



GUIDE FOR THE DISSOLUTION OF CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATIONS

Dissolution is a legal process that results in the termination of the legal existence of a nonprofit corporation. In considering dissolution, the corporation's board of directors should remain aware that regulatory authorities supervising the dissolution of a nonprofit public benefit corporation will primarily be focused on ensuring that the corporation's assets remaining after settling all of its liabilities go to another public benefit organization whose purpose is consistent with the corporation's stated purpose as described in the corporation's articles of incorporation and bylaws.

Public Counsel's Community Development Project has designed this guide to assist directors and executive management staff of California nonprofit public benefit corporations, as well as attorneys who are assisting such corporations on a *pro bono* basis, in understanding the process of dissolution. The Guide focuses on the procedures and requirements specified in the California Nonprofit Corporation and Revenue and Taxation Laws. It does not cover other actions that may be necessary when dissolving a corporation (e.g., terminating employees and contracts, filing required notices, etc.).



This publication should not be construed as legal advice. It is very important for any nonprofit public benefit corporation considering dissolution to consult with an attorney to ensure that the general rules described in this Guide are appropriately applied to its specific circumstances. **As discussed in the guide, directors and recipients of charitable assets may be exposed to personal liability as a result of an improperly executed dissolution.**

Public Counsel's **Community Development Project** builds strong foundations for healthy, vibrant and economically stable communities through its comprehensive legal and capacity building services for nonprofits that assist low income neighborhoods in Los Angeles County. If your organization needs legal assistance, or to access the latest version of this document, call (213) 385-2977, extension 200 or visit www.publiccounsel.org/practice_areas/community_development.

Table of Contents

I. WHAT IS DISSOLUTION? 1

 A. Definitions and Reasons for Dissolution 1

 B. Contrasting Dissolution, Liquidation, and Bankruptcy 1

 C. Dissolution Processes Available 2

II. STEPS TO BEGIN STANDARD DISSOLUTION PROCESS 3

 A. Prerequisites for Standard Dissolution: Good Standing and Tax Exemption Required 3

 B. Who Must Approve Standard Dissolution 3

 C. Certificate of Election to Wind Up and Dissolve 4

 D. Revocation of Election to Dissolve 5

III. CORPORATE ACTIVITIES DURING DISSOLUTION 5

IV. COMPLETING THE DISSOLUTION PROCESS 6

 A. Notice to Members, Creditors, and Claimants 6

 B. Settling Corporation’s Debts and Liabilities; Director Liability for Improper Distributions 6

 C. Distribution of Assets; Attorney General’s Written Waiver of Objections to Disposition or
 Written Confirmation That the Corporation Has No Assets 7

 D. Filing Certificate of Dissolution 8

 E. Final Notice of Submission to Attorney General 9

 F. IRS and Franchise Tax Board Filings 9

V. VOLUNTARY DISSOLUTION AND PRE-DISSOLUTION TAX ABATEMENT 10

VI. SHORT FORM DISSOLUTION 12

VII. COURT INTERVENTIONS 13

 A. Court Supervision of Dissolution 13

 B. Petition for Court Order to Dissolve Corporation 13

VIII. ADMINISTRATIVE DISSOLUTION 14

IX. RESOURCES 14

APPENDIX A (Sample Resolution to Dissolve) 15

APPENDIX B (Sample Notice to Creditors) 16

APPENDIX C (Sample Request to Attorney General for Waiver of Objections) 17

APPENDIX D (Summary of Dissolution Processes Available) 19

I. WHAT IS DISSOLUTION?

A. Definitions and Reasons for Dissolution

A nonprofit public benefit corporation's¹ existence as a corporate legal entity can be ended upon the completion of the dissolution procedures specified in the California Nonprofit Corporation Law (California Corporations Code sections §§ 5000 *et seq*). There are many reasons why a nonprofit might consider dissolution: an inability to attract or maintain funding, an assessment that the nonprofit no longer serves its stated mission or constituency or that its mission or constituency is more than adequately served by other organizations. In considering dissolution, the corporation's board of directors should remain aware that the foremost consideration for regulatory authorities in supervising the dissolution of a nonprofit public benefit corporation is to ensure that the corporation's assets remaining after settling all of its liabilities go to another public benefit organization in keeping with the corporation's stated purpose as described in the corporation's articles of incorporation and bylaws.

B. Contrasting Dissolution, Liquidation, and Bankruptcy

Most types of dissolution under California law² involve a legal process through which a nonprofit corporation can wind up its charitable activities, quantify its assets and liabilities, pay off its debts, distribute any remaining property to another tax exempt entity, and ultimately "dissolve" its corporate legal existence. *Bankruptcy* is a more formal, federal bankruptcy court supervised process through which a financially-distressed nonprofit can either be reorganized under a plan or liquidated, and by which its outstanding debts are paid (in whole or in part) in accordance with the priorities provided in the United States Bankruptcy Code. Bankruptcy does not in and of itself result in the dissolution of a corporation. *Liquidation* is the process under either dissolution or bankruptcy or otherwise by which the nonprofit corporation's assets are reduced to a form in which they can be distributed to its creditors or other parties.

