



# **A Guide for Nonprofit Organizations: Dissolution of Illinois Not For Profit Corporations**

# A Guide for Nonprofit Organizations: Dissolution of Illinois Not For Profit Corporations



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This dissolution guide is published by the Community Law Project, a project of Chicago Lawyers' Committee for Civil Rights, formed in 1985 and dedicated to assisting nonprofit groups and small business entrepreneurs with neighborhood revitalization efforts. This guide was originally written by Jeannie Carmedelle Frey and published in 2006. This second edition was revised by Erica Spangler Raz, Staff Attorney with the Community Law Project. The Community Law Project extends its appreciation to Brandon Barela, Michael Ott with Schiff Hardin LLP, and James Croke for assistance with this second edition.

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# GUIDE TO DISSOLUTION OF ILLINOIS NOT FOR PROFIT CORPORATIONS

This brochure is designed to serve as a guide for non-lawyers who need to understand the process for dissolution of not for profit corporations in Illinois. It is intended for use by anyone who needs to understand the process and implications of voluntary dissolution of a not for profit corporation, and focuses on dissolution procedures and requirements under the Illinois General Not For Profit Corporation Act of 1986, as amended (the "Act"). Finally, the last section of the brochure briefly addresses other dissolution-related requirements. **Where possible, we recommend that those involved in dissolution proceedings consult with an attorney, accountant or other advisors to ensure that the general rules discussed below are appropriately applied in the specific circumstances. The information provided in this brochure should not be considered legal advice.**

## WHAT IS DISSOLUTION?

### Dissolution Defined

Dissolution means the end of a not for profit corporation's existence as a legal entity. Once dissolution occurs, the corporation is no longer permitted legally to enter into contracts or otherwise operate, except for taking actions necessary to "wind up" the company's affairs.

### Reasons for Dissolution

Not for profit corporations may be dissolved for many reasons. "Voluntary" dissolutions, meaning those initiated by a controlling majority of a not for profit corporation's board or its members, may become necessary in circumstances such as the following:

- A long-standing corporation may find that it is steadily losing clients, members or revenues.
- Other corporations may have emerged that perform substantially the same function as the corporation, and it appears that the market either doesn't need or won't support multiple institutions.
- An arts organization highly associated with its founder finds it is unable to function or attract interest from donors and audiences after the founder dies or retires.
- A newly-formed corporation may find that it is unable to attract sufficient donors or board members to assure the successful start-up of the proposed organization.
- Not for profit corporations may also be dissolved by administrative act of the Secretary of State or court action initiated by creditors, individual corporation directors or members, or even the corporation itself.

## **Distinction between Dissolution and Liquidation**

*Dissolution* is a legal process that is accomplished either through the corporation's filing of Articles of Dissolution (after satisfying other requirements under the Act), action of the Secretary of State in an administrative dissolution, or judicial action usually initiated by an outside or minority party with respect to the corporation. Dissolution constitutes the "death" of the corporation as a legal entity. In contrast, *liquidation* is a process involving the corporation's assets, and involves converting to cash any of the company's assets that are not readily distributable to creditors. Liquidation may occur prior to a corporation's final dissolution, or after dissolution as part of the "winding up" process. The "winding up" process is discussed in further detail on page 11.

## **Distinction between Dissolution and Bankruptcy**

*Bankruptcy* is a formal, court-supervised process by which a corporation will be 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 federal Bankruptcy Code. Bankruptcy under Chapter 7 of the federal Bankruptcy Code involves liquidation of the corporation's assets and results in the termination of the corporation's operations. Bankruptcy under Chapter 11 permits the corporation to reorganize after working out a plan of reorganization, subject to approval by creditors and the bankruptcy court.

Unlike for-profit corporations, not for profit corporations cannot be forced into bankruptcy by creditors. However, not for profit corporations can elect to declare bankruptcy. In some cases, such "election" is a result of pressure imposed by a substantial creditor. In other cases, a not for profit organization may elect to declare bankruptcy, as opposed to dissolving, in order to avail itself of certain protections afforded debtors under the Bankruptcy Code, such as the automatic stay against lawsuits or collection actions that might otherwise be commenced against the organization, or bankruptcy court procedures that permit the efficient handling of a large volume of claims. Moreover, if the directors and officers of a not for profit corporation believe that it could operate profitably in the future if existing debts were able to be discharged (such as in the case of certain debts that were the result of unusual or "one-time" events), reorganization through a Chapter 11 bankruptcy should be considered.

Although the significant costs of a bankruptcy proceeding tend to recommend against a small, not for profit corporation declaring bankruptcy rather than undergoing a voluntary dissolution, bankruptcy may offer advantages to larger not for profits having significant assets, a high number of outstanding claims and/or multiple threats of creditor lawsuits.

## **VOLUNTARY DISSOLUTION**

Illinois not for profit corporations may be dissolved in two ways: (1) voluntary dissolution effected by corporate representatives (including by application for court-ordered dissolution); or (2) involuntary dissolution effected by actions initiated by governmental or private persons representing interests opposed to the continued existence of the not for profit corporation. The different kinds of voluntary and involuntary dissolution methods are described in this Booklet, with particular attention paid to the former. Finally, the last section provides a brief overview of dissolution-related requirements and recommended procedures in connection with other local, state and federal laws.

## Timing of Dissolution

Voluntary dissolution may occur at any time before or after a corporation begins formal operations. Dissolution before operations begin may result from unexpected difficulty obtaining support from potential donors, a change of circumstances involving key donors or a change of direction of a sponsoring organization. Voluntary dissolution may also occur after a not for profit corporation has ceased all operations, so that there will not need to be any post-dissolution “winding-up” process.<sup>1</sup>

As set forth below, the Act provides that only directors or eligible members of a corporation may act to effect voluntary dissolution of an Illinois not for profit corporation. Thus, even if the corporation has no current operations, only such persons can approve the corporation’s voluntary dissolution.

## Financial Issues in Dissolution

### (1) Duties to Creditors.

When a corporation is at risk of becoming insolvent, its directors and officers are generally deemed to have a primary fiduciary duty to creditors. Thus, in situations in which creditors believe that there would have been more funds to pay debts if corporate assets had not been improperly spent, or “wasted,” that other creditors were favored over them, or that the corporation failed to get the best price when it sold key assets to an affiliated party, may consider suing officers, directors or members personally, for breach of such fiduciary duty.

### (2) Potential Liability of Members, Directors or Officers for Organization Debts.

Although members, directors and officers are generally not personally liable for the debts of a not for profit corporation, if the corporation has not followed appropriate formalities to distinguish between the corporation and its members or other associated persons (such as when a sole member routinely writes personal checks on the corporation’s account, or uses corporation vehicles and other assets without compensating the corporation), creditors could have grounds to sue the corporation’s members, directors or officers on a “piercing the corporate veil” theory, arguing that the corporation was simply the alter ego of one or more individuals, who should be therefore personally liable for debts incurred in the corporation’s name.

## Limits on Voluntary Election to Dissolve by Board if Corporation is Unable to Pay its Debts

It is advisable that the directors and officers be sure of the financial position of the not for profit corporation before embarking on a dissolution process. This includes analyzing the organization’s balance sheet, operating statement and cash flow.<sup>2</sup> This step is important because, in comparison to other

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<sup>1</sup> It is recommended that once a not for profit corporation has determined that it must dissolve, the officers and directors begin the process of winding-up operations, liquidating assets, and identifying and paying or settling outstanding debts and obligations. If this is done, the post-dissolution winding-up activities may be minimal, and permits everyone involved with the corporation to “move on” soon after dissolution is effective. (See also discussion of the winding-up process on page 10.)

