

2020 Kansas Statutes

17-6808a. Notice to claimants; filing of claims. (a) (1) After a corporation has been dissolved in accordance with the procedures set forth in this code, the corporation or any successor entity may give notice of the dissolution, requiring all persons having a claim against the corporation other than a claim against the corporation in a pending action, suit or proceeding to which the corporation is a party, to present their claims against the corporation in accordance with such notice. Such notice shall state:

(A) That all such claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim;

(B) the mailing address to which such a claim must be sent;

(C) the date by which such a claim must be received by the corporation or successor entity, which date shall be no earlier than 60 days from the date thereof;

(D) that such claim will be barred if not received by the date referred to in subsection (a)(1)(C);

(E) that the corporation or a successor entity may make distributions to other claimants and the corporation's stockholders or persons interested as having been such without further notice to the claimant; and

(F) the aggregate amount, on an annual basis, of all distributions made by the corporation to its stockholders for each of the three years prior to the date the corporation dissolved.

(2) Such notice shall also be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the office of the corporation's last resident agent in this state is located and in the corporation's principal place of business and, in the case of a corporation having \$10,000,000 or more in total assets at the time of its dissolution, at least once in all editions of a daily newspaper with a national circulation. On or before the date of the first publication of such notice, the corporation or successor entity shall mail a copy of such notice by certified or registered mail, return receipt requested, to each known claimant of the corporation, including persons with claims asserted against the corporation in a pending action, suit or proceeding to which the corporation is a party.

(3) Any claim against the corporation required to be presented pursuant to this subsection is barred if a claimant who was given actual notice under this subsection does not present the claim to the dissolved corporation or successor entity by the date referred to in subsection (a)(1)(C).

(4) A corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this subsection by mailing notice of such rejection by certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before the expiration of the period described in K.S.A. 17-6807, and amendments thereto, except that in the case of a claim filed pursuant to K.S.A. 17-6905, and amendments thereto, against a corporation or successor entity for which a receiver or trustee has been appointed by the district court, the time period shall be as provided in K.S.A. 17-6906, and amendments thereto, and the 30-day appeal period provided for in K.S.A. 17-6906, and amendments thereto, shall be applicable. A notice sent by a corporation or successor entity pursuant to this subsection shall state that any claim rejected therein will be barred if an action, suit or proceeding with respect to the claim is not commenced within 120 days of the date thereof, and shall be accompanied by a copy of K.S.A. 17-6807 through 17-6809 and K.S.A. 2020 Supp. 17-6808a, and amendments thereto, and, in the case of a notice sent by a court-appointed receiver or trustee and as to which a claim has been filed pursuant to K.S.A. 17-6905, and amendments thereto, copies of K.S.A. 17-6905 and 17-6906, and amendments thereto.

(5) A claim against a corporation is barred if a claimant whose claim is rejected pursuant to subsection (a)(4) does not commence an action, suit or proceeding with respect to the claim no later than 120 days after the mailing of the rejection notice.

(b) (1) A corporation or successor entity electing to follow the procedures described in subsection (a) shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future

events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. As used in this section and in K.S.A. 17-6810, and amendments thereto, the term "contractual claims" shall not include any implied warranty as to any product manufactured, sold, distributed or handled by the dissolved corporation. Such notice shall be in substantially the form, and sent and published in the same manner, as described in subsection (a)(1).

(2) The corporation or successor entity shall offer any claimant on a contract whose claim is contingent, conditional or unmatured such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall mail such offer to the claimant by certified or registered mail, return receipt requested, within 90 days of receipt of such claim and, in all events, at least 150 days before the expiration of the period described in K.S.A. 17-6807, and amendments thereto. If the claimant offered such security does not deliver in writing to the corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant shall be deemed to have accepted such security as the sole source from which to satisfy the claim against the corporation.

(c) (1) A corporation or successor entity which has given notice in accordance with subsection (a) shall petition the district court to determine the amount and form of security that will be reasonably likely to be sufficient to provide compensation for any claim against the corporation which is the subject of a pending action, suit or proceeding to which the corporation is a party other than a claim barred pursuant to subsection (a).

(2) A corporation or successor entity which has given notice in accordance with subsections (a) and (b) shall petition the district court to determine the amount and form of security that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to subsection (b)(2).

(3) A corporation or successor entity which has given notice in accordance with subsection (a) shall petition the district court to determine the amount and form of security which will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity within five years after the date of dissolution or such longer period of time as the district court may determine, not to exceed 10 years after the date of dissolution. The district court may appoint a guardian ad litem in respect of any such proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

(d) The giving of any notice or making of any offer pursuant to this section shall not revive any claim then barred or constitute acknowledgment by the corporation or successor entity that any person to whom such notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom such notice is sent.

(e) As used in this section, the term "successor entity" shall include any trust, receivership or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits, by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation and to distribute to the dissolved corporation's stockholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

(f) The time periods and notice requirements of this section shall, in the case of a corporation or successor entity for which a receiver or trustee has been appointed by the district court, be subject to variation by, or in the manner provided in, the rules of the district court.

(g) In the case of a nonstock corporation, any notice referred to in the last sentence of subsection (a)(4) shall include a copy of K.S.A. 2020 Supp. 17-6014, and amendments thereto. In the case of a nonprofit nonstock corporation, the provisions

of this section regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation's articles of incorporation or bylaws.

(h) This section shall be part of and supplemental to article 68 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2016, ch. 110, § 6; July 1.