Nonprofit public benefit corporations cannot be forced into bankruptcy by creditors, although a substantial creditor may pressure a nonprofit to do so. An insolvent nonprofit public benefit corporation may choose to file for bankruptcy to avail itself of procedures that permit the efficient handling of claims, or that allow it to reorganize and discharge debt fairly among a large number of creditors, especially if the nonprofit believes that it can continue to operate if granted relief from unusual debt or one-time events.³

However, a small nonprofit public benefit corporation facing a sudden loss of funding and threatening phone calls from creditors most likely will not have the financial resources to avail itself of

¹ The term "nonprofit public benefit corporation" is a specific corporate classification as defined under California nonprofit corporation law in section 5111 of the California Corporations Code. The term "tax exempt" refers to an organization's income tax status under federal and state tax codes. Although not all nonprofit corporations are tax exempt, this guide is written for nonprofit corporations operating in California that have obtained tax-exempt status under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Tax Code. This guide will refer to such corporations as "nonprofits," "nonprofit organizations," or "nonprofit corporations."

² See [Section I.C](#), below, for a description of available dissolution procedures in California.

³ Please refer to Public Counsel's publication on nonprofit bankruptcy for further information (www.publiccounsel.org/tools/publications/files/bankruptcyNP.pdf).

federal bankruptcy proceedings, which can cost many thousands of dollars. Dissolution allows a nonprofit corporation to avoid the high cost of bankruptcy, pay creditors, and distribute the remaining corporate assets to other nonprofit organizations. As long as the winding up process is carried out with the requisite exercise of fiduciary duty by the board of directors and in accordance with the law, the individual directors will be afforded protection from personal liability in carrying out the dissolution.

C. Dissolution Processes Available⁴

The California Corporations and Revenue and Taxation Codes provide for a variety of different dissolution processes for nonprofit corporations:

- 1) Standard Dissolution: The most common dissolution process for ending corporate existence initiated by nonprofits. Unless a nonprofit qualifies for *voluntary dissolution and pre-dissolution tax abatement* or *short form dissolution*, it should follow the standard dissolution process, which is described in [Sections II through IV](#).
- 2) Voluntary Dissolution with Pre-Dissolution Tax Abatement: This is a simplified version of Standard Dissolution available only to an inactive nonprofit corporation that either has obtained and lost IRS and/or Franchise Tax Board (FTB) tax-exempt status, or never did any business after incorporation in California. Through this procedure, a qualifying corporation can bypass the dissolution prerequisites of good standing and tax exemption required by Standard Dissolution. See Section II.A. Voluntary Dissolution with Pre-Dissolution Tax Abatement is discussed in [Section V](#).
- 3) Short Form Dissolution: Short form dissolution is another more simplified procedure available to non-membership nonprofits which were created in error and are less than two years old. Short form dissolution is discussed in [Section VI](#).
- 4) Court Supervised Dissolution: A nonprofit with debts that exceed the value of its assets may wish to consider a court supervised to avoid an improper distribution of assets and possible director or officer liability. Court supervised dissolution is discussed in [Section VII](#).
- 5) Administrative Dissolution. Administrative dissolution is an involuntary process under which the Secretary of State and FTB dissolve a nonprofit if its corporate powers have been suspended by the FTB for at least four years. Administrative dissolution is discussed in [Section VIII](#).

⁴ For a summary of dissolution processes, see [Appendix D](#). This guide only discusses voluntary dissolution and administrative dissolution of nonprofits which have been suspended for four or more years. California law also allows for *involuntary dissolution*, a process initiated by a lawsuit. Involuntary dissolution, which may be initiated by a group of directors or members or the Attorney General, may be initiated under a variety of circumstances, including when the directors or members are deadlocked regarding the management and activities of the nonprofit or when the directors and officers have engaged in fraud, mismanagement, or abuse of authority. See Cal. Corp. Code §§ 6510 *et seq.*

II. STEPS TO BEGIN STANDARD DISSOLUTION PROCESS

A. Prerequisites for Standard Dissolution: Good Standing and Tax Exemption Required

Before launching the standard dissolution process, a nonprofit corporation should verify that it is in active status (good standing) with the Secretary of State. The corporation can check its corporate compliance status with the Secretary of State online – the status should be listed as “Active” (<http://kepler.sos.ca.gov>). If its status is listed as “Suspended,” the Secretary’s office *will not file the dissolution documents of that corporation*. See Cal. Rev. & Tax. Code §§ 23301 and 23775. A nonprofit corporation may be suspended by (i) the Secretary of State for failure to file the required Statement of Information and/or (ii) the Franchise Tax Board (FTB) for failure to file a return and/or failure to pay taxes, penalties or interest. Cal. Corp. Code §§ 5008.6; 6810; Cal Rev. & Tax. Code § 23775. The corporation should contact the Secretary of State at (916) 657-5448 to determine the cause for suspension and the reinstatement procedures that must be followed.

In addition, if a nonprofit corporation has lost or never applied for federal and/or state tax exemption, and also does not qualify for simplified voluntary or short form dissolution as described in [Sections V](#) and [VI](#) below⁵, then it may also have to apply for reinstatement of tax-exempt status with the FTB and/or IRS before it can dissolve.⁶ The corporation should contact FTB Exempt Organization Unit at (916) 845-4171 to determine how to reinstate tax-exempt status so that dissolution can be processed.⁷

B. Who Must Approve Standard Dissolution⁸

Standard dissolution is managed by the board of directors and statutory members (if any) of the corporation. If a nonprofit does not have statutory members⁹, dissolution must be approved by the board

⁵ For example, if a nonprofit has recently conducted activities or never obtained federal and state tax exemption to begin with, it is unable to use the voluntary dissolution procedures and will need its tax exemption reinstated prior to dissolving.

