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Corporation Law: Washington

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Status: **Law stated as of 10 Oct 2023** | Jurisdiction: **United States, Washington**

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A Q&A guide to corporation law in Washington State. This Q&A addresses key areas of corporate law, such as formation, foreign qualification, mergers, anti-takeover laws, and dissolution. Answers to questions can be compared across a number of jurisdictions (see Corporation Law: State Q&A Tool).

Forming a For-Profit Corporation and Corporate Actions

1. What is required to form and organize a for-profit corporation in your jurisdiction? Please include information on:

- Documents.
- Corporate actions (board versus incorporator actions).
- Name requirements and reservation options.
- Filing requirements (including what must be filed and where, timing, electronic versus paper, and availability of expedited/rush services).

Documents

Articles of Incorporation

One or more persons acting as the incorporator must file articles of incorporation in writing with the Washington secretary of state unless the secretary of state permits electronic delivery. Articles of incorporation must include:

- The name of the corporation.
- The number of authorized shares.
- The name and street address of the corporation's initial registered office and initial registered agent.
- The name and address of each incorporator.

(RCW 23B.02.020.)

The Washington Business Corporation Act includes a list of default provisions a corporation is subject to unless otherwise provided in the articles of incorporation. Counsel should review the default provisions to avoid unintended consequences for the corporation. (RCW 23B.02.020.)

For more information on drafting articles of incorporation, see Practice Note, Forming and Organizing a Corporation (WA): Articles of Incorporation and Standard Document, Articles of Incorporation (WA).

Bylaws

Bylaws are the governance rules of the corporation. Bylaws are not filed with the secretary of state and may be adopted by the board of directors (or incorporators) unless otherwise provided in the articles of incorporation or bylaws. Areas typically covered by bylaws include:

- The number of directors on the board and the process for electing directors.
- Board and shareholder meeting procedures and conduct.
- Board committees and officers.

(RCW 23B.02.060 and 23B.10.200.)

For a sample document setting out bylaws for a private Washington corporation, see Standard Document, Bylaws (WA).

Corporate Actions

Organizational Meeting

After incorporation, if initial directors are named in the articles of incorporation, they must hold an organizational meeting to complete the organization of the corporation by:

- Appointing officers.
- Adopting bylaws.

- Carrying on any other business brought before the meeting.

(RCW 23B.02.050(1)(a).)

If initial directors are not named in the articles of incorporation, the incorporators must hold an organizational meeting to either:

- Choose directors and complete the organization of the corporation.
- Elect directors who will complete the organization of the corporation.

(RCW 23B.02.050(1)(b).)

An organizational meeting may be held in or outside of the state. Corporate action required to complete the organization of the corporation may be approved at a meeting or by written consent of each incorporator. (RCW 23B.02.050(2), (3).)

For an example of organizational actions taken by written consent, see Standard Document, Unanimous Consent of the Board in Lieu of an Organizational Meeting (WA).

Initial Report

A Washington corporation's initial annual report must be delivered to the secretary of state for filing within 120 days of the date its articles of incorporation became effective (RCW 23B.02.050(4), 23.95.255(1), and 23.95.105(32)(a)).

For more information on filing the report, see Question 2.

Name Requirements and Reservation Options

Naming a Washington Corporation

Except in the case of a social purpose corporation, the name of a Washington corporation must contain one of the following words or its abbreviation:

- Corporation.
- Incorporated.
- Company.
- Limited.

(RCW 23.95.305(1).)

The name of a Washington corporation and the name under which a foreign corporation may register to do business in the state must be distinguishable on the records of the secretary of state from the name of other entities registered or reserved in Washington, unless:

- An entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to one that is distinguishable on the records of the secretary of state from any name:
  - of an existing domestic entity;
  - of a foreign entity registered to do business in Washington; or
  - reserved or registered with the secretary of state.
- The corporation delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the corporation to use the name in Washington.
- The other entity is formed or authorized to transact business in Washington and the proposed user entity has:
  - merged with the other entity; or
  - been formed by reorganization of the other entity.

(RCW 23.95.300.)

Name Reservations

To reserve a corporate name, a person must deliver an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. The name reservation reserves the name for a nonrenewable 180-day period. (RCW 23.95.310(1).)

The fee for the name reservation is $30 with an additional $50 fee for expedited service.

The owner of the reserved corporation name may transfer the reservation to another person that is not an individual by delivering to the secretary of state an executed notice in a record of the transfer, which states the name and address of the transferee (RCW 23.95.310(2)).

Filing Requirements

The articles of incorporation can be submitted for filing along with the filing fee online or by mail to the Corporations Division of the secretary of state.

Expedited services are available, and fees vary by method of filing. If seeking expedited service in Washington for forms filed by mail, fax, or online, allow for a two-business-day turnaround. However, at busier times of the year, for example the end of the year or holidays, it can take longer. The most expedient turnaround times are reserved for filings submitted in person before 3:30 p.m., which are processed the same day.

The filing fee for Washington for-profit corporations is:

- $180, for articles of incorporation.
- $50 for expedited service in person, by mail, or by fax. The persons filing should also write "EXPEDITE" in bold letters on the outside of the envelope, the face of the record to be filed, or any cover letter submitted with the record. These filings are normally processed within two business days of receipt or as soon thereafter as possible.

(Wash. Admin. Code 434-112-080 and 434-112-085.)

Further information may be found by visiting the Washington secretary of state's Corporations Division website.

2. What are the annual reporting or other filing requirements (including franchise tax amounts) for a corporation in your jurisdiction?

Each domestic corporation and each foreign corporation authorized to transact business in Washington must deliver an annual report to the Washington secretary of state and pay its annual corporate license fee. The annual report is due by the last day of the month that the business entity was formed or registered in the secretary of state's office. (RCW 23.95.255(2) and Wash. Admin. Code 434-112-060.)

The domestic or foreign corporation's annual report must include:

- The name of the corporation.
- The jurisdiction of incorporation.
- The name, street address, and mailing address of its registered agent.
- The street and mailing addresses of the corporation's principal office.
- For a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.
- The names of its directors.
- A brief description of the nature of its business.
- The corporation's unified business identifier number.

This information must be current on the date the report is executed by the corporation. (RCW 23.95.255.)

Between 30 and 90 days before the annual report is due, the secretary of state will send a notice that the corporation's annual report must be filed. It is the responsibility of the corporation to file and pay the fee on time whether it receives the renewal form or not. (RCW 23.95.255(7).)

Annual reports may be submitted online or by mail. The annual license fees are:

- $60 for annual reports.
- $10 for amended annual reports.

Corporations doing business in Washington are also subject to business and occupation tax (B&O tax). The B&O tax is measured by the application of rates against the value of products, gross proceeds of sales, or gross income. (RCW 82.04.220.) For more information on the B&O tax, see Department of Revenue of Washington State: Business & Occupation Tax.

3. What are the requirements for holding an annual meeting of shareholders in your jurisdiction?

Preliminary Requirements

Meeting Location

A Washington corporation must hold a shareholders' meeting annually to elect directors at a time stated in or fixed according to its bylaws. The annual shareholder meeting may be held:

- In or outside of Washington at a place provided in or fixed according to the bylaws.
- If no place is identified, at the corporation's principal office.