<sup>2</sup> A not for profit’s Statement of Financial Position is the equivalent of a balance sheet listing assets and liabilities. The operating statement may be called a Statement of Activities, which shows revenues and expenses, and also shows whether funds are unrestricted, or restricted temporarily or permanently.



states, the Act is unusual in that while it provides that the directors of a not for profit corporation may vote to dissolve the corporation if the corporation lacks members entitled to vote on dissolution, the directors may not do so if the corporation has outstanding debts. This is a troublesome provision, since in many cases the inability to pay debts is the main reason a not for profit corporation determines to dissolve. This provision mirrors a similar provision in the Illinois Business Corporation Act relating to dissolution by initial directors prior to issuance of shares; however, such limitation makes more sense in the business corporation context, since normally dissolution requires shareholder approval. Unlike business corporations which are always expected to have shareholders, many not for profit corporations do not have members, so the debts restriction does not appear logical in the not for profit context.

Nonetheless, the payment of debts restriction is valid and directors of Illinois not for profit corporations without members entitled to vote may not approve voluntary dissolution unless the no-debts requirement is satisfied.<sup>3</sup> Boards of Directors that disregard this requirement could later face creditors challenging the legality of the dissolution, and exposing themselves to potential personal liability. However, not for profit corporations without members and that are unable to pay their debts do have several alternate means to effect dissolution consistent with the terms of the Act, as discussed below.

### **(1) Create a List of Creditors and Determine Amount of Actual Debts.**

First, the corporation should try to identify its true creditors, that is, individuals or entities to whom the not for profit corporation potentially owes money. Creditors should be included on this list regardless of whether the payment is owed now or in the future, regardless of whether the exact amount due has been established, and regardless of whether the not for profit corporation has disputed the debt. Second, once the not for profit corporation has identified all of its potential creditors to the best of its ability, the not for profit corporation should estimate the amount owed to each creditor, to the extent possible, and identify which portion are “debts” as opposed to “obligations”. While Illinois law does not provide clear guidance regarding the distinction between such terms, “debts” are typically understood to represent a duty to pay money for goods, services or other items already received, while “obligations” are duties to make payments in the future for goods or services to be received at a later time, or a potential or contingent duty to satisfy liabilities that may foreseeably be imposed in the future. For instance, current and past-due rent payments would be considered “debts,” while rent payments for future periods may be considered an “obligation” rather than a “debt”. Finally, on this list, ongoing contracts with creditors that may be canceled should be identified. A sample chart for determining debts and obligations, and available assets to satisfy them is included in Appendix A.

### **(2) Resolution of Outstanding Debts.**

Once the corporation has created a list of creditors and determined its debts, obligations, and contracts that may be canceled, it may find that it has sufficient funds to pay off its debts in full, even though it does not have enough funds to pay its other obligations.<sup>4</sup> In such case, the directors will be able to approve voluntary dissolution consistent with the Act. However, if the corporation is unable to pay its debts, it may attempt to eliminate such debts by approaching its creditors and negotiating a settlement arrangement under which the not for profit corporation would pay a set amount or a percentage of the debt, in exchange for a

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<sup>3</sup> The form Articles of Dissolution provided by the Secretary of State’s office requires officers of a dissolving not for profit corporation to check a box indicating which section of the Act was relied on in approving dissolution. If directors of a corporation that has no members and is unable to pay its debts nonetheless vote to approve voluntary dissolution, the officer who signs the Articles of Dissolution will not be able with accuracy to check the box indicating that the requirements of the Act were complied with.

<sup>4</sup> For 501(c)(3) tax exempt not for profit corporations, a director or other third party may make a tax-deductible contribution to the corporation to enable it to satisfy unpaid debts.

settlement and release from the creditor that would effectively terminate the debt.<sup>5</sup> For example, these negotiations could include an agreement by a landlord for an early lease cancellation, reaching out to utility companies to see if they will agree to write-off any portion of the total amount due, and terminating any service contracts and agreeing to any applicable termination fees. If the corporation is unable to negotiate settlements with each individual creditor, then the corporation may attempt to negotiate with all of its creditors collectively to work out a payment plan by which every creditor would receive a share of the corporation's assets relative to the size of the creditor's claim against the corporation.

### **(3) Creation of Members; Voluntary Dissolution by Members Entitled to Vote.**

If a not for profit corporation that has no members remains unable to pay its debts, it will be unable to effect voluntary dissolution under the provisions in the Act relating to corporations without members. However, it could still dissolve under other sections of the Act relating to voluntary dissolution. The directors could amend the corporation's Bylaws to provide for one or more members entitled to vote on dissolution. Such member(s) could then approve dissolution under other sections of the Act, through written consent or by vote at a meeting of members - since members may approve dissolution without regard to the corporation's ability to pay its debts.

### **(4) Administrative Dissolution.**

Depending on timing issues, a not for profit corporation without members that cannot voluntarily dissolve under the "no debts" restriction might consider allowing itself to become administratively dissolved, by deliberately failing to file its annual corporate report with the Secretary of State. Such reports are generally due in the anniversary month of the organization's incorporation. Failure to file the corporate report will generally result in administrative dissolution within 3 to 6 months after the report was due.

The problem with this approach is that the corporation may continue to accrue further debt, and angry creditors, while waiting for administrative dissolution to occur. Moreover, this approach delays the timing for the ultimate winding-up process for the organization, including taking advantage of the provisions barring claims of creditors not confirmed within specified periods after receiving notice of dissolution. (See page 12, Notice to Creditors.) Such delay runs the risk that appropriate winding up will not be done - since everyone involved in the organization may have "moved on." Any remaining "loose threads," especially involving unpaid debts or obligations, could come back to haunt former directors or executives involved in the dissolution decision.

### **(5) Dissolution by Judicial Action Initiated by the Corporation Itself; Court Appointment of Receiver.**

Illinois not for profit corporations may also request a court to dissolve the corporation and oversee its dissolution, if the corporation establishes that it is unable to carry out its purposes. This method may be used by a corporation without members that is unable to pay its debts, and therefore unable to carry out its purposes. In addition, this procedure may also be used in situations in which there are no longer any members or board members eligible to vote on dissolution, or if a board of a corporation that is no longer able to carry out its corporate purposes (due to lack of funds or other reasons) determines that court oversight of the judicial process would be useful, such as in avoiding post-dissolution lawsuits by creditors. A court receiving such a petition from a corporation may elect to appoint a receiver, who

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<sup>5</sup> A sample of a settlement agreement is attached at Appendix B.

would then be empowered to conduct the winding up process, for a fee (paid by the corporation) and subject to the court's ultimate supervision.

## **Dissolution of Corporations with No Members Entitled to Vote on Dissolution**

### **(1) Determining if any Members are Entitled to Vote on Dissolution.**

As noted above, the Act gives a not for profit corporation's board of directors the power to authorize the corporation's dissolution if there are no members entitled to vote on the dissolution, and the statutory requirements requiring payment of debts are satisfied. Whether or not there are "members entitled to vote" can sometimes be difficult to determine. Of course, if the corporation has no members at all, there is no issue. If the corporation does have members, however, it may or may not be clear if such members are entitled to vote on dissolution. Some members of not for profit corporations have extensive voting powers, whereas others have only limited voting power. The Act does not create any voting rights in members;<sup>6</sup> instead, member voting rights must be specified in the corporation's Articles of Incorporation or Bylaws. If the Articles and Bylaws are not clear, then the board must determine in good faith, based on past practice of submitting matters to membership vote and other factors applicable to the corporation's specific circumstances, whether members were intended – or if they would expect – to have the power to vote on voluntary dissolution. If members believe they were entitled to vote on dissolution, but were not allowed to do so, they could file suit to invalidate the dissolution and possibly to hold the directors liable.

### **(2) Approval by Directors.**

If it is determined that there are no members entitled to vote on the question of whether or not the corporation should be dissolved, and if the corporation is able to pay or otherwise satisfy all its outstanding debts, the board may approve dissolution either at a meeting or through execution of a unanimous written consent. The procedures for both of these methods of dissolution approval are set forth below, and a sample resolution is attached at Appendix C.

