

How to Dissolve a Maine Nonprofit Corporation

Part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

Thank you to *Robert H. Levin, Attorney at Law* (www.roblevin.net), for his work on this whitepaper.

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Purpose

To provide a summary of the process of dissolving a nonprofit.

Note: This FAQ is provided solely for informational purposes, and no one should rely on it as legal advice. You are strongly encouraged to consult a qualified attorney for advice on any particular situation.

Introduction

When a nonprofit corporation ceases to function and closes down, the process is called "dissolution." Given the thousands of Maine-based nonprofit organizations (to be exact, 6,500 section 501(c)(3) organizations as of 2010, according to the National Center for Charitable Statistics), it is no surprise that every year sees some of these organizations fold up their tents. In a best case scenario, the mission has been achieved and everyone walks away smiling. More commonly, funding, board enthusiasm, and programmatic success have waned, leading to organizational stagnation. In an effort to provide guidance to organizations facing the prospect of dissolution, the Maine Association of Nonprofits has commissioned this paper to outline the fundamental steps to dissolving a Maine nonprofit corporation.

In many cases, organizations do not formally dissolve, but simply wither away. Typically, the State of Maine Annual Report is not filed and the Secretary of State "administratively dissolves" the corporation. However, it is best to go through the formal dissolution process in order to responsibly handle the organization's assets and liabilities, as well as to reduce personal liability for the directors of the organization.

This paper deals with general issues and is not to be relied on as legal advice specific to any particular organization. An organization considering a dissolution is strongly encouraged to obtain independent legal advice from an attorney who has experience with nonprofit corporations.

Although the following steps are presented in a linear fashion, in practice some may occur simultaneously or out of the sequence shown here.

Dissolution Process

1. Board Passes Resolution to Dissolve

The first step in any dissolution process must be a clear and documented decision by the Board of Directors. Ideally, this decision would follow at least several months of analysis and discussion. Alternatives to dissolution, such as a merger with another organization, should be explored and considered.

The Board must document its decision to dissolve in a Resolution. As part of this Resolution, the Board also must specify how to distribute any remaining assets of the corporation. Failure to adequately address this issue could lead to trouble with the Maine Attorney General and/or the Internal Revenue Service.

If the organization is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, its Articles of Incorporation and Bylaws are required to have provisions that address the distribution of assets. As a general matter, these provisions usually limit distribution to other 501(c)(3) organizations or to a governmental entity. In certain cases, distribution to a specific organization is spelled out. In any event, it is important to understand and comply with these dissolution provisions, and to document any decisions made in the minutes of the meeting and in the Resolution.

If the Corporation has members, the Articles and Bylaws most likely require that the members pass any such Resolution to dissolve. This should be done via a formal membership meeting, with proper notice given in accordance with the Bylaws. Given the significance of a decision to dissolve, adherence to all procedural requirements is paramount.

One issue to consider in deciding whether to dissolve is whether the Board or staff is aware of any bequests or future gifts coming to the organization. If this is the case, a conversation with the donor(s) might be in order. In many cases, a merger may preserve the gift, as presumably the successor organization will step into the shoes of the original beneficiary.

2. Informing Constituents

There is no single best time or manner in which to inform the organization's constituents that it is dissolving. In some cases, this is best held off until the last moment, so as to avoid undue harm to the organization or to the constituents. In other cases, transparency and early communication is preferred. The Board should discuss communication matters internally and come up with a strategy right from the outset, as inevitably rumors will fly.

3. Filing Statement of Intent to Dissolve

As a filing matter, dissolution is a two-step process with the Maine Secretary of State. The first step is the filing of a Statement of Intent to Dissolve. This Statement must include a copy of the Resolution passed by the Board of Directors or the Members, discussed in Step 1. There is a \$10 filing fee for this form.

- ▶ Statement of Intent to Dissolve, if by unanimous written consent:
<http://www.maine.gov/sos/cec/forms/mnpca11.pdf>
- ▶ Statement of Intent to Dissolve if by vote of the board at a meeting:
<http://www.maine.gov/sos/cec/forms/mnpca11a.pdf>

4. Dealing With Creditors

How to handle creditors can be the single trickiest part of the dissolution process. Legal guidance is crucial in this regard. The number and size of any debts owed will go a long way toward determining how complicated the dissolution process might become. If there are significant debts owed, it might behoove the corporation to file for bankruptcy. Alternatively, the organization can try to cut its own deals outside of a court process. As a formal matter, once the Statement of Intent to Dissolve has been filed and processed by the State, the corporation must give notice to all known creditors of the filing of the Statement. Except in exceptional situations such as where fraud might be alleged or where individuals have not fulfilled their duties of care and loyalty, the liabilities of the corporation cannot be turned into the personal liability of any employee, director, or member.

