

# DISSOLUTION

## Dissolving a Michigan Nonprofit Corporation

BY CELESTE ARDUNIO

Deciding to close the doors of your nonprofit organization is a difficult decision. It is a decision that will affect the lives of staff, board members, and the clients being served. Notwithstanding these many concerns, the decision to dissolve a nonprofit is also a serious business decision.

Many organizations do not realize that there is a formal process for dissolving a nonprofit. If you are considering dissolution or have made the decision to dissolve, it is important to know and understand the process. This publication outlines the legal formalities for dissolving a Michigan nonprofit corporation.

### Step 1: Recommendation of Dissolution to Members

In the case of a corporation organized on a **membership** basis,<sup>1</sup> the dissolution process begins with the board of directors recommending dissolution to the members. This is true unless the board determines that it should not make a recommendation because of a conflict of interest or other special circumstance exists or unless the power to dissolve the corporation is reserved exclusively to the members.

The board recommends dissolution to the members by adopting a resolution either at a meeting of the board or by unanimous written consent of all directors. If the board determines that it should not make a recommendation, it should communicate to the members the basis for not making a recommendation. MCL 450.2804(2).

In the case of a corporation organized on a **directorship** basis, there is no recommendation to make and the dissolution process begins with Step 2 below.

### Step 2: Approval of Dissolution

The members of a corporation organized on a **membership** basis must consider the board's recommendation to dissolve at a meeting of the members. Notice of such meeting must be given to each member of record, whether or not that person is entitled to vote, not less than ten nor more than sixty days before the date of the meeting. The notice must state that a purpose of the meeting is to vote on dissolution of the corporation. MCL 450.2804(6).

At the meeting, the members must vote on the proposed dissolution. The dissolution is approved if a majority of the votes held by members that are entitled to vote on the proposed dissolution are cast in favor of dissolution. There is a special rule for corporations that have more than 20 members. If a corporation has more than 20 members, then unless a greater vote is required by the articles or bylaws, the dissolution is approved if a majority of the votes held by members entitled to vote who are present in person or by proxy at the meeting are cast in favor of dissolution. MCL 450.2804(7).

As an alternative to holding a meeting to vote on the proposed dissolution, the members of a corporation organized on a membership basis may approve dissolution of the corporation by written consent or, if permitted in the corporation's articles or bylaws, by ballot voting or polling place voting. Action by written consent requires the written consent of all members entitled to vote, unless there is a provision in the corporation's

<sup>1</sup> The dissolution process for corporations organized on a stock basis is similar to the process for corporations organized on a membership basis. For simplicity here, and because stock nonprofit corporations are unusual, we omitted a specific discussion of corporations organized on a stock basis.



MICHIGAN  
COMMUNITY  
RESOURCES

bodman

This resource outlines the formal process for dissolving a nonprofit organization along with considerations to keep in mind for organizations exploring dissolution.

*If a corporation is organized on a directorship basis, a dissolution is approved if it receives the affirmative vote of a majority of directors.*

articles that permits action by written consent of a majority of members. MCL 450.2407-450.2409.

If a corporation is organized on a **directorship** basis, a dissolution is approved if it receives the affirmative vote of a majority of directors who are then in office at a meeting of the board. Notice of such meeting must be given to each director at least 10 days before the meeting, and the notice must state that a purpose of the meeting is to vote on dissolution of the corporation. MCL 450.2804(8).

Alternatively, instead of holding a board meeting, the directors may approve the dissolution by unanimous written consent of all directors then in office. MCL 450.2525.

### Step 3: Distribution of Assets

A dissolved corporation's assets must be distributed as follows:

1. All debts, liabilities, and obligations of the corporation must be paid and discharged, or adequate provisions should be made for their payment and discharge. Provision must also be made for those debts, obligations, and liabilities that are anticipated to arise after the effective date of dissolution.
2. Assets held subject to a condition requiring return, transfer or conveyance that is triggered by reason of the dissolution, must be returned, transferred or conveyed in accordance with the condition.
3. Assets held for charitable purposes, without a condition requiring return, transfer or conveyance, must be distributed according to provisions of the organization's articles of incorporation or bylaws that designate the charitable recipient or establish a mechanism for determining the charitable recipient. If the articles or bylaws do not contain such a provision, the assets must be distributed to a nonprofit corporation engaged in similar activities.
4. Other assets, if any, must be distributed in accordance with provisions of the articles or bylaws pertaining to distribution.

Any remaining assets may be distributed to a nonprofit corporation as specified in a plan of distribution adopted by the corporation. If there is no provision for distribution of the assets, the assets escheat to the State of Michigan. MCL 450.2855. assumes the liabilities and assets of the constituent organizations.

### Step 4: Obtaining Approval of the Michigan Attorney General

The Michigan Attorney General must approve the dissolution of all charitable purpose corporations.<sup>2</sup> MCL 450.251.

A request for approval may be submitted while the corporation still holds assets and the Attorney General will begin its review. However, the Attorney General typically will not approve the dissolution until all of the corporation's assets are distributed according to the plan of distribution. In order to obtain the Attorney General's approval, the organization must submit the following:

---

<sup>2</sup> Nonprofit corporations that are not formed for charitable purposes or that are formed solely for religious purposes do not need the Attorney General's approval to dissolve. Instead of submitting a Dissolution Questionnaire, such corporations should mail, email or fax to the Attorney General a request for a letter stating that the Attorney General's approval is not necessary. The request should be accompanied by a copy of the corporation's articles of incorporation and sent to the Attorney General at the same mailing address, email address or fax number for submitting the Dissolution Questionnaire.