#### **(a) *Approval at a Board of Directors Meeting.***

The directors of an Illinois not for profit corporation may approve a resolution to dissolve the corporation at a regularly-scheduled or a special meeting. The directors should be given notice of such meeting in accordance with the meeting notice requirements under the corporation's Bylaws. Unless the corporation's Bylaws require a greater number of directors to approve the corporation's dissolution, dissolution may be approved by the affirmative vote of a *majority of the directors then in office* – not just a majority of the directors present at a board meeting at which a quorum is present. Thus, for example, if a "bare" majority of directors attends a meeting to consider dissolution, all directors in attendance must vote in favor of the dissolution for it to be approved. In addition, once dissolution is approved, but at least *three days prior to execution of Articles of Dissolution (discussed below)*, the corporation must give written notice of the board's

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<sup>6</sup> Some not for profit corporation Bylaws state that members shall have such voting and other rights "as are set forth" in the Act. Since the Act does not give members the right to vote on dissolution, absent any such rights given in the corporation's Articles and Bylaws, such provision would not act to give members dissolution voting rights. However, if such provision has been interpreted in the past to give members other voting rights, the board will need to determine if such provision should be read, in light of past practices, as giving members the right to vote on a proposal to dissolve the corporation.

*decision to dissolve the corporation to all of the directors, whether or not present at the board meeting.*

**(b) Approval by Unanimous Written Consent.**

The board may also approve a resolution to dissolve the corporation by written consent in lieu of meeting (provided such written consent procedure is not prohibited by the corporation's Articles and Bylaws). The Act provides that written consents are only effective if signed by *all* directors. Therefore, dissolution can be approved by written consent of the board only if all directors agree and are available to sign the consent.

## **Dissolution of Corporations with Members Entitled to Vote on Dissolution**

If a not for profit corporation has members entitled to vote on a proposal to dissolve the corporation, such members can approve dissolution in either of two ways: (1) by written consent signed by two-thirds of the members entitled to vote on a dissolution proposal; or (2) by a meeting of the members entitled to vote on dissolution, at which at least two-thirds of the members present vote to approve dissolution. These two methods are discussed below.

**(1) Approval by Members Acting by Written Consent.**

Unless the corporation's Articles or Bylaws prohibit members from acting by written consent, the members entitled to vote on dissolution may approve dissolution by written consent, without any action by the board, by the following procedures:

- (a) The consent document (the "Consent") should set forth a resolution that states that the members signing the Consent approve the corporation's dissolution.
- (b) At least two-thirds (or other number if specified in the Articles or Bylaws for member approval of dissolution) of all of the members entitled to vote on dissolution sign the consent. *(Note: members may sign individual copies of the consent signature page, if it is not convenient to have all members sign the same signature page; the consent should note that it may be signed in such "counterpart" signature pages).*
- (c) If not all of the members entitled to vote on dissolution sign the consent, the effective date<sup>7</sup> of dissolution stated in the consent must be at least 5 days after notice of the proposed action is sent to all members entitled to vote. *(Note: this requirement is easily satisfied if the proposed form of consent is sent to all of the members at the same time.)*
- (d) If not all of the members entitled to vote on dissolution sign the consent, written notice of the approval of dissolution must be promptly given to those members who were entitled to vote on dissolution but did not sign the consent.

**(2) Approval by Members at a Member Meeting.**

If it is desirable to have the members vote on a dissolution proposal at a meeting, the procedures below should be followed:

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<sup>7</sup> The effective date of dissolution is the date that the Articles of Dissolution are filed with the Illinois Secretary of State. In other words, the Consent should set forth an effective date of dissolution that is at least 5 days after the notice of the proposed action is sent to members. Assuming the resolution passes and a sufficient number of members sign the Consent, the President or Vice President will execute the Articles of Dissolution on the effective date proposed in the Consent.

- (a) The board of directors must adopt a resolution (i) proposing that the corporation be voluntarily dissolved, and (ii) directing that the dissolution proposal be submitted to a vote of the members entitled to vote on such matter. The resolution may, but need not, state whether or not the directors recommend that dissolution be approved. A sample board resolution proposing dissolution is attached at Appendix D.
- (b) Written notice of the members meeting (which may be an annual or special meeting) must note that one of the purposes of the meeting is to consider the not for profit corporation's voluntary dissolution. Such notice must be given at least 20 days and not more than 60 days in advance of the meeting date. *(Note: if the time for notice of meeting in the Bylaws is within this range, but more limited, then the notice should be given within the range set forth in the Bylaws.)*
- (c) At the meeting, if a quorum<sup>8</sup> is present, whether in person or by proxy,<sup>9</sup> the dissolution proposal must be approved by two-thirds of the members present, unless the Bylaws specify a different number or percentage of member votes are required to approve dissolution. A sample member resolution to dissolve is included in Appendix D.

## Adopting a Plan of Distribution: What Is It, and When Is It Required?

After a voluntary dissolution is approved by the board or the members as set forth above, the corporation may, and in some cases must, approve a plan of distribution of corporate assets.

### (1) What is a Plan of Distribution.

A plan of distribution is a detailed description of how debts and obligations will be paid (applicable for corporations with members), and how and to whom any remaining assets will be distributed. A sample Plan of Distribution is attached at Appendix E. Generally, the plan must follow the conditions of the Act, which provides that:

- (a) Before any assets are deemed available for distribution, all liabilities and obligations of the not for profit corporation must be paid, satisfied, and/or discharged, or adequate provision must be made for such future payment or satisfaction.
- (b) Specific assets that are required to be returned, transferred or conveyed to a specific party in the event of the not for profit corporation's dissolution must be so conveyed. *(This section may apply in the case of works of art, religious artifacts or other unique items previously given by a party to the corporation.)*
- (c) If the not for profit corporation holds some or all of its assets for a charitable, religious, eleemosynary, benevolent, educational or similar use (other than

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<sup>8</sup>For example, the Bylaws may specify that a majority of all members will constitute a quorum. However, if the Bylaws do not specify the number of members that will constitute a quorum, the Act applies and requires that at least one-tenth of the votes entitled to be cast are present.

<sup>9</sup>Some organizations' Bylaws prohibit member voting by proxy; in such cases, only the votes of those members physically present at the meeting may be counted.

specific assets that must be returned or conveyed as referenced in subsection (b) above), the Act provides that such assets must be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities that are substantially similar to those of the dissolving corporation; however, such transfers *must be made pursuant to a written plan of distribution, approved by the board and the members of the corporation (if any) who were entitled to vote on dissolution.* Note, this requirement may or may not be consistent with any dissolution distribution provisions set forth in the corporation's Articles or Bylaws. In the event of inconsistencies, the Act governs.

Moreover, even if such Article or Bylaw provisions relating to post-dissolution transfers are consistent with the Act, *the corporation's directors and any eligible members must still approve a written plan of distribution to implement dissolution distributions.* If the corporation is tax-exempt, the corporation must ensure that the plan of distribution is consistent with IRS requirements.<sup>10</sup> Further, if the corporation is registered as a charitable trust with the Illinois Attorney General, it may need to obtain the Attorney General's consent before transferring assets held in trust for charitable purposes.<sup>11</sup>

- (d) To the extent the Articles or Bylaws of the corporation give certain or all members specific rights to receive assets distributable upon dissolution, or provide for assets to be distributed to other parties, any assets not otherwise distributable in accordance with the above procedures must be distributed in accordance with such Article or Bylaw provisions.
- (e) Any remaining assets, after application of the four procedures above, shall be distributed to any societies, organizations or corporations, whether for-profit or not for profit, as shall be specified in a written plan of distribution, approved by the board and the members of the corporation (if any) who were entitled to vote on dissolution.

## (2) **Adopting a Plan of Distribution.**

As noted above, a plan of distribution is only required under certain circumstances (as set forth in subsections (1)(c) and (e) above). However, if there are a number of assets that need to be distributed in different ways, or if there is any reason to make sure that both the board and applicable members are all aware of and have "signed off" on the details of post-dissolution asset distribution, it may be advisable to adopt a formal plan of distribution. Approval of the plan of distribution may occur simultaneously with or after approval of the corporation's dissolution. If the corporation has certain assets that are of a kind required under the Act to be distributed pursuant to a plan of distribution, *it may be useful to prepare the plan of*

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<sup>10</sup> The IRS requires that upon dissolution of a 501(c)(3) corporation, any distributable assets must be distributed for one or more exempt purposes or to a governmental entity for a public purpose.