(RCW 23B.07.010.)

The meeting may instead be held solely through remote communication according to RCW 23B.07.080 if both:

- The articles of incorporation or bylaws do not provide otherwise.
- The board of directors or any person authorized by the bylaws to determine the location of the meeting decides to hold a virtual meeting instead of a physical assembly at a particular location.

(RCW 23B.07.010(4).)

Notice to Shareholders

A Washington corporation must notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Notice of the annual meeting:

- Does not need to include a description of the purpose of the meeting unless the articles of incorporation require otherwise.
- Must be given no fewer than ten and no more than 60 days before the meeting date.

(RCW 23B.07.050.)

Only shareholders entitled to vote are entitled to receive notice of the meeting unless the articles of incorporation require otherwise (RCW 23B.07.050).

For a special meeting, the notice must include a description of the purposes for which the meeting is called (RCW 23B.07.050).

Record Date

The bylaws may fix or set how to fix the record date for one or more voting groups to determine which shareholders are entitled to:

- Notice of a shareholder meeting.
- Demand a special meeting.
- Vote.
- Approve any corporate action.

(RCW 23B.07.070(1).)

If the bylaws do not fix or provide for fixing the record date, the corporation's board of directors may fix the record date, which may not precede the date on which the resolution fixing the record date is approved. The record date cannot be more than 70 days before the meeting or more than ten days before the date on which the first shareholder consent is executed. If no record date is specifically set by the board of directors or the bylaws, the record date is the day before notice is delivered to shareholders. (RCW 23B.07.070.)

Quorum

A majority of the votes entitled to be cast on the matter by a voting group is a quorum of that voting group for action on the matter at hand unless the articles of incorporation or the Washington Business Corporation Act (WBCA) specify a different requirement (RCW 23B.07.250(1)). The articles of incorporation may increase or decrease the number of votes required for a quorum, but a quorum can never consist of less than one-third of the votes entitled to be cast (RCW 23B.07.270(1)).

A voting group means all shares of one or more classes or series that under the articles of incorporation or the WBCA are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the WBCA to vote generally on the matter are a single voting group for that purpose. (RCW 23B.01.400(48).)

Failure to Hold an Annual Meeting

Failure to hold an annual meeting when stated in or fixed according to a Washington corporation's bylaws does not affect the validity of any corporate action (RCW 23B.07.010(5)).

Voting and Approval

Shares Entitled to Vote

Unless the articles of incorporation or WBCA provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. The shares of a Washington corporation are not entitled to vote if they are, directly or indirectly, either:

- Owned or otherwise belong to the corporation.
- Owned by a second corporation and the first corporation owns, through an entity of which a majority of the voting power is held directly or indirectly by or is otherwise controlled by the corporation.

(RCW 23B.07.210.)

Voting

Unless the articles of incorporation provide otherwise:

- Shareholders of a Washington corporation formed on or after January 1, 2020, do **not** have a right to cumulate their votes for directors.
- Shareholders of a Washington corporation formed before January 1, 2020, elect directors by cumulative voting.

(RCW 23B.07.280(1), (2).)

Unless otherwise provided in the articles of incorporation or in the bylaws of a public company adopted under RCW 23B.10.205, the director candidates receiving the most votes cast by shares entitled to vote, up to the number of directors to be elected by the shares, are elected. (RCW 23B.07.280(4).)

Shares otherwise entitled to vote cumulatively cannot be voted cumulatively at a meeting unless either:

- The meeting notice or proxy statement with the notice conspicuously states that cumulative voting is authorized.
- A shareholder with the right to cumulate votes gives notice to the corporation at least 72 hours before the meeting's scheduled time of the shareholder's intent to cumulate votes. If one shareholder gives this notice, all other shareholders in the same voting group are entitled to cumulate votes without giving further notice.

(RCW 23B.07.280(3).)

Unless the articles of incorporation authorize cumulative voting, alter the vote specified in RCW 23B.07.280(4), or explicitly prohibit the adoption of one of these bylaws, a public company may elect in its bylaws to state that, for director elections:

- Each vote entitled to be cast may be voted for, against, withheld, or abstained for one or more candidates, up to the number of candidates that is equal to the number of directors to be elected but without cumulating the votes.
- To be elected, a candidate must have received the number, percentage, or level of votes specified in the bylaws cast by shareholders of shares entitled to vote in the election at a meeting at which a quorum is present.
- Except in a contested election, a candidate who does not receive the number, percentage, or level of votes specified in the bylaws but who was a director at the time of the election shall continue to serve as a director for a term that shall terminate on the date that is the earlier of:
  - a date specified in the bylaws but not later than 90 days from the date on which the voting results are determined by the inspectors of elections; or
  - the date an individual is selected by the board of directors to fill the office held by that director under RCW 23B.08.100 (governing filling vacancies on the board).
- The board of directors may select any qualified individual to fill the office held by a director who did not receive the specified vote.
- Unless the bylaws specify otherwise, only votes cast are to be accounted for. A ballot marked "withheld" regarding a share is counted as a vote cast.
- Unless the bylaws specify otherwise, shares otherwise present at the meeting but which are abstained or about which no authority or direction to vote in the election is given or specified are not counted as votes cast in the election.
- A bylaw may provide that votes cast against or withheld regarding a candidate are to be accounted for in determining whether the number, percentage, or level of votes required for election has been received.
- Unless the bylaws specify otherwise, or unless the board of directors determines no bona fide election contest will result, election of directors by a voting group cannot be held in this manner if there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders at:
  - the expiration of the time fixed under a provision requiring advance notification of director candidates; or
  - if the bylaws do not require advance notification, a time fixed by the board of directors that is no more than 14 days before notice is given of the meeting at which the election is to occur.

(RCW 23B.10.205.)

Other matters requiring a vote are approved if there are more votes cast in favor of the action than votes cast in opposition to it unless a different requirement is specified for a vote on that matter by the articles of incorporation or the WBCA (RCW 23B.07.250(3)).

Proxy Voting

A shareholder or a shareholder's agent may vote by proxy. An appointment of a proxy is effective when an executed appointment form is received by the inspectors of election or an officer or agent of the corporation authorized to tabulate the votes. Unless the appointment states that it is irrevocable, an appointment is valid for:

- The term provided in the appointment form.
- 11 months, if no term is provided.

(RCW 23B.07.220.)

An irrevocable appointment must be coupled with an interest to be valid. An interest can include the appointment of:

- A pledgee.
- A person who purchased or agreed to purchase the shares.
- A creditor of the corporation who extended credit under terms requiring the appointment.

- An employee of the corporation whose contract requires the appointment.
- A party to a voting agreement under RCW 23B.07.310.

(RCW 23B.07.220(4).)

An irrevocable interest is revoked when the interest it is coupled with is extinguished. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of the appointment's existence when the transferee acquired the shares and the existence of the irrevocable appointment was not conspicuously on the share certificates or the information statement. (RCW 23B.07.220(6) and (7).)

Other Requirements

Ability to Raise Matters at a Meeting

Shareholders of at least 10% of all the votes entitled to be cast on an issue may call special meetings according to RCW 23B.07.020. If the corporation is a public company, this right can be limited or denied in the articles of incorporation. (RCW 23B.07.020.)