⁶ Failure to file a state tax return for three years in a row can result in a revocation of state tax-exempt status by the FTB. Cal. Rev. & Tax Code § 23772((b)(14). The FTB may also automatically revoke the tax exemption of a nonprofit that has been suspended by the FTB or Secretary of State. 18 Cal. Code Reg. § 23775(c).

⁷ For a full discussion of how to reinstate corporate and tax-exempt status, consult Public Counsel, *Guide for Reinstatement of Good Standing with Corporate and Tax Regulatory Agencies for California Nonprofit Public Benefit Corporations* (January 2017), at <http://www.publiccounsel.org/publications?id=0240>.

⁸ This section does not apply to short form or voluntary dissolution, which do not require a dissolution resolution. The requirements for voluntary and short form dissolution are discussed in [Sections V](#) and [VI](#).

⁹ The term “statutory members” refers to members of the corporation that are provided for in the articles of incorporation and bylaws. A statutory member of the corporation is any person or corporation with governance rights, including the right to vote on (i) the election of directors, (ii) dissolution, (iii) merger, and (iv) the disposition of all or substantially all the corporate assets. California nonprofit corporations are not required by law to have statutory members. If the articles and bylaws do not make specific provision for members, the corporation is presumed to have no members. A nonprofit corporation may refer to donors or other supporters as “members,” but these informal members do not have voting rights and do not have to approve the dissolution of the

of directors. Cal. Corp. Code § 6610(b)(3). (See [Appendix A](#) for a sample board resolution to dissolve the corporation in the form of a unanimous written consent. The same resolution could also be passed at a meeting of the board held with proper notice.). If a nonprofit corporation has statutory members, the resolution to dissolve may be approved by either a majority of all members, or by approval of the board of directors along with approval of the members.¹⁰ Cal. Corp. Code § 6610(a). Even if the corporation has statutory members, the board alone may elect to wind up the corporation under any of the following circumstances:

- A court determines that the corporation is bankrupt;
- All corporate assets have been disposed of and the corporation has not conducted any business in the five years preceding the resolution; or
- The corporation’s articles of incorporation require dissolution. Cal. Corp. Code § 6610(b).

In cases where approval by the members is not required and the number of directors in office is less than a quorum, the board resolution to dissolve can be approved by unanimous written consent of the directors then in office or by the affirmative vote of a majority of directors then in office at a meeting held with proper notice. If there is only a single director, the sole director can vote to dissolve the corporation. See Cal. Corp. Code § 6610(c).

If a director’s identity or authority to be a director is in doubt, or if directors are missing, or fail or refuse to act, the Attorney General or any interested person can petition the superior court to determine the identity of the directors, or, if there are no directors, to appoint directors to wind up the affairs of the corporation. See § 6712.

C. Certificate of Election to Wind Up and Dissolve

If the resolution to dissolve under the standard dissolution procedure is approved *by less than 100 percent* of the members, or if the nonprofit corporation has no members, *by less than 100 percent* of the directors, then the corporation must file a Certificate of Election to Wind Up and Dissolve with the Secretary of State, and send a copy to the Attorney General. An electronically fillable certificate form and filing instructions can be found at http://bpd.cdn.sos.ca.gov/corp/pdf/dissolutions/corp_npdiss.pdf.

The Certificate of Election to Wind Up and Dissolve is *not* required when the resolution to dissolve is (i) approved by 100 percent of the members, or if the corporation has no members, by 100 percent of the directors, and (ii) if a statement to that effect is included in the Certificate of Dissolution (discussed below in [Section IV.D](#)). See Cal. Corp. Code § 6611(c).

corporation. Of course, it is important for the board of a nonprofit corporation to maintain good communication with all stakeholders during dissolution.

¹⁰ “Majority of all members,” which is required when the board does not vote on dissolution, means approval by an affirmative vote of a majority of the votes *entitled to be cast*. Cal. Corp. Code § 5033. In contrast, “approval of the members” means approved or ratified by a majority of the votes represented and voting on the issue, so long as a quorum is present. Cal. Corp. Code § 5034.

In addition, the Certificate of Election to Wind Up and Dissolved is *not* required if the corporation meets the qualifications for short form dissolution (discussed below in Section [VI](#)).

The Certificate of Election to Wind up and Dissolve may be either in the form of: a) an officer's certificate signed by the chair of the board, the president or any vice president and verified by the secretary, the chief financial officer, the treasurer or any assistant secretary or assistant treasurer, b) a certificate signed and verified by the sole director or the majority of the directors in office, or c) a certificate signed and verified by members authorized to do so by approval of a majority of members. If the board consists of a sole director in office, a signed and verified certificate by that director will be sufficient. The certificate must state that the nonprofit corporation has elected to wind up and dissolve, and identify the authorizing body that passed the resolution to dissolve, e.g., members only, board and members, or board alone.

D. Revocation of Election to Dissolve

A nonprofit corporation may revoke its resolution to dissolve as long as it does so before distributing any assets or filing a Certificate of Dissolution. Cal. Corp. Code § 6612. Revocation of a resolution to dissolve must be approved by the same parties who approved the dissolution resolution. For example, if the members alone acted to dissolve the corporation, the members must approve the revocation. The corporation must prepare a certificate evidencing the revocation. The certificate must state that the election has been revoked and that no assets have been distributed. If the revocation was made by the board alone or by members and the board, the certificate must state so. If the revocation was made by the vote of the members alone, the certificate must state the number of member votes for the revocation and that the revocation was made by a majority of all members. Finally, the certificate must be signed, verified, and filed with Secretary of State, with a copy to the Attorney General, in the same manner as a Certificate of Election to Wind Up and Dissolve a Corporation. See Cal. Corp. Code § 6611 and [Section II.C](#) above.