<sup>11</sup> Under the Charitable Trust Act, a not for profit corporation is considered a trustee of a charitable trust if it holds property for any charitable purpose. Therefore, funds which are appropriated for the benefit of society at large are considered held in charitable trust and the Illinois Attorney General holds vested common law power and authority to safeguard these charitable assets. If a trustee determines that the continued administration of the charitable trust is impractical because of its small size or because of changed circumstances that adversely affect the purpose of the trust, the trustee must notify each named charitable organization that the trust was formed to benefit, and obtain consent of the Attorney General before terminating the trust and transferring the trust assets.

*distribution sufficiently in advance so it can be approved at the same time that dissolution is approved.*

(a) **Adoption of Plan of Distribution by Members Entitled to Vote.**

*If there are members of the corporation who have rights to vote on dissolution, they must also approve any plan of distribution adopted in connection with such dissolution. To obtain the approval of the members, the procedures below should be followed:*

- (1) The board of directors must adopt a resolution recommending a plan of distribution and directing the submission of such plan to a vote of the members entitled to vote on the plan.
- (2) The members entitled to vote on the plan of distribution must approve the plan by a two-thirds vote (unless the Articles or Bylaws specify a different number) of members present in person or by proxy,<sup>12</sup> at a meeting of members for which appropriate notice was given (see page 8, Section (2)(b)). The members may also approve the plan by a written Consent, provided that at least two-thirds of all members sign the Consent, and the other requirements for member consent set forth on page 7, Section (1) are satisfied.

(b) **Adoption of Plan of Distribution by Board When There Are No Members Entitled to Vote.**

If no members of the corporation are entitled to vote with respect to any dissolution matters, a plan of distribution may be approved by a vote of a majority of directors then in office, voting at a regular or special board meeting. The directors may also approve a plan of distribution by unanimous written consent in lieu of a meeting.

## **Filing Articles of Dissolution**

After a voluntary dissolution is approved by the board or the members as set forth above, dissolution becomes effective by filing Articles of Dissolution with the Secretary of State. Form Articles of Dissolution are available on the Illinois Secretary of State website, at <http://www.cyberdriveillinois.com/> and current copies of the form are attached at the end of this Booklet, at Appendix F.

Articles of Dissolution must satisfy the following requirements:

- (1) Be signed by the corporation's President or Vice President, and the corporation's Secretary or Assistant Secretary.
- (2) Contain the following information:
  - (a) The corporation's name;
  - (b) The date dissolution was authorized by the members, or by the directors if there were no members entitled to vote on dissolution;
  - (c) A mailing address for the mailing of documents relating to any lawsuits against the corporation that may be served on the Secretary of State after the corporation's dissolution; and

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<sup>12</sup> Assuming that proxy voting by members is not prohibited by the not for profit corporation's Articles or Bylaws.

- (d) A statement that the dissolution was authorized by (as applicable) the directors or the members, at a meeting or by written consent.
- (3) Be filed, with the applicable fee, with the Secretary of State, by presenting two exact copies, one of which must be the original.

## **The Winding Up Process: Liquidation and Distribution of Assets, and Providing Notice to Creditors**

### **(1) Pre-Dissolution Wind Up Activities.**

It is not necessary to wait until a corporation is formally dissolved to begin the winding up process. Although the activities listed in subsection (2) below are the only corporate activities permitted after dissolution, there is no prohibition on engaging in such wind up activities prior to dissolution. In fact, it is often beneficial for not for profit corporations to begin the process of winding up operations, liquidating assets and identifying and paying known creditors, before filing Articles of Dissolution. Such pre-dissolution wind up activities may eliminate or significantly minimize the need to maintain officer, director and staff involvement once formal dissolution has occurred.

### **(2) Permissible Winding Up Activities after Dissolution.**

Once an Illinois not for profit corporation has dissolved, it is deemed to no longer have a corporate existence. However, although dissolved, the corporation remains able to act, through its officers, board of directors and/or one or more designated individuals or entities, to the extent necessary to wind up its operations and liquidate its assets. The acts permitted during this winding up process include:

- (a) Collection of all of the corporation's assets (including accounts receivable);
- (b) Disposing of assets, other than as dissolution distributions to members or others,<sup>13</sup> including the sale of assets for the purpose of converting such assets to cash that may be used to pay creditors;
- (c) Giving notice of dissolution to creditors (see further discussion of such notices on page 8);
- (d) Discharging or making provision for the payment or satisfaction of all outstanding debts and obligation, including contingent liabilities;
- (e) Distributing available assets (after paying debts and making provisions for other liabilities and obligations) in accordance with the provisions of the Act and the corporation's Articles and Bylaws; and
- (f) Engaging in other acts necessary to wind up and liquidate the corporation's operations, including, if applicable, adopting a plan of distribution.

### **(3) Transfer of Title to Assets.**

As part of the winding up and distribution process, it may be necessary to transfer and convey assets to third-party purchasers, creditors, members or other not for profit organizations. Such transfers should be done by appropriate legal documentation transferring title, such as a bill of sale, deed, etc.

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<sup>13</sup> For example, specific assets such as artwork or religious artifacts may be required to be returned or conveyed to another organization in the event of dissolution. In such a situation, those assets may not be sold to satisfy the not for profit corporation's creditors.



#### (4) **Role of Directors and Officers in Winding-up Process.**

Although a not for profit corporation is limited in the kinds of activities in which it may engage post-dissolution, the authority of the corporation's officers and directors otherwise remains intact during the post-dissolution winding-up process. Thus, directors may vote on matters related to the winding-up process, and officers may take appropriate winding-up actions on behalf of the corporation. There are two practical issues that commonly arise relating to officer and director involvement with a dissolved corporation. First, a number of directors and officers may submit their resignations as of or before the effective date of dissolution, either out of a need to pursue other activities, or in the mistaken belief that once the corporation is dissolved their responsibilities automatically end. To the extent directors and certain officers will be needed to take action after dissolution occurs, existing officeholders should be encouraged to stay in office, or replacements should be found.

A second common problem arises with regard to when officers and directors *should* or *can* resign, once dissolution occurs. In other words, since the winding-up process may go on for some time after the corporation's dissolution date, with various "loose ends" that may need to be addressed for an indefinite period even after most winding-up activities are done, when is it "safe" for the officers and directors to resign? In some cases, it may be helpful to have at least a quorum of the board remain intact (including by appointments to fill vacancies created by any resignations), with one or more officers authorized to execute documents and otherwise act on the corporation's behalf, for as long as there is a significant level of post-dissolution winding-up activity. However, once the bulk of the winding-up process is completed, it generally makes sense for the directors and officers to formally resign, and appoint one or more individuals or entities to oversee any final winding-up tasks such as the filing of tax returns and year-end reports, and handling miscellaneous requests for information or other matters that may arise from time to time.

## **Notice to Creditors**

The Act provides a procedure for defining the scope of outstanding debts and other obligations against the dissolved corporation that must be satisfied prior to completing the dissolution process. (*Note, however, that this procedure does not apply to the following: any contingent liabilities; any claim arising after the effective date of the corporation's dissolution; or any claim arising from the failure of the corporation to pay any tax, penalty or interest related to any tax or penalty. Such claims are thus not able to be limited or barred through this creditor-notice procedure.*)

Under this procedure, the corporation gives notice of its dissolution, no later than 60 days after the effective date of the corporation's dissolution, to each known creditor or other person who is known or believed to have a claim against the corporation. The notice to known potential claimants must contain the following information:

- (1) The fact and effective date of the corporation's dissolution;
- (2) The mailing address to which the creditor or other claimant must send its claim and essential information regarding the claim (i.e., information that will enable the corporation to verify the claim and the claim amount);
- (3) The deadline, which must be at least 120 days from the effective date of the corporation's dissolution, by which the corporation must receive the claim; and
- (4) A statement that the claim may be barred if not received by such deadline.