A written demand for a special meeting will only be effective when the demand is delivered to the corporation within 60 days after its execution by shareholders who hold at least ten percent of all of the votes entitled to be cast or the percentage as otherwise fixed in accordance with RCW 23B.07.020(2) or (3). (RCW 23B.07.020(4).)

Shareholders' Lists

A Washington corporation must make a shareholders list available for inspection by any shareholder beginning ten days before the shareholder meeting and through the conclusion of the meeting either:

- At its principal office.
- At a place identified in the meeting notice in the city where the meeting will be held.
- On a reasonably accessible electronic network with necessary information provided with the meeting notice to access the list.

(RCW 23B.07.200.)

A shareholder, shareholder's agent, or the shareholder's attorney is entitled to inspect the list. If the meeting is held solely by means of remote communication in accordance with RCW 23B.07.010(4) or 23B.07.020(6), then the list must be available for inspection by any shareholder, shareholder's agent, or shareholder's attorney during the entire time of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided with the notice of the meeting. (RCW 23B.07.200.)

During the period that the list is available, shareholders or their agents may inspect and copy the corporation's shareholder records if:

- A request to inspect and copy the records is submitted in writing at least five business days before the date on which the shareholder wants to inspect and copy the records.
- The demand is made in good faith and for a proper purpose.
- The shareholder describes with reasonable particularity the purpose for requesting to inspect the records and the records the shareholder wants to inspect.
- The records are directly connected with the shareholder's purpose.

(RCW 23B.07.200 and 23B.16.020(1), (3).)

Use of Inspectors of Election

A Washington corporation must appoint one or more inspectors to act at a shareholder meeting if the corporation's shares are either:

- Listed on a national securities exchange.
- Regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(RCW 23B.07.035(1)).

The inspectors must:

- Ascertain the number of shares outstanding and the voting power of each share.
- Determine the shares represented at a meeting.
- Determine the validity of proxy appointments and ballots.
- Count votes and ballots.
- Make a written report of results.

(RCW 23B.07.035(2).)

An inspector may be an officer or employee of the corporation (RCW 23B.07.035(3)).

Action by Written Consent

Shareholders may act by written consent without a meeting if the action is approved by either:

- All shareholders entitled to vote on the action.

- Shareholders holding of record or otherwise entitled to vote no less than the minimum number of votes needed to approve the action at a meeting at which all shares entitled to vote were present and voted if the ability to act by written consent is authorized by the articles of incorporation.

(RCW 23B.07.040.)

For an example of a written consent to take action, see Standard Document, Action by Consent of Shareholders (WA).

Shareholder proposals for publicly traded corporations incorporated in Washington are also governed by Rule 14a-8 under the Securities Exchange Act of 1934. For more information on the shareholder proposal process, see Rule 14a-8 Shareholder Proposal Process Flowchart.

Foreign Corporations

4. When and how does a corporation qualify to do business in your jurisdiction? Please include information on:

- State nexus analysis.
- Filing requirements.
- Fees.
- Name requirements.

State Nexus Analysis

Any corporation incorporated under the laws of a jurisdiction other than Washington is a foreign corporation and, unless authorized to transact business by another state or federal statute, it must register with the Washington secretary of state if it desires to transact business in the state. Once registered, the foreign corporation can transact lawful business in the state. (RCW 23.95.505.)

Section 23.95.520 of the Revised Code of Washington sets out certain activities that do not constitute transacting business in Washington, including:

- Maintaining, defending, mediating, arbitrating, or settling any action or suit or any administrative or arbitration proceeding.
- Holding meetings of the board of directors or shareholders.
- Maintaining accounts at financial institutions.
- Selling through independent contractors.
- Soliciting orders where:
  - the orders require acceptance outside Washington before becoming binding contracts; and
  - the contracts do not involve any local performance other than delivery and installation.
- Securing or collecting debts or enforcing mortgages or security interests in property securing the debts.
- Owning property.
- Conducting an isolated transaction that is completed within 30 days and that is not one of a series of related and similar transactions.
- Transacting business in interstate commerce.
- Operating an approved branch campus of a foreign degree-granting institution in compliance with Chapter 28B.90 of the Revised Code of Washington and according to RCW 23.95.520(2).

Conduct in Washington that is more involved, regular, or systemic generally will constitute transacting business under RCW 23.95.520. (See *Green Thumb, Inc. v. Tiegs*, 726 P.2d 1024, 1026 (Wash. Ct. App. 1986).)

Filing Requirements

A foreign corporation may deliver a foreign registration statement to the secretary of state to register to do business in Washington.

The foreign registration statement must include:

- The name of the foreign corporation, which must meet the requirements stated in RCW 23.95.300 (see Question 1: Name Requirements and Reservation Options).
- The type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability partnership.
- The jurisdiction of incorporation.
- The date of incorporation and period of duration.
- The street and mailing address of its principal office and, if the law of the corporation's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing address of the office.
- The name of its commercial registered agent in Washington or its noncommercial registered agent (including the name and address of the noncommercial registered agent or the title of an office or other position

with the corporation and the address to which process, notice, or demands are to be sent).

- The names and business addresses of its current directors and officers.
- The nature of the foreign corporation's business or purposes to be conducted or promoted in Washington.
- The date on which the corporation first did or intends to do business in Washington.

(RCW 23.95.510(1) and 23.95.415(1).)

A foreign corporation must also deliver a certificate of existence (or comparable certificate):

- Issued by the state or country of its jurisdiction of incorporation.
- Issued no more than 60 days before the date of submission of the registration statement.
- Authenticated by the secretary of state or other official having custody of the foreign corporation's records in its jurisdiction of formation.

(RCW 23.95.510(2).)

Fees

Registration Records

A foreign corporation must pay a fee of $180 to the secretary of state with its foreign registration statement. The fee for expedited service is an additional $50.

Annual Reports

The entity registration fee for foreign corporations and the fees for amendments and annual reports for foreign corporations are provided on the secretary of state website (see Question 2). The annual report must be delivered to the secretary of state on a date determined by the secretary of state and at additional times as the corporation elects. An annual report that meets the same requirements imposed on a domestic corporation must be filed with the annual license fee. (RCW 23.95.255.)

For more information on registering a foreign entity in Washington, see Qualifying a Foreign Entity to Do Business in Washington Checklist.

Fiduciary Duties

5. Please summarize the fiduciary duties of directors and officers in your jurisdiction.

Directors

In Washington, directors owe a fiduciary duty to a corporation and its shareholders. The primary duties are:

- Care.
- Loyalty and good faith.

Courts can impose liability on directors if they fail to discharge their duties as directors according to these standards of conduct.

Duty of Care

The duty of care is a standard of conduct that addresses the attentiveness and good judgment of directors in performing their duties. Directors must perform their duties:

- In good faith.
- In a manner that they reasonably believe to be in the best interest of the corporation.
- With the care that an ordinarily prudent person would exercise under similar circumstances.

(RCW 23B.08.300.)

Directors should seek all relevant material information for performing their duties and assess that information carefully before making decisions on behalf of the corporation (*Grassmueck v. Barnett*, 281 F. Supp. 2d 1227, 1230 (W.D. Wash. 2003) (applying Washington law)).

