

GUIDE FOR THE VOLUNTARY DISSOLUTION OF MINNESOTA NONPROFIT CORPORATIONS

I. INTRODUCTION

This Guide is designed to assist non-lawyers who need to understand the process of voluntarily dissolving a Minnesota nonprofit corporation. It focuses on the procedures and requirements described in the Minnesota Nonprofit Corporation Act, Minnesota Statutes Section 317A (the “Act”). Voluntary dissolution is managed by the Board of Directors and members, if any, of the corporation; nonprofit corporations may also be dissolved by administrative act of the Secretary of State of Minnesota, or by a court action initiated by the Attorney General of Minnesota, creditors, or even individual directors or members. This Guide does not address the rights and duties of a nonprofit corporation after it has become involved in such involuntary dissolution proceedings. **Where possible, it is strongly recommended that those involved in dissolving a nonprofit corporation consult with an attorney, accountant, or other advisor to ensure that the general rules described in this Guide are appropriately applied to the specific circumstances. The information provided in this Guide should not be considered legal advice.**

II. WHAT IS DISSOLUTION?

A. Definitions and Reasons for Dissolution

Dissolution is the end of a nonprofit corporation’s existence as a legal entity that occurs upon the completion of certain procedures specified in the Act. Once dissolution occurs, the corporation is no longer permitted to enter into contracts or otherwise operate, except for any actions incidental to winding up the affairs of the corporation.

There are many reasons why a nonprofit corporation might consider dissolution: an inability to attract or maintain funding, an assessment that the corporation no longer serves its stated mission or constituency, or a determination that that mission or constituency is more than adequately served by other corporations, or an inability to attract volunteers and leaders willing or able to maintain the effort necessary to make the corporation successful. In considering dissolution in any of these circumstances, the corporation’s Board of Directors should remain aware that the foremost consideration for regulatory authorities in supervising nonprofit dissolution is to ensure that funds received by a nonprofit from donors are disposed of in a manner which is consistent with the corporation’s stated purpose and mission.

B. Dissolution, Liquidation and Bankruptcy

Dissolution is a legal process that results in the termination of the legal existence of a nonprofit corporation. *Liquidation* is the process by which the corporation’s assets are reduced to a form in which they can be distributed to a corporation’s creditors or

other parties. Liquidation can occur either prior to or after dissolution. *Bankruptcy* is a formal, court-supervised process by which a corporation is recognized as reorganized or liquidated, and the corporation's outstanding debts will be paid (in whole or in part) in accordance with the priorities provided in the United States Bankruptcy Code.

Nonprofit corporations cannot be forced into bankruptcy by creditors, although a substantial creditor may pressure a nonprofit to do so. A nonprofit corporation may choose to file for bankruptcy to avail itself of procedures that permit the efficient handling of claims, or that allow it to reorganize and discharge debt fairly among a large number of creditors, especially if the nonprofit corporation believes that it can continue to operate if granted relief from unusual debt or one-time events.

A small nonprofit corporation facing a sudden evaporation of funding and threatening phone calls from creditors most likely does not have the financial resources to avail itself of federal bankruptcy proceedings. While such proceedings have the advantage of relieving the Board of Directors of the nonprofit of collecting the corporation's assets, liquidating the corporation's assets and distributing them to creditors under a court-approved plan, voluntary dissolution proceedings preserve the corporation's assets and produce the same result. As long as the process is carried out with the requisite exercise of fiduciary duty by the Board, the individual directors will be afforded protection from liability in carrying out the dissolution in accordance with the Act.

III. STEPS TO ACCOMPLISH DISSOLUTION UNDER THE ACT

A. Adoption of a Plan of Dissolution by the Board

A majority of the directors of the nonprofit must first adopt a resolution authorizing dissolution. [See Section 317A.721, Subd. 2 of the Act.] This can be accomplished either at a meeting of the directors or by a written action signed by all of the directors unless the Articles of Incorporation provide that the Board may take written action by less than unanimous written action. If a meeting is held, the directors must be given notice of the meeting in accordance with the corporation's bylaws. The resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after the debts of the corporation have been paid. It is also helpful if the resolution authorizes an individual officer, director or group of persons to execute and file the various forms required to carry out the dissolution.