1. A completed and signed Dissolution Questionnaire (available on the Attorney General's website at: [https://www.michigan.gov/ag/0,4534,7-359-82915\\_82919\\_80762\\_80768---,00.html](https://www.michigan.gov/ag/0,4534,7-359-82915_82919_80762_80768---,00.html)).
2. IRS returns (Form 990, 990-EZ or 990-PF) and, if prepared, audited financial statements for the last three years. If the corporation did not file an IRS return, or if it filed Form 990-N, the corporation must provide financial reports in another format, such as treasurer's reports.
3. If the corporation has no remaining assets:
  - a. If the last IRS return does not report that the corporation ended with zero assets, a financial accounting for the subsequent period up to the date of last activity or distribution.
  - b. Receipts or copies of cancelled checks, for the distributions of any assets to another charitable organization.
4. If the corporation has assets (other than a nominal amount for final expenses), an inventory of any assets currently held. The Attorney General will typically send a letter asking for additional information, including a final financial report and receipts for disbursements of assets when made.

The completed Dissolution Questionnaire and all supporting documents should be mailed or emailed to Department of Attorney General, Charitable Trust Section, at the address set forth on the Dissolution Questionnaire.

Once the dissolution is approved by the Charitable Trust Section staff, a letter will be sent to the corporation stating that the Attorney General has no objection to the dissolution. This letter should be submitted to the Department of Licensing and Regulatory Affairs, Corporation Division along with the certificate of dissolution.

## Step 5: Execution and Filing of the Certificate of Dissolution

After the dissolution is approved by the Attorney General, a certificate of dissolution must be executed and filed with the State of Michigan on behalf of the corporation. The certificate of dissolution must set forth: (1) the name of the corporation; (2) the date and place of the meeting of members, or directors approving the dissolution; and (3) a statement that the dissolution was approved by the requisite vote of directors for corporations organized on a directorship basis or of directors and members for corporations organized on a membership basis. MCL 450.2804(9).

The certificate of dissolution, along with the letter from the Attorney General approving dissolution, will be sent to the Michigan Department of Licensing and Regulatory Affairs, Corporation Division. Once the certificate of dissolution is filed, the corporation is dissolved. MCL 450.2831.

## Step 6: Notice to Claimants

A dissolved corporation may notify its existing **known claimants** any time after the effective date of dissolution through a written notice that includes the following: (1) a description of the information required in the claim; (2) a mailing address where the claim may be sent; (3) a deadline (at least six months after the effective date of the written notice) by which the corporation must receive the claim; and (4) a statement that a claim that is not received by the deadline is barred. MCL 450.2841a(1).

If a claimant submits its claim after the deadline or if the claim is received by the

corporation, rejected by written notice, and the claimant does not institute proceedings to enforce the claim within ninety days after the written notice of rejection, then the claim will be barred. MCL 450.2841a(3).

A dissolved corporation may also publish notice to **unknown claimants** and request the claimants present their claims in the manner described in the notice. The notice must: (1) be published once in a newspaper of general circulation in the county where the corporation's principal office is located; and (2) state that a claim against the corporation is barred unless the claimant commences a proceeding to enforce the claim against the corporation within one year after the publication date of the notice. MCL 450.2842a.

If a claimant does not file a claim as required by the notice, that claimant and all persons claiming through or under that claimant, are forever barred from bringing a claim. However, a claimant known to the corporation at the time notice is published and to whom written notice is not directly sent is not barred from bringing its claim until six months after the claimant has actual notice of the dissolution. MCL 450.2842a(4).

## Step 7: State Tax Clearance

The corporation must apply for tax clearance from the Michigan Department of Treasury within 60 days of dissolution. The Treasury Department will examine its records to make a determination that there are no remaining state taxes to be paid. Once that determination is made, a certificate of tax clearance will be issued, which completes the state dissolution process.

## Step 8: Notification to the IRS

After dissolution, the corporation must notify the IRS that it has dissolved by filing a final Form 990 (or 990-EZ, 990-N or 990-PF) by the 15<sup>th</sup> day of the fifth month (i.e., 4 months and 15 days) from the date on which the dissolution occurs. The "Final return/terminated" box in the header area on page 1 of the Form 990 should be checked, and the organization should answer "yes" to the question of whether the corporation liquidated, terminated or dissolved. Schedule N, *Liquidation, Termination, Dissolution, or Significant Disposition of Assets*, will need to be filed with the Form 990. The corporation must also submit a copy of its filed certificate of dissolution, along with any other documentation requested by Form 990 or Schedule N.

There are special rules for terminating private foundation status under section 507 of the Internal Revenue Code. Dissolving private foundations should file a final Form 990-PF, including a disclosure of the dissolution as required by the Form 990-PF instructions. In addition to filing a final Form 990-PF, the dissolving private foundation may be required to submit a separate notice to the Internal Revenue Service to terminate its private foundation status under section 507 of the Internal Revenue Code.

## Step 9: Winding Up of Affairs

The dissolved corporation must continue its corporate existence for the purpose of winding up its affairs by: (1) collecting its assets; (2) selling or transferring assets not distributed pursuant to MCL 450.2855; (3) paying all debts and liabilities; and (4) doing all other acts incident to liquidation of its affairs, including addressing the termination or transfer of any qualified benefit plans. MCL 450.2833.

*The corporation must notify the IRS that it has dissolved by filing a final Form 990.*



# bodman

This publication should be used for informational purposes only, and does not create an attorney-client relationship.

Readers should not act upon this information without seeking professional counsel. Individual circumstances or other factors might affect the applicability of this information.

Nonprofit organizations are encouraged to contact Michigan Community Resources for specific legal assistance. For more information, please visit [www.mi-community.org](http://www.mi-community.org).