Duty of Loyalty and Good Faith

The duty of loyalty and the duty to act in good faith are often considered together as the standards of conduct necessary to ensure that directors provide undivided loyalty to the corporation and that their self-interest does not interfere with the corporation's best interests. Directors must act in good faith in pursuing the interests of the corporation and should avoid injury to the corporation. (See *Grassmueck*, 281 F. Supp. 2d at 1230.)

A director generally will not be held liable for the decision to take action or not to take action if the director exercises care to avoid harm to the corporation. A director also must avoid conflicts of interest and place the corporation's well-being before the director's own. A director is entitled to rely on information, opinions, reports, or statements if prepared or presented by:

- Officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

- Legal counsel, public accountants, or other persons about matters the director reasonably believes are within the person's professional or expert competence.
- A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(RCW 23B.08.300.)

A director can be subject to personal liability to the corporation and its shareholders for breaches of fiduciary duty. A director can be insulated from certain claims for breach of fiduciary duty:

- Under the business judgment rule, which protects a director's business decisions unless:
  - there is evidence of bad faith, self-interest, gross negligence in becoming informed; or
  - lack of subjective belief that the decision made was in the best interest of the corporation.

  The business judgment rule only protects directors from liability for a breach of the duty of care. (See *Grassmueck v. Barnett*, 2003 WL 22128263 at *3 (W.D. Wash. July 7, 2003.)
- If the corporation adopts an exculpation provision in its articles of incorporation. However, the articles of incorporation cannot eliminate or limit the liability of a director for:
  - acts or omissions that involve intentional misconduct;
  - a knowing violation of law;
  - conduct violating RCW 23B.08.310 (relating to unlawful distributions);
  - any transaction from which the director will personally receive a benefit to which the director is not legally entitled; or
  - any act or omission occurring before the date when this provision became effective.

  (RCW 23B.08.320.)

Business Opportunities

If a director or officer (or related person) pursues a business opportunity, that action cannot be enjoined or give rise to any damages or other sanctions because the opportunity should have first been offered to the corporation if either:

- Before the director, officer, or related person becomes legally obligated regarding the opportunity, they bring it to the attention of the corporation and make prior disclosure to the corporation of all material facts concerning the opportunity then known to the director or officer and:
  - qualified directors (as defined in RCW 23B.01.400(33)) disclaim the corporation's interest in the opportunity according to the procedures described in RCW 23B.08.720; or
  - the shareholders take action to disclaim the corporation's interest in the opportunity according to the procedures described in RCW 23B.08.730.
- The duty to offer the corporation the right to the opportunity has been limited or eliminated by the articles of incorporation.

(RCW 23B.08.735.)

The articles of incorporation may limit or eliminate any duty of a director or any other person to offer the corporation the right to any business opportunity before the pursuit or taking of the opportunity by the director or other person. However, for an officer or related person of an officer, the board of directors:

- Must approve the application of the limitation to the officer or related person.
- May condition the application of the limitation on any basis by action of qualified directors taken under RCW 23B.08.720 and taken after the inclusion of this provision in the articles of incorporation.

(RCW 23B.08.735(1)(b).)

Officers

The standards of conduct of officers are provided in RCW 23B.08.420. They are substantially similar to the standards for directors except that an officer cannot rely on a committee of the board of directors in discharging the officer's duties.

An officer of a Washington corporation may be subject to liability for breach of fiduciary duties to the corporation and its shareholders if the officer fails to meet the standards required under RCW 23B.08.420.

Mergers

6. What is required to complete a merger in your jurisdiction? Please include information on:

- Documents.
- Board actions.
- Filing requirements (including timing, electronic versus paper, and availability of expedited/rush services).
- Shareholder actions.
- Availability of appraisal rights (including requirements to exercise such rights).

Documents

Merger Agreement

A merger agreement is the transaction document executed by the parties that sets out the terms and conditions of the transaction, including the conditions for closing the merger and the obligations of each of the parties. To effect the merger, the surviving corporation's articles of merger must be filed with the Washington secretary of state. (RCW 23B.11.010 to 23B.11.110.)

Articles of Merger

The articles of merger must include:

- The name and jurisdiction of organization of each party to the merger.
- The name and jurisdiction of organization of the surviving entity.
- If the surviving entity is a domestic corporation and its articles of incorporation are amended or amended and restated, the amendments or the amended and restated articles of incorporation of the surviving entity.
- If shareholder approval of any domestic corporation party to the merger was not required, a statement to that effect.
- If shareholder approval of one or more domestic corporations party to the merger was required, a statement that the merger was approved by those shareholders.
- If approval of the shareholders of one or more other entities party to the merger was required, a statement that the merger was approved by the interest holders of such other entity in accordance with the organic law of the other entity or entities party to the merger.

(RCW 23B.11.050 and 23B.11.090(1).)

Plan of Merger

The board of directors of each corporation must adopt and recommend that the corporation's shareholders approve the merger agreement if shareholder approval is required under RCW 23B.11.030. The plan of merger must include:

- The name of each merging corporation and the name of the surviving corporation.
- The terms and conditions of the merger.
- The manner and basis of:
  - converting the shares of each corporation into a combination of shares, obligations, or other securities of the surviving or any other corporation;
  - converting the shares into cash or other property in whole or part; or
  - cancelling some or all of the shares.

(RCW 23B.11.010.)

The plan of merger may include:

- Amendments to the articles of incorporation of the surviving corporation or a restatement that includes one or more amendments to the surviving corporation's articles of incorporation; and
- Other provisions relating to the merger.

(RCW 23B.11.010.)

Effective June 9, 2022, the requirement that the approved plan of merger be filed with the secretary of state was removed from RCW 23B.11.050 and RCW 23B.11.090.

Plan of Share Exchange

A plan of share exchange needs to be approved by shareholders of the corporation whose shares will be acquired in the share exchange. The acquiring corporation should deliver to the secretary of state for filing articles of share exchange, executed by the acquiring corporation and the corporation whose shares will be acquired, stating:

- The name of the corporation whose shares will be acquired in the share exchange.
- The name of the acquiring corporation.

- A statement that the plan of share exchange was duly approved by the shareholders whose shares will be acquired under RCW 23B.11.030.

(RCW 23B.11.050(2).)

Board Actions

The board of directors of each constituent corporation must approve the terms of the merger agreement by resolution and determine that the merger is in the best interests of the corporation and its shareholders. If shareholder approval is required, the board of directors must recommend the merger to the shareholders for approval. If the board of directors determines that it should not make this recommendation because of conflicts of interest or special circumstances, it must instead give the shareholders the basis for its determination. (RCW 23B.11.030.)

A merger of a parent corporation and a subsidiary owned at least 90% by the parent can be approved by the board of directors of the parent corporation without approval of the shareholders of the parent or subsidiary if the parent will be the surviving corporation. If the subsidiary will be the surviving corporation, the merger can be approved with only the vote of parent shareholders. (RCW 23B.11.040.)

Filing Requirements

The surviving corporation must file the articles of merger with the secretary of state (RCW 23B.11.050 and 23B.11.090). The articles of merger may be filed before the effective date of the merger if the articles of merger state the effective date and time (RCW 23.95.210).