5. Paying Outstanding Taxes

If funds are available, it is important to pay all outstanding local, state and federal taxes prior to dissolution. To a certain extent, outstanding taxes are similar to any other kinds of debt, but in many cases (especially payroll taxes) other rules apply that could increase the personal liability of directors and officers.

6. Distributing Assets

Maine Statute requires nonprofit corporations (public and mutual benefit) to include details in their bylaws regarding the disposal of assets upon dissolution.

www.mainelegislature.org/legis/statutes/13-b/title13-Bsec1104-A.html.

When filing Articles of Dissolution (step 9) the corporation must state

"That all remaining property and assets of the corporation have been distributed among its members in accordance with their respective rights and interests, or have been otherwise distributed pursuant to the articles or bylaws of the corporation, as long as the remaining property and assets of a public benefit corporation are transferred to a public benefit corporation engaged in activities substantially similar to those of the dissolving or liquidating corporation or to another entity pursuant to a conversion plan approved pursuant to Title 5, sections 194-B to 194-K"

7. Dealing With Restricted Funds

Another complication that might arise is if the corporation maintains restricted funds. Funds may be restricted in a variety of ways, including grant contracts, board-created restrictions, or by a donor. In general, the distribution of any restricted funds must comply with the restrictions, to the extent possible. In certain cases, donor, Attorney General, and/or court approval might be necessary or wise.

8. Ending Employment Relationships

Care should be taken in ending any employment relationships. For contractors, any written agreements should be read carefully to determine what obligations might be owed to the contracting parties. Employees will usually be eligible for unemployment compensation, but certain exemptions might apply (e.g., 501(c)(3) organizations with less than four employees are normally exempt, although they may have chosen to be covered). Ideally, final compensation amounts owed should be agreed to ahead of time with the employees, to avoid disputes later in the process.

9. Filing Articles of Dissolution

Assuming no outstanding debts, and upon the distribution of all remaining assets, the corporation completes the dissolution process by filing Articles of Dissolution with the Maine Secretary of State. There is a \$10 filing fee for this form. The Articles affirm that there are no legal actions pending against the corporation in any court, or that "adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit." Again, legal guidance is critical if any such lawsuits are threatened, pending or current.

- ▶ Articles of Dissolution Form: <http://www.maine.gov/sos/cec/forms/mnpca11d.pdf>

10. Submitting Notice of Dissolution to Internal Revenue Service

The IRS requires that it be given notice of the dissolution by any tax-exempt organization under code 501(c). More information on such notice may be found at www.irs.gov/Charities-&-Non-Profits/Termination-of-an-Exempt-Organization.

Most organizations will notify the IRS at the time it files its final form 990, 990-EZ, 990-PF, or 990-N. Each form includes a place or places to indicate that this will be the final filing due to termination, dissolution or merger. Be sure to answer completely. In addition, all filers with the exception of 990-N filers, will need to provide more detailed information on Schedule N. The IRS additionally asks for one or more of the following attachments to your filing:

- ▶ Articles of Dissolution filed with state officials.
- ▶ Minutes of the meeting where the vote was taken to dissolve (signed and dated by an officer)
- ▶ For a trust, resolution to dissolve (signed and dated by a trustee)
- ▶ A list of the last set of officers or trustees and their daytime telephone numbers,
- ▶ For section 501(c)(3) organizations only, a statement signed by an officer giving details on final distribution of assets

In addition, for those organizations required to file any Form 990, a final return is required. It is important to check the "Termination" box in Section B of the contact information on the first page, as well as complete Part IV, lines 31 and 32 of the 990 (or line 36 of the 990EZ) and the detailed information on Schedule N.

11. Retaining Records

Once the dissolution process is complete, it is usually a good idea for the last President and/or Secretary to keep the organization's records for a certain period of time. This is both for practical reasons (in case an important question arises and the records must be consulted) and for legal reasons (in case the organization or its directors are sued). Maine's general statute of limitations period (i.e., the time in which a lawsuit can be successfully pursued) is six years, but certain actions must be filed within 2 or 3 years, while others can be filed as long as 20 years after the event. If you are curious about the specific statutes of limitations, visit Maine Revised Statutes, Title 14 § 751-754 and www.expertlaw.com/library/limitations_by_state/Maine.html.