The plan of dissolution must provide that the assets of the corporation are distributed in the following priority:

- (1) Any assets which were received by the corporation from a donor subject to their use for a specific purpose must be used for that purpose;

- (2) Payment of the costs and expenses of dissolution, including filing fees with state agencies and professional fees of any finance or legal professionals who assist with the dissolution;
- (3) Payment of all debts, liabilities and obligations of the corporation;
- (4) If the corporation's Articles of Incorporation or Bylaws require a particular distribution of assets upon dissolution, that distribution must be complied with (for example, if the corporation is a local chapter of a national corporation, its Articles or Bylaws may require the distribution of assets upon dissolution to the parent corporation);
- (5) Distribution of any remaining assets held for a charitable or public use or purpose. [See Section 317A.735, Subd.1 of the Act]

The preparation of a plan of dissolution requires the Board to carefully examine all of the corporation's assets and liabilities. It must consider contractual obligations (rent, salaries and benefits, unemployment insurance payments, lease payments, etc.) and the source and location of its assets (bank accounts, investment accounts, etc.). If the Board, or a subcommittee of the Board charged with carrying out the dissolution, will have discretion in distributing assets (for example, identifying final grant or scholarship recipients), then the plan must also state that the Board has that discretion.

B. Approval of the Plan of Dissolution by Voting Members

If a nonprofit corporation has members entitled to vote concerning dissolution (this will be set forth in the corporation's Articles or Bylaws), then the plan of dissolution must be approved by the members. [See Section 317A.721, Subd. 2 of the Act] The Board must call a meeting of the members and give notice to the members of the date, time and place of the meeting at least 5 but no more than 60 days prior to the date of the meeting. [See Section 317A.435 of the Act]. The notice must state that the purpose of the meeting is to discuss the dissolution. If the members approve the plan of dissolution, the Board must begin carrying out the plan of dissolution.

C. Notice of Intent to Dissolve, Notice to Attorney General

After the Board, and if necessary the members, have adopted the plan of dissolution, the corporation must file a Notice of Intent to Dissolve with the Secretary of State of Minnesota. The notice must contain the name of the corporation, the date and place of the meeting at which the Board, and if necessary the members, approved the plan, and a statement that the required approval of the plan was received. [See Section 317A.723 of the Act]

Nonprofit corporations that either hold assets for a charitable purpose or which are exempt under section 501(c)(3) of the U.S. Internal Revenue Code must also complete a notice of intent to dissolve form and file it with the Charities Division of the

Minnesota Attorney General's office. The form requires much of the same information as the plan of dissolution and it is available on the Attorney General's website: www.ag.state.mn.us. The corporation must then wait 45 days before transferring assets unless it receives a written notice of waiver of the waiting period from the Attorney General's office. Also, the Attorney General's office may elect to extend the waiting period for an additional 30 days by notifying the corporation and the Minnesota Secretary of State. [See Section 317A.811 of the Act]

After the Notice of Intent to Dissolve has been filed with the Secretary of State, the corporation, the Attorney General, or, for good cause, a creditor or members, may apply to a court to have the dissolution conducted or continued under the supervision of the court. In effect, the application converts the voluntary dissolution into an involuntary dissolution. The main advantage of this procedure is that it insulates the corporation from subsequent claims by placing the liquidation process into the hands of a court appointed trustee. [See Section 317A.741 of the Act]

D. Carrying Out the Plan of Dissolution; Notice to Creditors

As soon as the required notices have been filed, the Board may begin collecting any debts owed to the corporation. [See Section 317A.725, Subd.1 of the Act]. During this time, the corporation must cease carrying on its regular activities (for example, suspend services, cease accepting grant applications, etc.) and may act only for the purpose of winding down the affairs of the corporation. Members, if any, continue to have the right to remove directors or fill vacancies as necessary on the Board. The corporate existence of the corporation continues until the dissolution is complete. [See Section 317A.723, Subd. 2 of the Act] Filing of the required notices does not affect any remedies that the corporation has against others, or that others have against the corporation. For example, if a creditor of a corporation, such as a landlord, seeks to collect payment, it may pursue all collection remedies available to it. [See Section 317A.723, Subd. 3 of the Act] Transfers and distributions of the corporation's assets may not take place until the Attorney General's waiting period has expired (45 or 75 days, if extended).