The filing fee is $20 per merging entity. There is an additional $50 fee per entity for expedited service. (See Washington Secretary of State: Fee Schedule/Expedited Service.)

Shareholder Actions

In a case where a target corporation is merging with an acquiring corporation and the acquiring corporation will survive the merger, the target corporation must obtain the approval of shareholders holding two-thirds of the shares entitled to be cast. The articles of incorporation may provide for approval by a greater or lesser percentage of the shares, but it cannot be by less than the majority of all votes entitled to be cast. For the surviving corporation, shareholder approval of the plan of merger is not required if:

- There are no changes to the articles of incorporation except for certain amendments described in RCW 23B.10.020.
- Each shareholder whose shares were outstanding immediately before the effective date of the merger will still hold the same number of shares with identical designations, preferences, limitations, and relative rights.
- The number of voting and participating shares outstanding immediately after the merger plus the number of voting shares issuable resulting from the merger will not exceed the total number of shares of the surviving corporation immediately before the effective date of the merger.

(RCW 23B.11.030(6), (7).)

Unless the articles of incorporation provide otherwise, a plan of merger does not require approval by the shareholders of a public company if:

- The plan of merger expressly both:
  - permits or requires the merger to be effected under RCW 23B.11.030(9); and
  - provides that the merger will be effected as soon as practicable after the offeror holds, by owning or purchasing shares as provided in this section, at least the minimum number of votes required for the merger's approval.
- Another party to the merger or a parent of another party to the merger makes an offer to purchase all of the corporation's outstanding shares that would be entitled to vote on the plan of merger, except the offer may exclude shares owned at the offer's commencement by the corporation, offeror, parent of the offeror, or wholly owned subsidiary of any of the foregoing.
- The offer discloses that the plan of merger states that both:
  - the merger will be effected as soon as practicable after the offeror holds, by owning or purchasing shares as provided in this section, at least the minimum number of votes required for the merger's approval; and
  - each outstanding share that the offeror has offered to purchase, and which is not purchased in accordance with the offer, will be converted as provided in this section.
- The offer remains open for at least 10 days.
- The offeror purchases all shares properly tendered and not properly withdrawn.

- The offeror, by purchasing or owning shares, via a parent, wholly owned subsidiary or agreement, holds at least the minimum number of votes that would be otherwise required for the merger's approval.
- The offeror or the offeror's wholly owned subsidiary merges with or into the corporation.
- Each outstanding share of the corporation that the offeror is offering to purchase in accordance with the offer, and which is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, the same amount and kind of securities, interests, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or by the offeror via a parent, subsidiary or agreement need not be converted into or exchanged.

(RCW 23B.11.030(9).)

For a forward triangular merger or reverse triangular merger of the target company and a wholly owned subsidiary of the acquiring corporation, the target company must obtain the approval of the shareholders holding two-thirds of the shares entitled to vote. Shareholder approval of the acquiring corporation is not required unless there are changes to the articles of incorporation requiring approval. (RCW 23B.11.030(5), (7).) Public corporations may also be required to obtain shareholder approval under rules of the applicable stock exchange on which they are listed. The merger must also be approved by the sole shareholder of the wholly owned merger subsidiary.

In the merger of a parent corporation and its subsidiaries (at least 90% owned by the parent corporation), if the parent corporation is the surviving corporation, shareholder approval is not required (RCW 23B.11.040). However, if the subsidiary corporation is the surviving corporation, approval by shareholders holding two-thirds of the shares of the parent corporation is required (RCW 23B.11.030).

To obtain shareholder approval, the board of directors must submit a copy of the merger agreement or a summary of the material terms and conditions and considerations to be received by the shareholders at an annual or special meeting held to vote on the merger agreement. Notification of the date, time, and place and a description of the purpose for which the meeting is called must be mailed to each shareholder at least 20 days, but not more than 60 days, before the meeting. (RCW 23B.07.050 and 23B.11.030.)

Dissenter's Rights

The Washington Business Corporation Act generally provides for dissenter's rights in a merger if either:

- Shareholder approval was required or would have been required but for the provisions of RCW 23B.11.030(9), and the shareholder was entitled to vote on the merger.
- The corporation was a subsidiary that has been merged with its parent in a short-form merger without shareholder approval.

(RCW 23B.13.020(1)(a).)

To exercise its dissenter's rights, a shareholder must:

- Deliver written notice of its intent to demand payment for its shares to the corporation before the vote on the merger is taken or if the merger is effected pursuant to RCW 23B.11.030(9).
- Not vote its shares in favor of the proposed corporate action. In a merger approved by the shareholders by written consent, the shareholder must not execute the consent or otherwise vote its shares in favor of the proposed corporate action.

(RCW 23B.13.210.)

The right to dissent terminates if:

- The proposed corporate action is abandoned or rescinded.
- A court having jurisdiction permanently enjoins or sets aside the corporate action.
- The shareholder's demand for payment is withdrawn with the written consent of the corporation.

(RCW 23B.13.020(3).)

Asset Sales

7. What is required for an asset sale in your jurisdiction? Please include any distinctions for a sale of substantially all of the assets. In particular, please include information on:

- Documents.
- Board actions.
- Shareholder actions.
- Bulk sales compliance.
- Successor liability or de facto merger analysis.

Documents

A party desiring to sell its assets generally enters into an asset purchase agreement with a buyer. Washington does not require any filings with the secretary of state for a sale of assets.

Board Actions

If an asset disposition outside the ordinary course of business leaves a Washington corporation without a significant continuing business activity, the corporation's board of directors must approve the disposition and recommend the transaction to the shareholders for approval (RCW 23B.12.020(1), (5)). The board may forgo recommendation to the shareholders either:

- Because of conflicts of interest or other special circumstances
- Because RCW 23B.08.245 applies.

If either of the above situations applies, the board must communicate the basis for the decision to the shareholders. The board may also condition its submission of the proposed disposition on any basis. (RCW 23B.12.020(5)(b), (6).).

Shareholder Actions

Other than sales in the ordinary course of business, a Washington corporation may sell its assets on the terms and conditions determined by the corporation's board of directors without shareholder approval unless the sale would leave the corporation without a significant continuing business activity (RCW 23B.12.010 and 23B.12.020(1)). A continuing business activity is presumed to be significant if it represented at least, for the most recently completed fiscal year, both:

- 25% of the total assets.
- Either 25% of:
  - income from continuing operations before taxes; or
  - revenues from continuing operations.

Failure to meet this presumption does not create a presumption that the sale leaves the corporation without a significant continuing business activity. (RCW 23B.12.020(2), (3).)

Factors used to consider whether a continuing business activity is significant include:

- Financial statements prepared based on reasonable accounting practices and principles.
- A fair and reasonable valuation of assets.

(RCW 23B.12.020(4).)

If the sale leaves the corporation without a significant continuing business activity, shareholders must approve the proposed transaction by a vote of two-thirds of the shares entitled to vote, unless the articles of incorporation require a greater or lesser vote (but not less than a majority of the shares entitled to vote) (RCW 23B.12.010 and 23B.12.020(1), (8)). Unless the articles of incorporation require otherwise, shareholder approval is not required for the transfer of property and assets of a parent corporation to a subsidiary corporation directly or indirectly owned by the parent corporation (RCW 23B.12.020(11)).