III. CORPORATE ACTIVITIES DURING DISSOLUTION

While the resolution to dissolve does not affect the power or authority of the board of directors, the corporation must cease all activities other than those activities to wind up and dissolve the corporation once the resolution has been approved. For example, it may suspend programs and services or cease to make grant applications. However, the law does give the board latitude relative to maintaining day-to-day operations with a view to preserving "the corporation's good will or going-concern value pending a sale or other disposition of its assets, or both, in whole or in part." See Cal. Corp. Code § 6613(c).

In the course of winding up the nonprofit, the board can elect officers and board members, hire agents and attorneys, carry out the corporation's outstanding contracts, collect revenue and settle debts, defend suits and claims for or against the corporation, sue to recover amounts owed to the corporation, collect amounts remaining unpaid on memberships, and recover unlawful distributions. The board may also sell the assets of the corporation for an amount deemed reasonable by the board and execute bills of sale and deeds of conveyance in the name of the corporation. See Cal. Corp. Code §§ 6710, 6711.

IV. COMPLETING THE DISSOLUTION PROCESS

A. Notice to Members, Creditors, and Claimants

If the nonprofit corporation has members, the board must provide written notice to all members (other than those members who voted for the dissolution) disclosing that the dissolution has begun. See Cal. Corp. Code § 6613(c). This notice also must be given by mail to (i) the Attorney General; and (ii) all known creditors and claimants (even if there are no members).

In order for the corporation to dispose of known claims through the dissolution process, its notice to creditors and claimants must disclose (i) any information that must be included in a claim, (ii) the mailing address where a claim may be sent, and (iii) importantly, the deadline for submission of claims along with a statement that claims submitted after the deadline will be barred. This deadline must be at least 120 days from the effective date of the written notice. (See [Appendix B](#) for a sample notice to creditors). Cal. Corp. Code § 6618(b).

A claim that is timely received but rejected by the corporation will be barred if the claimant does not begin an enforcement action within ninety days from the effective date of the rejection notice. See § 6618(c).

B. Settling Corporation's Debts and Liabilities; Director Liability for Improper Distributions

After the nonprofit identifies creditors and evaluates the claims received pursuant to its written notice to creditors as explained in [Section IV.A](#), it must then pay its debts and liabilities. If a claimant cannot be located, a creditor refuses to accept the payment offered, or the amount of the debt is subject to dispute or a contingency, the nonprofit must “adequately provide for” these liabilities. The law sets forth two non-exclusive methods for making adequate provision of a debt or liability. Under the first method, the corporation may “adequately provide for” a liability by arranging for a federal agency or other financially responsible person to assume payment for or guarantee the liability, provided that the board determines in good faith and reasonable care, including an analysis of the financial capacity of the agency or person, that such arrangement is adequate. The alternative is for the board to deposit cash, stock, or property in an amount that the board in good faith at the time of the transfer believes to be adequate with the State Controller, a bank, or a trust company from which the claimant can later submit a claim. See Cal. Corp. Code §§ 6714, 6718.

Directors risk personal liability for an improper distribution of assets – that is, a distribution that was made without court supervision before all of the corporation's debts and liabilities had been satisfied or adequately provided for.¹¹ The Attorney General or any creditor may file suit in the name of the corporation to recover any asset which has been improperly distributed.¹² See Cal Corp. Code § 6719. Directors who approve an improper distribution are themselves jointly and severally liable to the

¹¹ While ordinarily nonprofit directors do not face personal liability for the acts of the nonprofit, the California Labor Code imposes liability on directors and officers who, while acting on behalf of the nonprofit, violate or cause to be violated one of any number of wage and hour laws. Cal. Labor Code § 558.1. A nonprofit considering dissolution which is unable to pay its employees should consult an employment lawyer.

¹² A creditor can file this action even though the improper distribution did not reduce its claim or judgment against the corporation. Cal. Corp. Code § 6719(b).

corporation to the extent of the fair market value of the assets improperly transferred plus interest and certain valuation fees. See Cal. Corp. Code § 5237. In order to protect directors from liability, a court supervised dissolution (discussed below in [Section VII](#)) may be advisable if the corporation's debts and liabilities exceed the value of its assets and if the corporation is unable to reach a settlement with all outstanding creditors.

C. Distribution of Assets; Attorney General's Written Waiver of Objections to Disposition or Written Confirmation That the Corporation Has No Assets

After paying or adequately providing for claims, the corporation must dispose of any remaining assets. Under California Law, a nonprofit corporation holds charitable assets in trust for the specific purposes and activities stated in its articles of incorporation and bylaws – its distribution of such assets must therefore be in conformity with its articles and bylaws. A nonprofit corporation's liquidating distribution (the final distribution of assets after claims are paid or adequately provided for) must be carried out either under the Attorney General's oversight and issuance of a *written waiver of objections to dispositions*, or with a superior court's supervision. Cal. Corp. Code § 6716. See [Section VII.A](#) for more information on court-supervised winding down and dissolution.