Nonprofit corporations are not required to notify their creditors and claimants that they have filed a notice of intent to dissolve. If they do choose to give notice and follow the procedures in Sections 317A.727 and 729 of the Act, then creditors and claimants who do not respond to the notice within the prescribed time period (approximately 90 days) may have their claims permanently barred. If the corporation does not give notice, then the claimant or creditor has two years from the date of filing of the notice of dissolution to pursue the claim. A detailed description of the notice procedures is beyond the scope of these guidelines. The notice procedures are not intended to shield a nonprofit corporation from creditors' claims; they are simply a means to assist the corporation in carrying out the plan of dissolution by identifying the corporation's debts and to establish a final cutoff date for liability for claims.

In circumstances where the nonprofit corporation does not have sufficient assets to pay all of its debts, liabilities and obligations, the Board or committee carrying out dissolution must be careful to exercise its fiduciary duty and not favor one creditor over another. To the extent that it is possible to persuade creditors to forgive all or a portion of an unpaid debt, the Board or committee should seek to do so. However, this must be done with full transparency and disclosure to all creditors of the corporation's circumstances. Insider loans (i.e. loans from persons or entities related to directors, members or key donors) in some cases may not be repaid, and certainly must not be repaid on a more favorable basis than unrelated third party claims or debts.

E. Notice of Transfer to Attorney General

After the corporation has carried out the plan of dissolution and substantially all assets have been transferred, the Board must deliver to the Attorney General's office a list of persons to whom the assets were transferred. The list must include the name and address of the recipient and a description of the asset it received.

F. Filing Articles of Dissolution

After delivering information on the transferred assets to the Attorney General's office, the corporation may file Articles of Dissolution with the Secretary of State. Before filing the Articles, it must make sure that (1) it has either paid claims of known creditors or provided for such payment; or (2) if notice has been given to creditors, the 90 day notice period has expired and payment has been made or provided for to creditors that came forward; or (3) more than two years has elapsed since the date of filing of the notice of intent to dissolve. [See Section 317A.733, Subd. 1 of the Act] Form Articles of Dissolution can be found on the Secretary of State's website, www.sos.state.mn.us.

IV. OTHER REGULATORY FILINGS

A. State and Local Tax Filings

As part of the dissolution process, the corporation should make arrangements to pay any outstanding local or state taxes (for example payroll taxes) and to file federal, local and state tax returns. Nonprofit corporations that are exempt from federal income tax – 501(c)(3), (c)(4), (c)(6) and similar corporations, must also notify the IRS of their dissolution. Dissolution is reported on the corporation's final Form 990 or 990EZ exempt corporation tax return for the year in which the dissolution occurred and is supported by Schedule N – Liquidation, Termination, Dissolution, or Significant Disposition of Assets. This form is available on the IRS website: www.irs.gov.

B. Termination of Regulatory Licenses and Permits; Contracts

Individuals responsible for carrying out the dissolution should determine if there are any licenses or permits which will simply lapse through non-renewal, or whether

further action needs to be taken to terminate the licenses. Some examples of such licenses and permits are sales or real estate tax exemptions, bulk mail permits, or fundraising licenses or permits.

In carrying out the Plan of Dissolution, the corporation should review contracts and pay particular attention to provisions requiring notice of termination or imposing penalties for early cancellation. Contracts that require penalties should be negotiated; contracts with deadlines should be carefully monitored to limit additional liability.

E. Employees

The corporation should review any employment contracts for special termination obligations. In terminating employees, the nonprofit corporation must comply with all relevant provisions of state and federal law regarding benefits, etc. Failing to prepare for payment of unemployment insurance claims and increased premiums can be very damaging to a corporation going through dissolution. The corporation should contact its unemployment insurance company at the beginning of the dissolution process to develop a plan for payment of the claims and increased premiums that will result from layoffs.

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