Bulk Sales

Washington repealed its bulk sales laws.

Successor Liability or De Facto Merger Analysis

Under Washington law, a successor company that pays fair consideration for the assets of a seller is generally not liable for the debts and obligations of that seller. However, successor liability can be imposed on the buyer if:

- The successor company expressly or impliedly agrees to assume the liability.
- There has been a de facto merger or consolidation of companies (for example, a sale of all of a corporation's assets for stock of the buyer followed by dissolution of the corporation).
- The successor company is a mere continuation of the seller.
- The transaction is entered into for a fraudulent purpose or to escape liability.

(*Hall v. Armstrong Cork, Inc.*, 692 P.2d 787, 789-90 (Wash. 1984).)

Anti-Takeover Laws

8. Please describe any state anti-takeover laws. Do corporations have the ability to opt in or out of these laws?

Washington corporations whose shares are publicly traded are prohibited from conducting significant business transactions (for example a merger, share

exchange, consolidation, sale, lease, exchange, mortgage, pledge, transfer, or other disposition) for five years with an acquiring person unless the acquisition has been approved by a majority of the board of directors and by the shareholders holding two-thirds of the outstanding shares (not including the shares owned by the acquiring person) (RCW 23B.19.040).

With certain exceptions, an acquiring person is a person who owns 10% or more of the outstanding voting shares of the target corporation (RCW 23B.19.020(1)). However, a transaction is exempted from the acquiring person rule if:

- It is an inadvertent acquisition as defined by statute (RCW 23B.19.030).
- The transaction is approved before the acquiring person's share acquisition by a majority of the members of the board of directors of the target corporation.
- At or after the acquiring person's share acquisition, the transaction is approved by:
  - a majority of the members of the board of directors of the target corporation; and
  - the affirmative vote of at least two-thirds of the outstanding voting shares at an annual or special meeting of the shareholders (other than shares of the acquiring person). This approval cannot be by written consent.

(RCW 23B.19.040(1).)

After the expiration of the five-year period, a Washington corporation cannot engage in a significant business transaction with an acquiring person unless it meets the fair price conditions set out in RCW 23B.19.040(2).

Dissolving a For-Profit Corporation

9. What is required to dissolve a for-profit corporation in your jurisdiction? Please include information on:

- Documents.
- Board actions.
- Filing requirements (including timing, electronic versus paper, and availability of expedited/rush services).
- Shareholder action.

Documents

A Washington corporation seeking to dissolve must file articles of dissolution with the secretary of state along with a copy of a revenue clearance certificate (issued according to RCW 82.32.260). A Washington corporation is dissolved on the effective date of its articles of dissolution. (RCW 23B.14.030(1), (2).)

The articles of dissolution must include:

- The name of the corporation.
- The date dissolution was approved.
- A statement that dissolution was duly approved by:
  - the initial directors;
  - the incorporators;
  - the board of directors; or
  - was duly proposed by the board of directors and approved by the shareholders.

(RCW 23B.14.030(1), see Question 9: Board Actions.)

Within 30 days after the effective date of dissolution, the corporation must publish notice of its dissolution and request that persons with claims against the dissolved corporation present them according to the notice. The notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county of its principal office. The notice must:

- Describe the information that must be included in a claim.
- Provide a mailing address where a claim may be sent.
- State that claims against the corporation may be barred if not timely asserted.

(RCW 23B.14.030(3).)

Board Actions

Dissolution of a Washington corporation that has not issued shares may be approved by a majority of the initial directors (or incorporators).

Unless prohibited by the articles of incorporation, a majority of the board of directors may approve dissolution of the corporation without approval of the shareholders on a finding that both:

- The corporation is unable to pay its liabilities as they become due in the usual course of business or the

corporation's assets are less than the sum of its total liabilities.

- Ten or more days have elapsed since the corporation gave notice to all its shareholders of the intent of the board of directors to approve dissolution.

(RCW 23B.14.010.)

A Washington corporation may also dissolve if the dissolution is approved by a majority of the board of directors and then submitted to and approved by shareholders (RCW 23B.14.020).

Filing Requirements

The corporation must file articles of dissolution with the secretary of state along with a copy of the revenue clearance certificate (RCW 23B.14.030(1)). There is no filing fee for regular service, but there is a $50 fee for expedited service (see Washington Secretary of State: Fee Schedule/Expedited Service). The Washington secretary of state accepts online filing.

Shareholder Action

If shareholder approval is required, dissolution requires approval of shareholders holding two-thirds of the outstanding shares. The articles of incorporation may allow approval by a greater or lesser amount, but it cannot be by less than a majority of the shares entitled to vote. (RCW 23B.14.020.)

For more information on terminating a Washington corporation, see Practice Note, Dissolving a Corporation (WA).

Activities Requiring Shareholder Consent

10. What activities require shareholder consent in your jurisdiction?

The corporation generally may require shareholder approval for certain actions in the articles of incorporation. Unless the articles of incorporation provide otherwise, the Washington Business Corporation Act requires that a private corporation obtain approval from its shareholders holding two-thirds of the outstanding shares for certain corporate actions, including:

- Amendment of the articles of incorporation unless no vote is required under RCW 23B.10.020 (RCW 23B.10.030(2)(b), (5)).
- Merger unless an exception applies (RCW 23B.11.030(2)(b), (5)).
- Sales of a corporation's property or assets that leave the corporation without a significant continuing business activity (RCW 23B.12.020(1), (5), (8)).
- Voluntary dissolution (RCW 23B.14.020(2)(b), (5)).
- Reverse stock splits, dividends, and forward stock splits in certain circumstances (RCW 23B.10.020(4)).

Preemptive Rights

11. Is there a statutory provision for preemptive rights? Do corporations have the ability to opt in or opt out of this provision?

Unless the articles of incorporation provide otherwise, shareholders of Washington corporations formed:

- On or after January 1, 2020, have **no** preemptive right to acquire the corporation's unissued shares (RCW 23B.06.300(1)).
- Before January 1, 2020, have a preemptive right to acquire proportional amounts of the corporation's unissued shares or any security convertible into shares on the decision of the board of directors to issue those shares (RCW 23B.06.300(2), (3)(a), (f)).

However, unless the articles of incorporation provide otherwise, for shareholders of Washington corporations formed before January 1, 2020, there are **no** preemptive rights for shares issued:

- Under the corporation's initial plan of financing.
- As compensation to directors, officers, agents, employees, or other service providers of the corporation or its subsidiaries or affiliates.
- To satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates.
- For consideration other than money.

(RCW 23B.06.300(3)(c).)

Holders of shares of a common class with general voting rights but without preferential rights to distributions or assets have no preemptive rights for shares of any preferred class unless the preferred shares are convertible into shares of a common class (without preferential rights) (RCW 23B.06.300(3)(d)).

A shareholder may waive preemptive rights unless the articles of incorporation provide otherwise (RCW 23B.06.300(3)(b)).

Limitations on Classes or Series of Stock

12. Are there limits on the classes or series of stock that can be issued in your jurisdiction?

Washington law does not impose any limits on the classes or series of capital stock issued by a corporation unless the articles of incorporation provide otherwise. Any preferences or limitations on any classes or series of capital stock must be included in the articles of incorporation. (RCW 23B.06.010.)