To obtain a written waiver of objections and permit a liquidating distribution absent court supervision, a director of the corporation, or its attorney, must submit a letter to the Attorney General listing all intended recipients of the corporation's remaining assets (see [Appendix C](#) for a sample letter).¹³ Intended recipients must (i) have the same IRS exemption (e.g., charitable, educational, etc.) as stated in the dissolution clause of the dissolving corporation's articles of incorporation and (ii) be current in reporting obligations to the Attorney General's Registry of Charitable Trusts.¹⁴ To check compliance with Attorney General reporting obligations, visit <http://rct.doj.ca.gov/MyLicenseVerification/Search.aspx?facility=Y>. The letter must include:

- Recipient's full legal name, address, telephone number, corporate number, and EIN number, if any.
- Itemized listing of assets to be distributed, by type and value.
- Proposed date of distribution.
- Any restrictions on the use of the assets to be distributed.
- Recipient's articles of incorporation.
- A signed copy of the Certificate of Election to wind up and dissolve and/or signed Certificate of Dissolution prepared for filing with the Secretary of State (See [Section IV.D](#) below for discussion of Certificate of Dissolution).

¹³ A written request for the required letter can be mailed to the Registrar of Charitable Trusts, Office of the Attorney General, P.O. Box 903447, Sacramento, California 94203-4470.

¹⁴ Any transfer of remaining assets that is inconsistent with the dissolving organization's stated purposes may be subject to objection by the Attorney General.

- Copy of the dissolving corporation's Form 990, Form 990-EZ, or Form 990-PF for the last three accounting periods – evidence of filing Form 990-N will not be adequate. If one of these informational returns was not filed, the letter instead must include a copy of the financial statements showing receipts and disbursements, and a balance sheet, for the three most current accounting periods, as well as financial statements for an incomplete accounting period.
- Copy of the dissolving corporation's articles of incorporation, including all amendments.

In addition to these documents, it is often helpful to include a balance sheet showing the current assets of the dissolving corporation, as well as the federal and state exemption letters of the recipient organizations.¹⁵

If the dissolving nonprofit corporation has no assets left to distribute, it must obtain from the Attorney General a written confirmation that the corporation has no assets. See Cal. Corp. Code § 6615(b)(2). To request this confirmation, a director of the corporation, or its attorney, must submit a letter to the Attorney General with the following information:

- A signed Certificate of Dissolution prepared for filing with the Secretary of State.
- A copy of the corporation's Form 990, Form 990-EZ, or Form 990-PF for the last three accounting periods. If the nonprofit filed a Form 990-N, it should submit financial statements instead. The letter should also include financial statements for the incomplete accounting period, showing an equal amount of receipts and disbursements, and a zero balance sheet.
- A copy of the corporation's articles of incorporation.¹⁶

D. Filing Certificate of Dissolution

Once the corporation's debts and obligations have been settled or otherwise provided for and its remaining assets distributed and the waiver or confirmation has been received from the Attorney General, a majority of the directors then in office must sign, verify, and file a Certificate of Dissolution (http://bpd.cdn.sos.ca.gov/corp/pdf/dissolutions/corp_npdis.pdf) with the Secretary of State.¹⁷ See Cal. Corp. Code § 6615(a). The certificate must state that the corporation has been completely wound up and that a final California franchise tax return has or will be filed. With regard to its debts and liabilities, the certificate must include one of the following statements:

¹⁵ For more information on the letter requesting a written waiver of objections from the Attorney General, consult the Attorney General's General Guide for Dissolving a Nonprofit Corporation (<http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/dissolving.pdf?>).

¹⁶ A written request for the required letter can be mailed to the Registrar of Charitable Trusts, Office of the Attorney General, P.O. Box 903447, Sacramento, California 94203-4470.

¹⁷ The corporation may choose to file its final tax return with the Franchise Tax Board before filing the certificate (see [Section IV.F](#)). If so, the certificate should be filed within twelve months of the date of the filing of the final tax return.

- 1) The known debts and liabilities have been actually paid;
- 2) The known debts and liabilities have been paid as far as the corporation's assets permit;
- 3) The known debts and liabilities have been adequately provided for by their assumption. If this is the case, the certificate must include the name and address of the assumer;
- 4) The known debts and liabilities have been adequately provided for as far as its assets permitted. If this is the case, the certificate must include an attachment detailing the provision made and the address of the corporation, person, or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or other information necessary to enable creditors to appear and claim payment; or
- 5) No known debts or liabilities have been incurred.

The corporation must include the Attorney General's written confirmation that the corporation has no assets or the written waiver of objections to distribution of the corporation's assets. The certificate must be dated, signed, and verified under penalty of perjury by a majority of the directors in office or by the sole director, if there is only one. See Instructions for Completing the Certificate of Dissolution. Once the Secretary of State has accepted the certificate, the corporate existence ends and the Secretary of State will notify the Franchise Tax Board of the dissolution. See Cal Corp. Code § 6615(c). However, even after filing the Certificate of Dissolution, corporate existence continues for certain limited purposes related to winding up its affairs, including disposing of and conveying property. See Cal. Corp. Code § 6720.

E. Final Notice of Submission to Attorney General

The final step in completing the dissolution process is the mailing of a final dissolution packet to the Attorney General. The packet must include:

- A copy of the Certificate of Dissolution endorsed (stamped) by the Secretary of State.
- The final financial report for the corporation showing that all assets were distributed properly, resulting in a zero balance.

F. IRS and Franchise Tax Board Filings

As part of the dissolution and winding up process, the dissolving corporation should make arrangements to pay any outstanding taxes or related interests or penalties on unpaid taxes, and to file final tax returns. If the corporation has been suspended for failure to file a return or pay taxes, it will not be allowed to file dissolution documents with the Secretary of State until the suspension is lifted (see [Section II.A](#)). In some cases directors or officers may be personally liable to the extent they were responsible for certain taxes (e.g., payroll taxes) that are not paid.