A sample notice to creditors is included at Appendix G.

Each creditor or other claimant who receives such notice then has at least 120 days (or longer period if stated in the notice to potential claimants) to deliver to the corporation a notice of the amount believed to be owed by the corporation. Any claims not submitted to the corporation by the deadline will be deemed barred, and may not be pursued against the corporation, or anyone affiliated with the corporation (i.e., members, officers, directors, employees or agents).

For claims received within the claim deadline, the corporation must follow one of two courses of action. First, if the corporation does not dispute such claim, the corporation must make arrangements to pay or otherwise satisfy such claim. For instance, if the corporation receives notice of outstanding debts and other claims amounting to \$50,000, but only has available assets totaling \$25,000, then the corporation must determine how to allocate the available funds and/or make compromise arrangements so that all outstanding claims are satisfied.

However, if the corporation receives any claim that it disputes, either entirely or with respect to a portion of the amount claimed, the corporation should give notice to the claimant that it rejects the claim in whole or in part. The notice should also state that such claim will be barred unless the rejected claimant files a lawsuit to enforce the claim (or the rejected portion of the claim) within the deadline stated by the corporation in its rejection notice – such deadline must be at least 90 days from the date of the rejection notice.

At the end of such period, the corporation is left with a fixed list of creditors with whom they need to deal. Corporations with more claims against them than funds to pay should try to negotiate settlement agreements so that as many creditors as possible may be paid. If claims-settlement negotiations are not possible or are unsuccessful, the corporation will generally be left with two groups of creditors: secured creditors and unsecured creditors. Secured creditors can ultimately just repossess or foreclose on the secured assets, with payment of asset proceeds going to the creditor with the most senior, or first-priority lien, and any additional proceeds going to the remaining secured creditors, in next order of priority.

For unsecured creditors and secured creditors to the extent their lien interests are insufficient to satisfy the corporation's debt, the corporation should determine the amount of funds (if any) available to pay such creditors as a group, divide by the total amount owed to the group, and calculate the portion of each claim that the corporation can pay. Typically, such portion is described in "cents on a dollar," such that if a dissolved organization had \$1,000 available to pay unsecured claims totaling \$10,000, each unsecured creditor would be paid ten cents for each dollar of claim, or "ten cents on a dollar."

**Important Note: Avoid Preferring Creditors: If the corporation's funds are not sufficient to pay all creditors in full, the corporation should be very cautious about "picking and choosing" among creditors such that it would end up paying certain creditors in preference to others. While preferring creditors who are not insiders or affiliates of the corporation over other creditors is not necessarily prohibited,<sup>14</sup> doing so increases the likelihood that an unpaid creditor will sue the corporation's officers and directors directly, arguing that the officers and directors violated their fiduciary duties in connection with the dissolution – or worse, that they conspired to defraud the creditor. Although the unpaid creditors' burden of proof of such a case would be very high, these claims may be expensive to defend. Furthermore, if the unpaid creditor is successful, then the officers and directors may be personally liable to the unpaid creditor.<sup>15</sup>**

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<sup>14</sup> On the other hand, it is prohibited to pay claims of insiders, such as an officer or director, or any person or entity associated with an officer and director, in preference to unaffiliated creditors. A director who approves any such insider preference would likely be found to have violated his or her fiduciary duties to the corporation. Additionally, such a transfer would likely be voidable as a fraudulent transfer under the Illinois Uniform Fraudulent Transfer Act.

<sup>15</sup> In addition to any claims an unpaid creditor may assert against the officers and directors, the creditor may also sue the preferred creditors under the Illinois Uniform Fraudulent Transfer Act and seek to void the corporation's payment to the preferred creditor as

## Potential Director Liabilities Resulting from the Dissolution Process

Directors of Illinois not for profit corporations may be liable for certain acts or omissions by the board or the corporation in connection with or prior to the dissolution process, as follows:

**(1) Liability for the Amount of Unauthorized Distributions.**

Directors who vote for or otherwise assent to a distribution not authorized by the Act, either before or after dissolution<sup>16</sup>, shall be jointly and severally liable to the corporation for the amount of the unauthorized distribution. *(Note, to avoid liability for an unauthorized distribution, a director must be on record as having dissented or abstained from the proposed distribution. Thus, such dissent or abstention must be: (a) entered into the minutes of the board meeting; (b) filed in writing by the director with the person acting as the secretary of the meeting before the meeting's adjournment; or (c) sent by the director to the corporation's secretary immediately after adjournment of the meeting, by registered or certified mail. A director who voted in favor of a distribution at a meeting may not later file a dissent or abstention.)* Any individual director who is held liable for an unauthorized distribution is entitled to contribution from other directors who approved the distribution, and from anyone who knowingly accepted or received a distribution knowing that it was unauthorized.

Note, however, that a director will not be liable for distribution of assets to any person, even if such distribution is found to be in an amount unauthorized by the Act, if (a) the director relied in good faith on a financial statement that was represented to the director by the corporation's president, chief financial officer or an independent or certified public accountant or firm as fairly reflecting the corporation's financial condition; or (b) in determining the amount available for distribution, the director relied in good faith on the book value of relevant assets.

**(2) Failure to Notify Known Creditors of Dissolution.**

If the corporation seeks to bar claims against the corporation by following the procedure described in Section (1) (above), the directors of the corporation shall be jointly and severally liable for failing to take reasonable steps to send the written notice to any known creditor of the corporation.

**(3) Debts Incurred after Filing Articles of Dissolution.**

The directors of a dissolved corporation may be jointly and severally liable to the creditors of the corporation with respect to any debts or obligations that were incurred *after* the filing of Articles of Dissolution, if such debts and obligations were not incurred as part of the "minimum necessary" activity required to wind up the corporation's affairs.

**(4) Breach of Fiduciary Duty to Creditors of Insolvent Corporation; D&O Coverage.**

When any corporation, whether for-profit or not for profit, is at risk of becoming insolvent, the duties of the directors of the corporation shift to include duties to the corporation's creditors. Thus, creditors of dissolved corporations who do not receive full payment for amounts owed to them by the corporation may consider direct suit against directors for actions taken once the corporation became insolvent (i.e., either having an excess of debts compared to assets, or the inability to pay debts as they become due). Claims made in such suits may allege that certain actions of the corporation's directors resulted in undue losses or dissipation of corporate assets

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a fraudulent transfer. Further, if the not for profit corporation enters bankruptcy, the bankruptcy trustee may seek to recover the transfers as voidable preferential transfers or fraudulent transfers under the Bankruptcy Code.

<sup>16</sup> Distribution after dissolution must conform to the requirements set forth starting on page 9. Prior to dissolution, the board may not make any distributions that would: (i) cause the corporation to be insolvent; (ii) result in the net assets of the corporation being less than zero, or (iii) render the corporation unable to carry on its corporate purposes. Distributions of assets must otherwise be consistent with the organization's corporate purposes, and otherwise be in conformance with the Act.

contrary to the interests of some or all of the creditors. Knowingly acting contrary to the interests of creditors could be deemed to be “willful” behavior eliminating the liability shield for uncompensated officers and directors. (See discussion at subsection (5) below.) Further, insolvency may result in loss of D&O coverage, if the corporation’s D&O policy has an insolvency exclusion or if the corporation is unable to continue to pay the D&O premium.

**(5) Illinois Liability "Shield" for Uncompensated Directors.**

Illinois law provides a “shield” from liability for directors and officers of Illinois not for profit corporations that are exempt from federal income tax under Section 501(c) of the Code (i.e., 501(c)(3), 501(c)(6), etc.) and who served without compensation (other than reimbursement for actual expenses), against being sued for damages resulting from the exercise of judgment or discretion in connection with the officer or director’s duties, unless the act or omission involved willful or wanton conduct. The “willful or wanton” exceptions to the shield law represent fairly high standards of misconduct (involving either an actual or deliberate intent to harm or an utter indifference to or conscious disregard for the safety of others or their property) for directors’ liability.

