consideration to be received by the corporation for that transaction. Subject to subsections (8) and (9), the transaction is approved if a majority of the votes held by shareholders or members of the corporation entitled to vote are cast in favor of the sale, lease, exchange, or other disposition.

(7) Notwithstanding subsection (6), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members that are entitled to vote at the meeting, the sale, lease, exchange, or other disposition is approved if a majority of the votes held by shareholders or members that are present in person or by proxy at the meeting are cast in favor of the sale, lease, exchange, or other disposition.

(8) Notwithstanding authorization by the shareholders or members under subsection (5) or (6), unless the power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the board may abandon a sale, lease, exchange, or other disposition under subsection (1), subject to the rights of third parties under any contracts that relate to the sale, lease, exchange, or other disposition, without further action or approval by shareholders or members.

(9) If a corporation is organized on a directorship basis, a sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets, with or without goodwill, of a corporation, in a transaction that is not in the usual and regular course of its business, is authorized if it receives the affirmative vote of a majority of the directors who are then in office. A corporation shall give notice of the meeting to authorize a sale, lease, exchange, or other disposition under this subsection to each director who is then in office at least 20 days before the meeting, and the notice shall include a statement that summarizes the principal terms of the proposed transaction or a copy of any documents that contain the principal terms.

(10) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity of which a second corporation owns a majority of the shares or beneficial interests, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger, is a disposition by the second corporation of its pro rata share of the property and assets of the corporation or other entity on a consolidated basis for purposes of this section.

(11) A transaction that is a distribution permitted under section 301 is governed by section 545, and this section and section 751 do not apply to that transaction.

History: 1982, Act 162, Eff. Jan. 1, 1983 ;— Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015