Limitations on Dividends

13. Please describe any limitations on the ability of a corporation to pay dividends on capital stock.

Under Washington law, a board of directors may declare and pay dividends on the shares of its capital stock unless the articles of incorporation provide otherwise. However, no dividend may be declared or paid if, as a result of the dividend:

- The corporation would be unable to pay its liabilities as they become due in the usual course of business.
- The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed on dissolution to satisfy the preferential rights of shareholders whose preferential rights are superior to those receiving the distribution.

(RCW 23B.06.400.)

A director who votes in favor of an unlawful dividend may be held personally liable to the corporation for the amount of the distribution that exceeds the amount that could have been distributed without a violation of law (RCW 23B.08.310).

Board of Directors

14. Please describe any minimum requirements to serve as a corporate director. What are the requirements for or limits on the size of the board of directors?

The articles of incorporation or bylaws may prescribe qualifications for directors. A director is not required to be a resident of Washington or a shareholder of the corporation unless required by the articles of incorporation or bylaws. (RCW 23B.08.020.)

A board of directors must consist of one or more individuals. The number is specified in or fixed according to the articles of incorporation or bylaws. (RCW 23B.08.030.)

Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors. A public company has a gender-diverse board of directors if, for at least 270 days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprise at least 25% of the directors serving on the board of directors (RCW 23B.08.120(1).)

If a public company does not have a gender-diverse board, the company must deliver to its shareholders a board diversity discussion and analysis no fewer than 10 or more than 60 days before the date of the annual shareholder meeting. The requirement is satisfied if:

- The company posts of the discussion and analysis on its principal website or another electronic network in compliance with federal law.
- The information is included in a proxy statement filed in accordance with federal securities law.

(RCW 23B.08.120(2), (4).)

If a public company is required to deliver a board diversity discussion and analysis, it must include a discussion regarding:

- How the board of directors or a board committee considered the representation of diverse groups (meaning women, racial minorities, and historically underrepresented groups) in identifying and nominating candidates for election as directors, or reasons why representation was not considered.

- Any policy adopted by the board of directors or a board committee relating to identifying and nominating members of any diverse groups for election as directors. If no policy has been adopted, the discussion should explain why not.
- The public company's use of mechanisms of refreshment of the board of directors, such as term limits or a mandatory retirement age. If no mechanisms exist, the discussion should explain why not.

(RCW 23B.08.120(3).)

If a public company fails to provide the required diversity discussion and analysis, any shareholder entitled to vote in the election for directors at an annual meeting may apply to the superior court in the county where the company's registered office is located for an order to deliver the required information (RCW 23B.08.120(7)).

The board diversity requirements do not apply to any public company:

- That does not have outstanding shares of any class or series listed on a US national securities exchange.
- That is an "emerging growth company" or a "smaller reporting company" as defined under federal securities law.
- Where voting shares entitled to cast votes comprising more than 50% of the voting power of the company are held by a person or group of persons.
- Where the articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040.
- That is not required under the Washington Business Corporation Act or the rules of any US national securities exchange to hold an annual meeting of shareholders.

(RCW 23B.08.120(5).)

15. Please summarize the board of directors' ability to designate committees and subcommittees. Are there any limitations on the board of directors' ability to delegate authority to those committees?

Under Washington law, unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees. Each committee must have two or more members who serve at the pleasure of the board of directors. (RCW 23B.08.250(1).)

Creating a committee and appointing members to it requires the approval of the greater of:

- A majority of all the directors in office when creation of the committee is approved.
- The number of directors required by the articles of incorporation or bylaws to take the action.

(RCW 23B.08.250(2).)

To the extent specified by the board of directors, the articles of incorporation, or the bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010. However, a committee **cannot**:

- Approve a distribution except according to a general formula or method prescribed by the board of directors.
- Approve or propose to shareholders corporate action that the Washington Business Corporation Act requires shareholders to approve.
- Fill vacancies on the board of directors or any of its committees.
- Amend the articles of incorporation in a manner that does not require shareholder approval.
- Adopt, amend, or repeal bylaws.
- Approve a plan of merger not requiring shareholder approval.
- Approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee to do so within limits specifically prescribed by the board of directors.

(RCW 23B.08.250(4), (5).)

Indemnification

16. Please describe a for-profit corporation's ability, and any requirements or limits on that ability, to indemnify its directors and officers in your jurisdiction.

Unless limited by the articles of incorporation, a Washington corporation must indemnify a director or officer who was wholly successful on the merits or otherwise in the defense of any proceeding to which the director or officer was a party because of being a director or officer of the corporation against reasonable expenses incurred by the director or officer regarding the proceeding (RCW 23B.08.520 and 23B.08.570(1)).

If an individual is made a party to a proceeding because the individual is or was a director, a Washington corporation may indemnify the individual against liability incurred in the proceeding if the individual:

- Acted in good faith.
- Reasonably believed:
  - if the conduct was in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests; or
  - in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests.
- In any criminal proceeding, had no reasonable cause to believe the individual's conduct was unlawful.

(RCW 23B.08.510(1).)

The termination of a proceeding by judgment, settlement, order, conviction, or a plea of ***nolo contendere*****,** or its equivalent does not, by itself, create a presumption that the individual director did not meet the requisite standard of conduct (RCW 23B.08.510(3)).

Indemnification permitted under RCW 23B.08.510 regarding a proceeding by or in the right of the corporation is limited to reasonable expenses incurred regarding the proceeding (RCW 23B.08.510(5)).

Unless ordered by a court, a corporation cannot indemnify a director under RCW 23B.08.510 unless it determines that indemnification is permissible because the individual has met the above requisite standards of conduct. This determination must be made by one of:

- The board of directors by:
  - a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or
  - if a quorum cannot be obtained, a majority vote of a committee designated by the board of directors consisting solely of two or more directors who are not at the time parties to the proceeding.
- Special legal counsel selected by:
  - a majority vote of a quorum of disinterested directors;
  - a board committee of disinterested directors if a quorum cannot be obtained; or
  - if a quorum of disinterested directors cannot be obtained and a committee made up of disinterested directors cannot be designated, a majority vote of the full board of directors.
- The shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding cannot be voted.

(RCW 23B.08.550.)

A corporation cannot indemnify a director under RCW 23B.08.510 regarding:

- A proceeding by or in the right of the corporation where the director was adjudged liable to the corporation.
- Any other proceeding charging improper personal benefit to the director, whether involving action in the director's official capacity or not, where the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(RCW 23B.08.510(4).)

If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified by the shareholders, a Washington corporation may indemnify a director regardless of the limitations in RCW 23B.08.510 to 23B.08.550 if the indemnity will not indemnify any director from or on account of:

- Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law.
- Conduct of the director finally adjudged to be in violation of RCW 23B.08.310 (relating to unlawful distributions).
- Any transaction where it was finally adjudged that the director personally received a benefit in money, property, or services to which the director was not legally entitled.

(RCW 23B.08.560.)

A Washington corporation may pay for or reimburse reasonable expenses incurred by a director who is a party to a proceeding before the final disposition of the proceeding if the director delivers to the corporation both an executed written:

- Affirmation of the director's good faith belief that the director has met the requisite standards of conduct.
- Undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standards of conduct.