The Act provides the same liability protection for persons other than officers or directors (such as volunteers) who rendered service to or for an Illinois not for profit, 501(c)(3) corporation without compensation, and for directors of Illinois not for profit corporations that are exempt under Section 501(c) of the Code and organized for any of the following purposes: agricultural; professional, commercial, industrial or trade association; electrification on a cooperative basis; or telephone service on a mutual or cooperative basis, even if such directors received compensation for their board service, as long as such compensation was not in excess of \$25,000 per year.

It should be noted, however, that while the "willful or wanton" provisions reference fairly egregious standards of conduct that may be hard for a plaintiff to ultimately prove, these liability shield provisions still cannot guarantee that no lawsuit will be filed against uncompensated officers or directors. Thus, disgruntled parties may file or threaten suits against directors or officers by characterizing actions taken by such officers or directors, whether in connection with dissolution or otherwise, as being either "willful or wanton."

## **Revoking Voluntary Dissolution**

After Articles of Dissolution have been filed, dissolution may be revoked within 60 days after the date of the filing of such Articles of Dissolution. Such revocation must be done by approval of the directors, provided that the corporation has not yet begun to distribute its assets or commenced a proceeding for court supervision of a winding up process. The directors can make such revocation without the consent or vote of any members entitled to vote on dissolution. To effect the revocation, the corporation must file Articles of Revocation of Dissolution within 60 days after the board’s approval of the revocation. Form Articles of Revocation of Dissolution are available on the Illinois Secretary of State website, at <http://www.cyberdriveillinois.com/> and a current copy of the form is attached at Appendix H.

## **Choosing to Allow Administrative Dissolution in Lieu of Following Voluntary Dissolution Procedures**

Sometimes persons associated with a not for profit corporation that is preparing to cease operations decide to forego filing Articles of Dissolution, preferring to wait until the corporation is administratively dissolved by the Secretary of State for failing to file an annual report. Although this approach appears

easy, it has several disadvantages that should be considered. First, administrative dissolution prevents a corporation from controlling the precise timing of dissolution and business wind-up. Moreover, although the corporation's business can be voluntarily wound up before administrative dissolution, the procedure discussed on pages 11-12 (for identifying the pool of corporation creditors and other claimants and barring claims that are not timely asserted) cannot be used until after the corporation has been administratively dissolved.

Further, waiting for administrative dissolution tends to result in more outstanding "loose ends", due to the failure to timely inform creditors and regulators of a corporation's cessation of operations. From the standpoint of directors and senior officers who might be the target of lawsuits by creditors and other persons with claims against the corporation, voluntary dissolution offers greater certainty and the ability to control the timing of the dissolution effective date. However, in cases in which there are no outstanding debts, claims or other activities, or when directors and/or members are no longer available to approve voluntary dissolution, administrative dissolution does provide a fixed time (generally, not more than 15 -16 months) in which an inactive corporation will be dissolved without the necessity of action by corporate representatives.

## **Dissolution by Judicial Action Initiated by a Member or Director**

One or more individual member(s) with voting rights, or one or more director(s) of a not for profit corporation, may apply for judicial dissolution on the following grounds:

- (1) The directors are deadlocked in the management of the corporation (whether because of even division in the number of directors or because of greater than majority voting requirements in the corporation's articles and bylaws), under circumstances in which the members of the corporation are unable to break the deadlock, and irreparable injury to the corporation is threatened or occurring as a result of such deadlock;
- (2) The directors or others in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;
- (3) The corporate assets are being misapplied or wasted; or
- (4) The corporation is unable to carry out its purposes.

## **Dissolution by Judicial Action Initiated by a Creditor**

A not for profit corporation's creditors may apply to a court to dissolve the corporation on either of the following grounds:

- (1) The creditor's claim has been reduced to a judgment, such judgment has remained unsatisfied, and the corporation is insolvent, or
- (2) The corporation has admitted in writing that the creditor's claim is due and owing, and the corporation is insolvent.

## Judicial Actions in Lieu of Requested Dissolution

A court considering a judicial dissolution petition may choose to delay a decision on dissolution and instead appoint a provisional director or a custodian, and allow such person to act in such capacity for a period of time before the court makes a final determination on the dissolution petition.

(1) **Appointment of Provisional Director.**

A court may appoint a provisional director if it appears that such appointment may allow correction of the issue (such as board deadlock) that is the basis for an involuntary dissolution petition submitted by a complaining director or member. A provisional director may be appointed as an additional board member, if there is no current vacancy on the board. Once appointed, the provisional director has all rights and powers of a duly-elected director. The provisional director is required to report back to the court periodically concerning the status of issues that led to the dissolution petition, and other relevant corporate matters. The provisional director can be removed by the court, and also by vote of the number of members of the corporation sufficient to elect a voting majority of the board (although a court may restrict such member removal power in appropriate circumstances).

(2) **Appointment of Custodian.**

As is the case for provisional directors, a court may appoint a custodian if it appears that such appointment may allow correction of the issue that is the basis for an involuntary dissolution petition submitted by a complaining director or member. Once appointed, the custodian becomes empowered to assume responsibility for management of the corporation, in place of the board of directors and executive staff. The custodian will be entitled to exercise such management powers (directly or through the board or management staff) to the extent necessary so as to manage the corporation's affairs to the general advantage of its creditors and in furtherance of its corporate purposes. The custodian can be removed by the court, or by vote of the number of members sufficient to elect a voting majority of the board (unless the court restricts such member removal power). The custodian must report to the court periodically. If the custodian determines that the corporation cannot survive financially or should be dissolved for other reasons, s/he may so recommend to the court.

(3) **Court Action to Approve Dissolution.**

If the court determines that the appointed provisional director or custodian is unable to remedy the problems that had resulted in the dissolution petition, the court will then grant the dissolution petition, and may appoint a receiver to liquidate the corporation's assets, pay and provide for outstanding debts and liabilities and otherwise "wind up" the corporation. Such winding-up will include providing notice to creditors pursuant to the procedures set forth on page 12. The court will retain jurisdiction over the corporation until the liquidation and winding-up process is complete.

## **REGULATORY FILINGS, NOTICES AND OTHER ACTIONS RELATING TO DISSOLUTION**

### **Tax Filings**

As part of the dissolution and winding-up process, a dissolving corporation should make arrangements to pay any outstanding taxes or related interests or penalties on unpaid taxes, and to file final tax returns (such as federal, state and local income tax returns and state sales tax returns). As noted above, taxes and related amounts cannot be barred or limited by following the procedure of providing notices to creditors. In addition, in some cases, organization directors or officers may be personally liable to the extent they were responsible for certain taxes – such as payroll taxes – that are not paid. As with other creditors, an insolvent corporation may attempt to work out a settlement arrangement with the IRS, the Illinois Department of Revenue and state and local tax regulators, under which the corporation pays a negotiated percentage of the total tax debt.

### **Termination of Regulatory Licenses and Permits**

Before dissolving, the corporation should have staff make a comprehensive list of all licenses and permits held by the organization, including any status with a regulatory authority that requires annual or other periodic reports, filings and/or payments. For instance, the organization may have a charitable trust and/or a charitable solicitation registration with the Illinois Attorney General's officer, a bulk mail permit with the U.S. Post Office, a business license with a city Department of Revenue, a sales-tax exemption permit from the Illinois Department of Revenue, and be a registered employer with the Illinois Department of Employment Security.

Corporation representatives should then review the list and determine which licenses and permits can simply be allowed to "lapse" through non-renewal, and which require notification to the applicable regulatory authority that the corporation has or will dissolve as of a specific date. With respect to annual or other filings, such as the AG990-IL annual report form for organizations registered as charitable trusts with the State Attorney General, the corporation's representatives should make arrangements for any filings due after dissolution to be made, and provide copies of the corporation's Articles of Dissolution or other required information relating to the corporation's dissolution with such filings.

