



## **GUIDE TO DISSOLVING A MARYLAND NONPROFIT (NONSTOCK) CORPORATION**

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### **INTRODUCTION**

In today's difficult economy, Maryland Nonprofits' staff has received many inquiries about how to dissolve a nonprofit corporation in our state. While reaching such a decision is difficult and sometimes heart wrenching, an organization may find that there simply are no other alternatives. Lack of funding for the organization is often the primary reason why staying in business is no longer viable. If the organization reaches the point where such a decision becomes necessary, this guide will help you follow the necessary steps to ensure that your nonprofit corporation has legally and properly dissolved its operations.

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### **OVERVIEW OF THE DISSOLUTION PROCESS**

There are five primary steps involved when dissolving a company:

- Taking corporate action by voting to dissolve the corporation in accordance with the appropriate governance documents
- Notifying the organization's creditors of the dissolution and settling creditor's claims
- Filing Articles of Dissolution with the State Department of Assessments and Taxation
- Distributing the remaining business assets in accordance with the corporation's governance documents, state, and federal regulations
- Filing all necessary federal, state, and local tax forms (including the IRS Forms for dissolving the corporation and notifying the federal government that it has submitted its final payroll)

The remainder of this document will discuss each step in more detail. Sample documents that will assist you in this process are available to members of Maryland Nonprofits, available as a downloadable Word document, in the members-only section of our website at [www.marylandnonprofits.org](http://www.marylandnonprofits.org).

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### **MARYLAND REQUIREMENTS**

#### **Making a Decision to Dissolve**

Under Maryland law, if the board of directors serves as the members of the corporation, the board is charged with making the decision to dissolve. If the organization has a broader membership, the members must vote to dissolve the corporation. Typically, the Articles of Incorporation or the

bylaws of an organization specify the percentage of members who must vote in favor of dissolution. If no percentage is stated, then a majority of the members must vote in favor of a resolution to dissolve the corporation.

Maryland law specifically states:

*§3-402.*

*(a) If there is no stock entitled to be voted on the dissolution either outstanding or subscribed for, the dissolution shall be approved as provided in this section.*

*(b) If the action is taken before the organization meeting of the board of directors, the dissolution shall be approved by resolution of a majority of the incorporators.*

*(c) If the action is taken after the organization meeting of the board of directors, the dissolution shall be approved by resolution of a majority of the entire board of directors.*

### **Notifying the Organization's Creditors**

Prior to filing the Articles of Dissolution, written notice regarding the dissolution must be sent to all creditors of the corporation. As noted below, the corporation will continue to exist during the time that it is settling debts and distributing assets. If the organization has no creditors, this must be noted in the Articles of Dissolution.

### **Filing Articles of Dissolution**

The State Department of Assessments and Taxation has Articles of Dissolution available online at: <http://www.dat.state.md.us/sdatweb/dissol.pdf>. The Articles must be signed by the secretary or assistant secretary, the president or the vice president, and the resident agent. Another set of fill-in-the-blank Articles and a resolution for board use are included in the downloadable Word document for members of Maryland Nonprofits. In 2009, the filing fee for Articles of Dissolution was \$100.00.

The statute governing the information that must be contained in the Articles of Dissolution states:

*§3-406.*

*(a) In the case of voluntary dissolution, the articles of dissolution shall include:*

*(1) The name of the corporation and the address of its principal office;*

*(2) The name and address of a resident agent of the corporation who shall serve for one year after dissolution and until the affairs of the corporation are wound up;*

*(3) The name and address of each director of the corporation;*

*(4) The name, title, and address of each officer of the corporation;*

*(5) A statement that dissolution of the corporation was approved in the manner and by the vote required by law and by the charter of the corporation, and a statement of the manner of approval;*

*(6) A statement that notice of the approved dissolution was mailed to all known creditors of the corporation and the date of the mailing, or a statement that the corporation has no known creditors;*

*(7) All other provisions which the corporation considers necessary to dissolve;*  
*and*

*(8) A statement that the corporation is dissolved.*

*(b) (1) If the dissolution is authorized under § 3-402 of this subtitle, a majority of the incorporators or a majority of the entire board of directors, as the case may be, shall execute articles of dissolution for the corporation in the manner required by Title 1 of this article.*

*(2) In all other cases, articles of dissolution shall be executed by the persons and in the manner required by Title 1 of this article.*

The State Department of Assessments and Taxation will send the organization a certified copy of its Articles, which indicates that they have been accepted, in approximately seven to eight weeks. If the organization would like to expedite that process, it can pay an expedited fee (in 2009 the fee was \$50) and it will receive the certified copy within 7 days. Although the corporation will be officially dissolved upon receipt of the certified copy of the Articles, as stated in the statutes below, the corporation continues to exist for the purposes of winding up its business affairs.