(RCW 23B.08.530(1).)

The undertaking must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment (RCW 23B.08.530(2)).

Authorization of payments or reimbursements of reasonable expenses may be made by the Washington corporation's articles of incorporation or bylaws, by resolution adopted by the shareholders or directors, or by contract (RCW 23B.08.530(3)).

Unless a Washington corporation's articles of incorporation provide otherwise, a director or an officer of the corporation who is a party to a proceeding may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice it considers necessary, may order indemnification or advance of expenses if it determines that:

- The director or officer is entitled to mandatory indemnification, in which case the court will also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification.
- The director or officer is fairly and reasonably entitled to indemnification in view of all relevant circumstances, regardless of whether the director met the requisite standard of conduct or was adjudged liable under RCW 23B.08.510(4), but if the director or officer was adjudged liable, indemnification is limited to reasonable expenses incurred (unless the articles of incorporation, bylaws, contract, or shareholder resolution provide otherwise).
- In the case of an advance of expenses, the director or officer is entitled under the articles of incorporation, the bylaws, or any applicable resolution or contract to payment or reimbursement of the director's or officer's reasonable expenses incurred as a party to the proceeding before final disposition of the proceeding.

(RCW 23B.08.540 and 23B.08.570(1).)

A Washington corporation may indemnify an officer, employee, or agent of the corporation who is not a director to the same extent as a director unless the articles of incorporation provide otherwise (RCW 23B.08.570(2)).

A Washington corporation may also indemnify an officer, employee, or agent who is not a director as provided by its articles of incorporation, bylaws, action of the board of directors, or contract to the extent consistent with the law (RCW 23B.08.570(3)).

Amendment of Organizational Documents

17. What is required to amend the corporation's certificate of incorporation and bylaws? Please include information on:

- Documents and filing requirements.
- Corporate actions (board and shareholder actions).

Documents

Articles of Incorporation

A Washington corporation amending its articles of incorporation must file articles of amendment with the secretary of state that include:

- The name of the corporation.
- The text of each amendment adopted.
- If an amendment provides for an exchange, reclassification, or cancellation of issued shares, and provisions for implementing the amendment if not contained in the amendment itself.
- The date of each amendment's adoption.
- If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that shareholder approval was not required.
- If shareholder approval was required, a statement that the amendment was approved by the shareholders according to the provisions of RCW 23B.10.030 and 23B.10.040 (see Corporate Actions).
- If the amendment is being filed according to RCW 23B.01.200(3)(e), a statement that effect.

(RCW 23B.10.060.)

A Washington corporation restating its articles of incorporation must file articles of restatement with the secretary of state that set out the name of the corporation and the text of the restated articles of incorporation. It must also file a certificate that includes:

- When the restatement does not include an amendment to the articles of incorporation, a statement to that effect.
- If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of the adoption.

- If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, a statement that the amendment was approved by the shareholders according to the provisions of RCW 23B.10.030 and 23B.10.040.

(RCW 23B.10.070.)

Both the articles of restatement and the certificate must be executed (RCW 23B.10.070).

Bylaws

A Washington corporation does not need to file any document with the secretary of state to amend its bylaws.

Corporate Actions

Articles of Incorporation

A Washington corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders at a meeting. If shareholder approval is required, the board must recommend the amendment to the shareholders unless either:

- The board determines that it should make no recommendation because of a conflict of interest or another special circumstance.
- After agreeing to submit the amendment to a vote of its shareholders, the board determines that it no longer recommends the action.

In each case, the board must communicate to the shareholders the basis for proceeding in that manner. (RCW 23B.10.030.)

The corporation must provide each shareholder, whether entitled to vote or not, with notice of the meeting, which must:

- Be delivered no fewer than 20 or more than 60 days before the meeting date.
- State that a purpose of the meeting is to consider the proposed amendment.
- Include a copy of the amendment.

(RCW 23B.07.050(1) and 23B.10.070(3).)

The shareholders must approve the amendment by two-thirds (or a majority if a public company) of the voting group comprising all votes entitled to be cast on the proposed amendment and of each other voting group entitled to vote separately under the articles of incorporation or RCW 23B.10.040. The articles of incorporation for a public company may require a greater vote than that provided for in this subsection. The articles of incorporation for a corporation other than a public company may require a lesser vote than that provided for in this subsection but cannot require less than a majority. (RCW 23B.10.030(5).)

The holders of the outstanding shares of a class or series are entitled to vote as a separate voting group on a proposed amendment if the amendment would:

- Increase the number of authorized shares of the class or series.
- Cause an adverse exchange or reclassification of the issued and outstanding shares of the class or series into shares of another class or series.
- Change the rights, preferences, or limitations of all or part of the issued and outstanding shares of the class or series so that the holders would be adversely affected.
- Change all or part of the issued and outstanding shares of the class or series into a different number of shares of the same class or series so that the holders would be adversely affected.
- Create a new class or series having rights or preferences regarding distributions or to dissolution that are or may be prior, superior, or substantially equal to the shares of the class or series.
- Increase the rights or preferences regarding distributions or to dissolution or the number of authorized shares of any class or series that, after giving effect to the amendment, has rights or preferences regarding distributions or to dissolution that are or may be prior, superior, or substantially equal to the shares of the class or series.
- Limit or deny an existing preemptive right of all or part of the class or series.
- Cancel or adversely affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the class or series.
- Cause a redemption or cancellation of all or part of the shares of the class or series in exchange for cash or any other form of consideration other than shares of the corporation.

(RCW 23B.10.040.)

Unless the articles of incorporation provide otherwise, the board of directors may adopt amendments to the articles of incorporation without shareholder approval:

- To provide, change, or eliminate any provision relating to the par value of any class of shares if the corporation has only one class of shares outstanding.

- To delete the names and addresses of the initial directors.
- To delete the name and address of the initial registered agent or registered office if a statement of change is on file with the secretary of state.
- If the corporation has only one class of shares outstanding, solely to effect:
  - a forward stock split, share dividend, or change in the number of authorized shares of that class in proportion to a forward split or stock dividend; or
  - a reverse stock split of the corporation's outstanding shares if the number of authorized shares of that class is proportionately reduced by the amendment.
- To change the corporate name.
- To make any other change expressly permitted by the Washington Business Corporation Act (WBCA) to be made without shareholder approval.

(RCW 23B.10.020.)

Bylaws

The board of directors may amend or repeal the bylaws or adopt new bylaws unless either:

- This power is reserved exclusively to the shareholders under the articles of incorporation, a shareholders' agreement, or any section of the WBCA.
- The shareholders expressly provide that the board of directors cannot amend or repeal that bylaw.

(RCW 23B.10.200(1).)

The shareholders may also amend, repeal, or adopt new bylaws (RCW 23B.10.200(2)).

A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed by either:

- The shareholders, if originally adopted by the shareholders.
- The board of directors or the shareholders, if originally adopted by the board of directors.

(RCW 23B.10.210.)

Filing Requirements

Articles of Incorporation

The articles of amendment or articles of restatement must be filed with the Washington secretary of state. The filing fee is $30. Expedited service is available for an additional $50. The Washington secretary of state accepts online filing.

Bylaws

Bylaws are not required to be filed.