The corporation may file the Form 199 or 199N with the Franchise Tax Board before or after filing the Certificate of Dissolution. Form 199 filers should write "Final" at the top of the first page and check the box labeled "Dissolved." The corporation must not conduct business in California after the end of the taxable year for which the final tax return was filed.

Similarly, a final Form 990, 990-EZ, 990-N, or 990-PF (and any applicable schedules and/or attachments) must be filed with the IRS by the fifteenth day of the fifth month after liquidation, dissolution, or termination. Form 990 filers should check the box labeled “Final return/terminated” in Section B of the header area on the first page of the return and answer “Yes” to the question whether the corporation liquidated, terminated, or dissolved (line 31 of Part IV) and, if applicable, to the question whether the corporation engaged in a significant disposition of net assets (line 32 of Part IV). Form 990-EZ filers should check the box labeled “Final return/terminated” in Section B of the header area on the first page of the return and answer “Yes” to the question whether the organization liquidated, terminated, dissolved or substantially contracted (line 36 of Part V). Both Form 990 and 990-EZ filers will be required to file a Schedule N: Liquidation, Termination, Dissolution, or Significant Disposition of Assets. The information required on Schedule N includes a description of the assets and any transaction fees, the date of distribution, the fair market value of the assets and information about the recipients of the assets. Form 990 and 990-EZ filers should also include a copy of the Certificate of Dissolution along with the annual return. Form 990-N filers should answer “Yes” to the question “Has your organization terminated or gone out of business?”

Please refer to the IRS publication “Life Cycle of a Private Foundation,” available at <https://www.irs.gov/charities-non-profits/charitable-organizations/life-cycle-of-a-public-charity-private-foundation> for a discussion of the specific rules (including a potential “termination tax”) that apply to the termination of a private foundation.

V. VOLUNTARY DISSOLUTION AND PRE-DISSOLUTION TAX ABATEMENT

Voluntary dissolution with pre-dissolution tax abatement allows inactive organizations that have previously obtained and then lost federal and/or state tax exemption to dissolve without the need to first reinstate tax exemption. Qualifying corporations can request abatement of any unpaid taxes or penalties which may have accrued during the period in which the organization’s tax-exempt status was revoked. This procedure is available to a nonprofit *that has ceased all business operations* and also meets one of the following conditions:

- 1) Was operating and previously obtained FTB tax-exempt status and the tax-exempt status was revoked for failure to file a return or pay a balance due;
- 2) Was operating and previously obtained tax-exempt status with the IRS and the tax-exempt status was revoked for failure to file a return or notice; or
- 3) Was never doing business after the time of its incorporation in California. See Cal. Rev. & Tax Code § 23156; Instructions to Form FTB 3502.¹⁸

In contrast to standard dissolution, an inactive nonprofit meeting *any* of the conditions above can file an application for abatement of taxes with the FTB for the period in which it had no state tax exemption and then request dissolution with the California Secretary of State, *even if its corporate status has been suspended* by the Secretary of State and/or FTB. **Note that nonprofit corporations that (1) never received IRS or FTB tax exemption; (2) are currently doing business; (3) never lost IRS and/or FTB tax exemption; or (4) lost IRS and/or FTB tax exemption for reasons other than failing to file a return or notice or pay a balance due may not use the voluntary dissolution process.** If a nonprofit has lost its IRS

¹⁸ The instructions to Form FTB 3502 are available at https://www.ftb.ca.gov/forms/2015/15_3502ins.pdf

tax exemption, but never received FTB tax exemption, it may avail itself of voluntary dissolution, as long as it has ceased all business activities.

Since a suspended corporation is prohibited from transferring real property, a nonprofit holding any real estate will not be able to use the voluntary dissolution process if it is not in good standing with the Secretary of State and FTB. See Cal. Rev & Tax. Code §23302(d). It instead will have to first reinstate its corporate and tax-exempt status so that it may dispose of its property before dissolution. Further, nothing in the Taxation and Revenue Code discharges a nonprofit of any of its outstanding debts and liabilities if it avails itself of the simplified voluntary dissolution process. If a nonprofit is unable to come to an agreement with any of its creditors regarding outstanding debts and liabilities, its board members may face personal liability for an improper distribution of assets. Therefore, voluntary dissolution is not appropriate for an organization with outstanding debts and liabilities. A nonprofit corporation should call the FTB Exempt Organizations Unit at (916) 845-4171 if it has any questions about whether it qualifies for voluntary dissolution.

To begin the voluntary dissolution with pre-dissolution tax abatement process, the corporation should file Form 3502 with the FTB, which must be signed by a director, officer, or authorized representative. The form is available at https://www.ftb.ca.gov/forms/2015/15_3502.pdf. Often, nonprofits qualifying for voluntary dissolution may only have one remaining director who, as discussed in [Section II.B.](#), is authorized to approve dissolution of the corporation. However, if the corporation has more than one director, voluntary dissolution requires approval of a majority of the directors, even though Form 3502 only requires the signature of one director or officer.