### **Termination of Contracts**

In anticipation of dissolution, the corporation should also review all of its contractual and business relationships, to determine what contracts can and should be terminated, and what suppliers or other service providers should be notified that the corporation is going out of business (such as any banks where the corporation has accounts). Contracts that may need to be terminated may include ones, such as leases, that do not easily permit termination on short notice. In the case of a lease, the corporation's representatives should discuss the corporation's need to terminate the lease and try to work out an acceptable arrangement with the landlord (such as simply walking away, paying a lump-sum termination payment, finding an acceptable sublessee, etc.). With respect to leases and any other contracts that are not easily terminated and involve future commitments to pay money, if the corporation cannot work out acceptable termination arrangements, it will need to treat such other contracting parties as potential creditors or claimants, and include them in the notice to creditors process.

Many service providers may need no formal notice that the corporation is terminating; however, such notice may be appropriate as a courtesy in certain circumstances. Other service providers, such as the U.S. Post Office, who may continue to receive mail, funds or other items relating to the corporation, or who may be providing end-of-the-year or other post-termination statements regarding prior corporation activity (such as banks) should be given forwarding information.

## **Employees**

Dissolution of a not for profit corporation is obviously a stressful event for the corporation's employees. The corporation should evaluate what legal obligations, such as notice requirements under COBRA (if applicable) it has to each employee with respect to employment and benefit terminations.

## **Document Retention**

Finally, a responsible person should take charge of reviewing corporate files and records, and making sure that any records that may need to be referred to in the future (such as in response to a regulatory inquiry) are stored in an accessible location.



## APPENDIX A

### SAMPLE CHART OF ASSETS, DEBTS, AND OBLIGATIONS

The following is a sample only, and should be tailored as appropriate for your organization.

#### ASSETS:

Item	Description	Qty	approx. FMV/item	Total	Collateral	Restrictions	Notes
Laptop	Dell Latitude E6510	2	500	1,000	No	No	
12-passenger van	2006 Ford E350	1	6,900	6,900	Yes	Yes	Funds borrowed to purchase van. Offer van to XYZ Fin. Co. before sale or transfer
scholarship funds	Max Scholarship Fund	1	8,000	8,000	No	Yes	Donor requires funds to be used for scholarship program, see contract for terms

#### LIABILITIES:

Creditor	Description	Debt		Obligation		Written Contract	Personal Guarantee	Notes
		Amount Owed	Due Date	Amount Owed	Due Date			
ABC Realty	Office Lease for 12 Main St.	1,000	4/1/13	12,000	4/1/14	Yes	No	
IRS	payroll taxes	450	4/1/13			No	No	Directors personally liable if not paid
XYZ Finance Company	loan to purchase 12-passenger van	300	4/1/13	10,000	7/1/16	Yes	No	XYZ Fin. Co. is owed either (1) van + 3100 or (2) full balance of note
American Express	company credit card	1,000	4/1/13			Yes	Yes	Fanny Founder is guarantor

## APPENDIX B

### SAMPLE SETTLEMENT AGREEMENT AND RELEASE

*The following is a sample only, and should be tailored as appropriate for your organization.*

#### Settlement Agreement and Release

This settlement agreement between [Creditor Name] (“Company”) and [Name of Not For Profit Corporation] (“Organization”) (collectively, the “Parties”) is a compromise for the complete and final settlement of their claims and causes of action.

Whereas, on or about [date] the parties entered into a [Describe Agreement, e.g., services, consulting, or work for hire] agreement (“Agreement”), a copy of which is attached as Exhibit A,

Whereas, the Company has asserted that Organization is in breach of the Agreement and liable for the outstanding balance of \$ [Amount] as of [Date], and Organization disputes that it is in breach (“Dispute”),

And whereas, the Parties desire to avoid the expense, inconvenience and uncertainty of litigation and to resolve and settle any and all claims between them, known or unknown, arising out of the Dispute.

Now therefore, in consideration of these mutual promises, the Parties agree as follows:

1. To settle the Dispute and without admitting liability, Organization shall pay Company \$[Amount] (Optional: in monthly installments of \$[Amount] due on the first day of each month until paid in full).
2. This settlement agreement shall settle and resolve all claims arising out of the Dispute, including but not limited to, legal expenses, attorneys’ fees and litigation costs. The Parties agree that no further payment is owed by either party.
3. Each party and its predecessors, successors, parents, subsidiaries, affiliates, heirs, assigns, agents and attorneys, release and forever discharge the other party and its predecessors, successors, parents, subsidiaries, affiliates, heirs, assigns, agents and attorneys.
4. The Parties agree that nothing contained in this settlement agreement, and no action taken by either Party with respect to this settlement agreement, shall be construed as an admission of liability.
5. The Parties agree that the terms of this settlement agreement are confidential, and no disclosure of any of its terms can be released except with the prior written consent of both Parties. Confidentiality of the terms in this settlement agreement extends to all persons other than attorneys, accountants, financial advisors, or other professionals who have a legitimate need to know the terms in order to render professional advice or services to the Parties.
6. This settlement agreement constitutes the complete understanding between the Parties. No other promises, representations, or agreements shall be binding unless signed by the Parties, and this settlement agreement cannot be amended or modified except in writing and executed by both Parties.
7. In the event that a court determines that any provision of this settlement agreement is unenforceable, the provision at issue shall be enforced to the maximum extent permitted by law, and all other provisions shall remain in full force and effect.

8. This settlement agreement shall be governed by and construed in accordance with the laws of Illinois without reference to its provisions regarding choice of law.
9. The Parties agree that if this settlement agreement is breached, the breaching Party shall save and hold harmless the non-breaching Party from all claims, costs, and expenses, including but not limited to, reasonable attorneys' fees incurred as a result of the breach.
10. The Parties understand and agree that this settlement agreement may be executed in identical counterparts, and each shall be deemed an original.
11. The Parties warrant that they are authorized to execute this settlement agreement on their own behalf and on behalf of any person or entity for which they have signed.
12. The Parties acknowledge that they have read this Agreement and agree to the terms set forth in it. Further, the Parties acknowledge that they have had an opportunity to consult with legal counsel and any other advisers they wish of their own choice with respect to its contents, and are signing this settlement agreement of their own free will.

The Parties have executed this settlement agreement on the dates set forth below.

[Name of Not For Profit Corporation]\_\_\_\_\_

\_\_\_\_\_ [Creditor Name] \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

Its: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX C

### SAMPLE BOARD RESOLUTION TO DISSOLVE FOR ILLINOIS NOT FOR PROFIT CORPORATIONS WITH NO MEMBERS ENTITLED TO VOTE ON DISSOLUTION

*The following is a sample only, and should be tailored as appropriate for your organization.*

Whereas, the board of directors believe it is in the best interests of the organization to dissolve.

Now, therefore, be it:

Resolved, that the corporation be dissolved and the attached plan of distribution is adopted,

and further resolved, that the [President or Vice President] shall file Articles of Dissolution with the Illinois Secretary of State, and the organization shall cease operations except for actions to wind up the corporation in accordance with the articles and bylaws of the organization, and the Illinois General Not For Profit Act.

## APPENDIX D

### SAMPLE BOARD AND MEMBER RESOLUTION TO DISSOLVE FOR ILLINOIS NOT FOR PROFIT CORPORATIONS WITH MEMBERS ENTITLED TO VOTE ON DISSOLUTION

*The following are samples only, and should be tailored as appropriate for your organization.*

#### **Sample Board Resolution:**

Whereas, the board of directors believe it is in the best interests of the organization to dissolve,

and whereas, the question of dissolution must be submitted to the members according to [the organization's articles of incorporation and/or bylaws].