*§3-408.*

*(a) Except as provided in subsection (b) of this section, the corporation is dissolved when the Department accepts its articles of dissolution for record.*

*(b) The corporation continues to exist for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required to liquidate and wind up its business and affairs.*

*§3-419.*

*(a) The voluntary or involuntary dissolution of a corporation does not relieve its stockholders, directors, or officers from any obligation or liability imposed on them by law.*

*(b) At any time before final ratification of the auditor's account distributing the assets of the corporation among its creditors and stockholders, any stockholder of a corporation dissolved by the order of a court may plead on behalf of the corporation all defenses, including limitations or laches, in the same manner as could the corporation or its receiver.*

The State has developed specific guidelines about the filing of personal property tax returns in the course of the dissolution process. If the organization is filing Articles of Dissolution between January 1<sup>st</sup> and prior to April 15<sup>th</sup> (the date when all personal property tax returns are due), then a personal property tax form need not be filed if the organization had no personal property prior to January 1 or the organization transferred its assets prior to filing for dissolution and has filed a transfer of personal property form.

If the Articles of Dissolution are filed after April 15<sup>th</sup>, the organization must file the personal property tax form but it will not have to pay taxes if the organization had no personal property prior to January 1 or the organization transferred its assets prior to filing for dissolution and has filed a transfer of personal property form.

## Distributing the Organization's Assets

Every nonprofit organization has the responsibility to ensure that its charitable assets have been properly disbursed to other similar charities and for charitable purposes, or that the assets have been properly expended to carry out the purpose of the dissolving charity. The State will require the organization to complete a transfer of personal property form, which can be obtained through the department by calling 410-767-1180. The IRS will require all filers of the 990 or 990EZ to file a Schedule N, which details the organization's liquidation of its assets (see the IRS section below for more details about this form).

## Secretary of State's Office

The organization must notify the Secretary of State's Office that it is withdrawing its registration and include its Articles of Dissolution with the letter. The address of the Secretary of State's Office is:

Secretary of State's Office  
Jeffrey Building  
16 Francis St.  
Annapolis, MD 21401

A sample letter is included in the downloadable Word document for members of Maryland Nonprofits.

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## IRS OVERSIGHT

### Termination of an Exempt Organization

“When you dissolve your organization, you should notify the IRS so that we will no longer expect you to file annual returns. To do this, send a letter to EO Determinations at:

Internal Revenue Service  
Exempt Organizations Determinations  
P.O. Box 2508  
Cincinnati, OH 45201

The following items must be submitted with the request:

- One of the following:
  - 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

If you file an annual return (Form 990, 990-EZ, or 990-PF), you should check the Termination box in the header area on page 1 of the return. Form 990 and Form 990-EZ filers must also attach Schedule N, *Liquidation, Termination, Dissolution or Significant Disposition of Assets.*”

(The preceding information was taken directly from the IRS Exempt Organizations website.)

Note that Schedule N asks questions about the disposition of the organization’s property, including the fair market value of the assets that were sold or donated, the name of the entity receiving the assets and the EIN of the entities in receipt of the assets. Accordingly, be sure to gather that information as the organization is going through the dissolution process.

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## **IF THE ORGANIZATION HAS EMPLOYEES**

### **IRS Requirements**

- File final quarterly or annual employment tax form.
  - Form 941, Employer's Quarterly Federal Tax Return (PDF)
- Issue final wage and withholding information to employees
  - Form W-2, Wage and Tax Statement (PDF)
- Report information from W-2s issued.
  - Form W-3, Transmittal of Income and Tax Statements (PDF)
- File final employee pension/benefit plan.
  - Form 5500, Annual Return/Report of Employee Benefit Plan (PDF)
- Issue payment information to sub-contractors.
  - Form 1099-MISC, Miscellaneous Income (PDF)
- Report information from 1099s issued.
  - Form 1096, Annual Summary and Transmittal of U.S. Information Returns (PDF)

### **State Requirements**

There are no state requirements regarding employee reporting when an organization dissolves.

## SAMPLE DISSOLUTION DOCUMENTS

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The following are available to members of Maryland Nonprofits as a downloadable Word document:

- Sample Letter to Secretary of State's Office
- Sample Articles of Dissolution
- Sample Notice of Corporate Dissolution
- Sample Resolution to Terminate Lease
- Sample Resolution to Terminate Contract

To access these documents:

1. Go to our website at [www.marylandnonprofits.org](http://www.marylandnonprofits.org)
2. If you know your Login and Password, enter them at the right side of the screen and click **Go**.

If you don't know your Login and Password, click on **Forgot Your Password?** under Go. Or call us for assistance at 800.273.6367 x10.

3. Once logged in, you will see your name and login ID on the right side of the screen. Click on **Member Resources**.
4. Click on **Technical Assistance for Your Nonprofit**. Under Download a Document, click on View All Documents; click on Human Resources folder; click on Sample Dissolution Documents.