Form 3502 asks for a description and value of the nonprofit's assets, if any. It further asks whether the nonprofit has distributed its assets and if yes, to include a description and value of the distributed asset and the EIN, name, telephone, and address of the recipient. As discussed in [Section IV.C.](#) above, a nonprofit may not distribute its assets before receiving a written waiver from the Attorney General – if a nonprofit distributes its assets to an organization whose purpose is inconsistent with the corporation's stated purpose in its articles of incorporation, the Attorney General can take legal action. Therefore, although Form 3502 asks whether a nonprofit has distributed its assets, a nonprofit initiating dissolution through Form 3502 should wait until the FTB has obtained a written waiver of objections from the Attorney General before distributing any assets.

It is our understanding that in order to help facilitate the dissolution of inactive nonprofits, many of which lack the knowledge or resources to complete dissolution without assistance, the FTB's current practice at the date of this publication is to communicate directly with the Attorney General after receipt and approval of Form 3502 and if the corporation has no assets, obtain from the Attorney General a confirmation that the corporation has no assets. This procedure is not specifically included in the statute authorizing voluntary dissolution. With regard to nonprofits that have remaining assets, since Form 3502 does not ask the nonprofit to include the name, EIN, and contact information of the intended recipient of its assets, the Attorney General would not be able to issue a written waiver of objections without obtaining additional information from the nonprofit. It is our understanding that as of the date of this publication, voluntary dissolution with pre-dissolution tax abatement has been used exclusively by nonprofit organizations with no remaining assets; therefore, the Attorney General has not yet issued a written waiver of objections for a nonprofit which has filed Form 3502.

Once the confirmation that the corporation has no assets or the written waiver of objections to disposition has been obtained, the FTB will then notify the nonprofit corporation that it may request

dissolution with the Secretary of State by filing a Certificate of Dissolution, described in [Section IV.D](#) above. As with the standard dissolution process, if the election to dissolve was not approved unanimously by the members or directors, then the corporation must also file a Certificate of Election to Wind Up and Dissolve with the Secretary of State, as described in [Section II.C](#) above. The nonprofit must submit a copy of the notice from the FTB with the Certificate of Dissolution. If the nonprofit files the Certificate of Dissolution within twelve months of filing Form 3502, the FTB will abate any unpaid taxes, interests, and penalties which may have accrued due to the revocation of FTB tax-exempt status. If the dissolution paperwork is not filed within twelve months, these taxes will not be abated. Cal. Rev. & Tax Code § 23156(3); Instructions to Form FTB 3502. The nonprofit should send the Certificate of Dissolution and accompanying documents certified mail, return receipt requested in order to have proof that it was sent within twelve months.

As with standard dissolution, the dissolving corporation should make arrangements to pay any outstanding taxes or related interests or penalties on unpaid taxes (other than FTB taxes, which will be abated). If a nonprofit had federal tax-exempt status at the time it initiated voluntary dissolution, it should file a final Form 990, 990-EZ, 990-N, or 990-PF with the IRS by the fifteenth day of the fifth month after liquidation, dissolution, or termination. For more information on filing the final IRS return, see [Section IV.F](#). The nonprofit is not required to file a final 199 or 199-N.

VI. SHORT FORM DISSOLUTION

California Nonprofit Corporation Law provides for a streamlined dissolution process available in very limited circumstances to nonprofit corporations which have not issued memberships. This process is only available if a number of conditions are present, including that the certificate of dissolution is being filed within twenty-four months from the date the articles were filed and that the corporation was created in error. In order to take advantage of streamlined dissolution, a majority of directors, or if no directors have been named in the articles or have been elected, the incorporator or a majority of the incorporators, must sign and verify a Short Form Certificate of Dissolution (available as a fillable form on page 9 of the following link: http://bpd.cdn.sos.ca.gov/corp/pdf/dissolutions/corp_npdiss.pdf). The certificate must state the following:

- That the certificate of dissolution is being filed within twenty-four months from the date the articles were filed;
- That the corporation does not have any debts or other liabilities other than tax liabilities;
- That the tax liability of the corporation will be satisfied on a taxes paid basis or that a person or business entity will assume any tax liability of the dissolving corporation, including taxes assessed after the assumption;
- That a final franchise tax return has been or will be filed with the Franchise Tax Board;

- That the corporation was created in error;¹⁹
- That the corporation has not issued any memberships, and if the corporation has received payment for memberships, those payments have been returned; and
- That the known assets of the corporation remaining after paying or adequately provided for debts have been distributed as required by law or that the corporation acquired no known assets.

The corporation must file the Short Form Certificate of Dissolution with the Secretary of State, upon which the corporation is dissolved. The form should be sent certified mail with return receipt requested so that the nonprofit has proof that it was mailed within twenty-four months of incorporation. The Secretary of State will notify the Franchise Tax Board and the Attorney General of the dissolution. See Cal. Corp. Code § 6610.5. Short form dissolution *will not discharge a nonprofit corporation of its liability to creditors, nor will it discharge the liability of any of its directors*. Likewise, short form dissolution does not diminish the ability of the Attorney General to take any enforcement action against a nonprofit. Cal. Corp. Code § 6610.5(d).

VII. COURT INTERVENTIONS

A. Court Supervision of Dissolution

The corporation, the Attorney General, three or more creditors, or five percent of the voting power of the corporation may petition the superior court to assume jurisdiction of a voluntary winding up. See Cal. Corp. Code § 6614. Such a petition is permitted if court intervention is needed to protect any interested party, or if it is necessary to protect the charitable purpose(s) served by the nonprofit corporation. As discussed in [Section IV.B](#), court supervision should be considered when the corporation's debts and liabilities exceed the value of the assets and an agreement with all outstanding creditors cannot be reached.