Now, therefore, be it:

Resolved, that the board of directors recommends that the corporation be dissolved, and that this decision be submitted to the members for a vote,

and further resolved, that the attached plan of distribution is adopted, and it is recommended that the plan be submitted to the members for a vote,

and further resolved, that a meeting of the members will be held on [insert date and time] at [location] to vote on whether the corporation be dissolved, and notice of the meeting will be sent [insert method of notice according to the bylaws] on [date],

and further resolved that upon the members' adoption of the board's resolution to dissolve and the plan of distribution, the [President or Vice President] shall file Articles of Dissolution with the Illinois Secretary of State, and the organization shall cease operations except for actions to wind up the corporation in accordance with the articles and bylaws of the organization, and the Illinois General Not For Profit Act.

#### **Sample Member Resolution:**

Whereas, the board of directors adopted a resolution recommending that the corporation be dissolved,

and whereas, the members believe it is in the best interests of the organization to dissolve,

Now, therefore, be it:

Resolved, that the resolution adopted by the board of directors recommending that this organization be dissolved is adopted and approved,

and further resolved that the plan of distribution adopted by the board is also adopted and approved.

## APPENDIX E

### SAMPLE PLAN OF DISTRIBUTION FOR ILLINOIS NOT FOR PROFIT CORPORATIONS

*The following is a sample only, and should be tailored as appropriate for your organization.*

Pursuant to the resolution adopted by the board of directors on [date], all assets of the Corporation shall be distributed as follows:

1. All debts and obligations shall be paid, discharged or adequate provision shall be made for them.
2. The following assets are held on condition requiring return or transfer upon dissolution of the corporation:

[List assets and the names of the organizations entitled to them]

The board shall transfer these assets to the applicable organizations entitled to them.

3. The following assets held for [charitable , educational, etc.] purposes, but that do not require return or transfer upon dissolution of the corporation, shall be conveyed to the following organizations, which are engaged in substantially similar activities of this corporation:

[List assets and the names of the organizations to receive them]

The board shall transfer these assets to the organizations as listed.

4. [*If applicable:* All remaining assets of the corporation shall be distributed to the following Illinois not-for-profit corporations:]

[List assets and the names of the organizations to receive them]

[The board shall transfer these assets to the organizations as listed.]

# APPENDIX F

## ARTICLES OF DISSOLUTION FORM NFP 112.20

For a fillable form, please see the Illinois Secretary of State website at [http://www.cyberdriveillinois.com/publications/business\\_services/nfp.html](http://www.cyberdriveillinois.com/publications/business_services/nfp.html).

**Print** **Reset**

**FORM NFP 112.20** (rev. Dec. 2003)  
**ARTICLES OF DISSOLUTION**  
General Not For Profit Corporation Act

Jesse White, Secretary of State  
Department of Business Services  
501 S. Second St., Rm. 350  
Springfield, IL 62756  
217-782-6961  
[www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)

Remit payment in the form of a check or money order payable to Secretary of State.

\_\_\_\_\_ File # \_\_\_\_\_ Filing Fee: \$5 Approved: \_\_\_\_\_

\_\_\_\_\_ Submit in duplicate \_\_\_\_\_ Type or Print clearly in black ink \_\_\_\_\_ Do not write above this line \_\_\_\_\_

1. Corporate Name: \_\_\_\_\_

2. Post Office Address to which a copy of any process against the corporation that may be served on the Secretary of State may be mailed: \_\_\_\_\_

3. The Dissolution of the Corporation was duly authorized on: \_\_\_\_\_  
Month, Day & Year

By a majority of the board of the directors, in accordance with Section 112.05.

By written consent, signed by all directors entitled to vote on dissolution, in accordance with Section 108.45 of this Act.

By written consent, signed by all members entitled to vote on dissolution, in accordance with Section 112.10, board of director action not being required. (See Note 1 on back.)

By the members in accordance with Section 112.15, resolution having been duly adopted and submitted to the members. At a meeting of members, not less than the minimum number of votes required by statute and by the Articles of Incorporation were voted in favor of the dissolution. (See Notes 2 and 3 on back.)

By the members, in accordance with Sections 112.10 and 107.10, a resolution having been duly adopted and submitted to the members. A consent in writing has been signed by members having not less than the minimum number of votes required by statute and by the Articles of Incorporation. Members who have not consented in writing have been given notice in accordance with Section 107.10. (See Notes 3 and 4 on back.)

4. a) The undersigned corporation has caused these Articles to be signed by a duly authorized officer\* (see next page) who affirms, under penalties of perjury, that the facts stated herein are true and correct.

**All signatures must be in BLACK INK.**

Dated \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Month & Day Year Exact Name of Corporation

\_\_\_\_\_  
Any Authorized Officer's Signature

\_\_\_\_\_  
Name and Title (type or print)

(continued on back)

\*If there are no officers and the dissolution is authorized by the board of directors, a majority of the directors must SIGN BELOW and type or print their names.

b) The undersigned affirms, under penalties of perjury, that the facts stated herein are true.

Dated \_\_\_\_\_, \_\_\_\_\_  
Month & Day Year

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (type or print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (type or print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (type or print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (type or print)

**NOTES**

1. Members may authorize dissolution by their unanimous written consent. This does not require any action of the board of directors and does not require a membership meeting.
2. To be effective, the dissolution must receive the affirmative vote or consent of at least two-thirds of the members entitled to vote on dissolution, and, if class voting applies, then also at least two-thirds of the votes within each class.
3. If the Articles of Incorporation so provide, the two-thirds vote requirement may be superseded by any smaller or larger vote requirement, not less than a majority of the members entitled to vote and not less than a majority within each class when class voting applies.
4. When member authorization is by less than unanimous written consent, all members must be given notice of the proposed dissolution actions at least five days before the consent is signed. Members who have not signed the consent must be given prompt notice that dissolution was duly authorized.



## APPENDIX G

### SAMPLE NOTICE TO CREDITORS FOR DISSOLVED ILLINOIS NOT FOR PROFIT CORPORATIONS

*This is a sample form only, and should be tailored as appropriate for your organization. For example, the Act only states that creditors should be told where to send their “claim and essential information regarding the claim.” Items numbered 1-4 in the sample below represent one approach to determining what information is “essential” to permit appropriate verification of the claim. However, a not for profit organization should not exclude a claim if all requested information is not provided, if the organization is otherwise able to verify the fact and amount of the claim.*

[Date]<sup>17</sup>

**Via Certified Mail, Return Receipt Requested<sup>18</sup>**

[Creditor Name]

[Creditor Address]

RE: Notice of Dissolution of [Name of Not For Profit Corporation] and Instructions for Submitting Notice of Claim

You are hereby notified that [Name of Not For Profit Corporation] has been dissolved, effective [date]. To file notice of a claim against [Name of Not For Profit Corporation], you must send the following information to the address below, no later than [Date]<sup>19</sup>.

1. A statement of the amount of your claim;
2. The legal name of the entity asserting the claim;
3. Identification or brief description of the agreement or other circumstances under which the claim arose; and
4. Any other information you believe may be useful to verify the nature and amount of the claim, including copies of any relevant documents.

Please send all of the above information to:

[Name and address of organization’s representative in charge of winding-up process]

PLEASE NOTE: Failure to file notice of your claim by [Date]<sup>20</sup> will result in your claim being legally barred. If your claim is so barred, you will have no further rights to assert or otherwise take action with respect to your claim, against [Name of Not For Profit Corporation] or any of its officers, directors, members, agents or employees.

If you have any questions, please contact [Name of organization’s representative in charge of winding-up process].

Sincerely,

[Name of Not For Profit Corporation]

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<sup>17</sup> Notice must be given within 60 days after the effective date of dissolution (i.e., the date the Articles of Dissolution were filed with the Illinois Secretary of State).

<sup>18</sup> It is recommended that notices be sent by certified mail or other traceable delivery method, and/or to prepare a separate notice for each creditor or potential claimant. These procedures will result in proof that a notice was sent, in the event any creditor later asserts that it did not receive a notice.

<sup>19</sup> This date must be at least 120 days after the effective date of the corporation’s dissolution.

<sup>20</sup> Insert same date as stated in second paragraph of notice.