B. Petition for Court Order to Dissolve Corporation

The board, in lieu of filing the Certificate of Dissolution, may petition the superior court for an order declaring that the corporation is wound up and dissolved. See Cal. Corp. Code § 6617. This procedure is often preferred if the creditors' claims cannot be resolved. Upon receipt of the petition, the court will issue an order requiring all persons, including the Attorney General, to show cause why the corporation should not be dissolved. The order will be provided to all creditors, claimants, and members by publishing a notice at least once a week for three consecutive weeks in the newspaper of general circulation of the county where the court is located. A copy of the notice must also be mailed to each creditor or claimant at the address last on record in the corporation's records. Cal. Corp. Code § 6517(b). Any party has thirty days to appear before the court to show cause and contest the petition to wind up the corporation. If the thirty days expire without a protest, the party's claim will be barred. The court clerk

¹⁹ Examples of "created in error" include where the incorporator believed it was changing the name of another corporation but mistakenly created a new corporation or where an incorporator did not realize that a corporation had already been created.

will then file the court order to wind up the corporation with the Secretary of State, who will then notify the Franchise Tax Board. Cal. Corp. Code § 6617.

VIII. ADMINISTRATIVE DISSOLUTION

California law grants the Secretary of State and FTB the power to initiate the dissolution of a nonprofit corporation which has been suspended by the FTB for a period of at least forty-eight continuous months. Cal. Corp. Code § 5008.9(a). Prior to dissolving a nonprofit corporation, the FTB will mail a written notice to the last known address of the nonprofit and then transmit the name of the nonprofit subject to dissolution to the Secretary of State and Attorney General. Cal. Corp. Code § 5008.9(b), (c). The Secretary of State will then provide sixty calendar days' notice of the pending dissolution on its website, during which a nonprofit may object in writing to the administrative dissolution. Cal. Corp. Code § 5008.9(d). If no objection is received, the nonprofit will be administratively dissolved and all accrued taxes will be abated. Cal. Corp. Code § 5008.9(f);(h). However, *liability to creditors will not be discharged*. Cal. Corp. Code § 5008.9(i). If a nonprofit provides the FTB with a written objection to administrative dissolution within the sixty day notice period, it then has an additional ninety days to pay all accrued taxes and penalties and file a current Statement of Information with the Secretary of State, after which the administrative dissolution will be cancelled. Cal. Corp. Code § 5008.9(g).

Although not technically a voluntary dissolution process, if a nonprofit wishing to dissolve has been out of compliance with the Secretary of State and FTB for nearly four years and does not have assets or any outstanding liabilities, it may be easier to simply wait for administrative dissolution, rather than to file the dissolution paperwork. A nonprofit wanting to dissolve should therefore not respond to the FTB notice of a pending administrative dissolution.

IX. RESOURCES

California Attorney General – Guide for Dissolving a California Nonprofit Corporation:
www.ag.ca.gov/charities/publications/dissolving.pdf

California Franchise Tax Board – Guide to Dissolve, Surrender, or Cancel a California Business Entity:
<http://www.ftb.ca.gov/forms/misc/1038.pdf>

California Secretary of State – Nonprofit Dissolution Forms:
http://bpd.cdn.sos.ca.gov/corp/pdf/dissolutions/corp_npdiss.pdf

Internal Revenue Service – Terminating Your Exempt Organization: www.irs.gov/pub/irs-pdf/p4779.pdf

APPENDIX A

Sample Board Resolution to Dissolve a Non-Membership Public Benefit Corporation

[CORPORATION]

WRITTEN CONSENT TO ACTION
BY BOARD OF DIRECTORS WITHOUT MEETING

We, the undersigned, constituting all members of the Board of Directors of [Corporation] (“Corporation”), a California nonprofit public benefit corporation, take the following actions by this unanimous written consent, which consent may be executed in counterpart:

WHEREAS, the Board of Directors has determined that it is in the best interests of this Corporation be wound up and dissolved; and

WHEREAS, this Corporation has no members.

RESOLVED, that the Board of Directors hereby elects to wind up and dissolve this Corporation;
and

RESOLVED FURTHER, that the officers or directors of this Corporation are hereby authorized and directed to file the Certificate of Dissolution as required by Section 6615 of the Corporations Code of California, and to take such further actions as may be necessary or convenient to wind up and dissolve this Corporation.

DATE: [Date]

[Name], Director

[Name], Director

[Name], Director

APPENDIX B

Sample Notice to Creditors

**NOTICE OF DISSOLUTION OF [CORPORATION]
AND INSTRUCTIONS FOR SUBMITTING NOTICE OF CLAIM**

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

[Name of Creditor]
[Address]

[Date]

To all Creditors and Claimants of [Corporation]:

You are hereby notified that on [date], [Corporation] (“corporation”) began proceedings to voluntarily wind up and dissolve by action of its board of directors.

According to our records, you may have a claim against the Corporation. To assert a claim, you must send the following information to the address below, no later than [Date – must be at least 120 days after the effective date of this notice]:

1. The legal name, address and contact information of the entity asserting the claim;
2. The amount of 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: [mailing address].

NOTE: IF THE CORPORATION DOES NOT RECEIVE THE CLAIM ON OR BEFORE [DATE], THE CLAIM WILL BE BARRED IN ITS ENTIRETY.

If you have any questions, please contact [name] at [contact information].

[Corporation],
a California nonprofit corporation

By: _____
[Name], Secretary

APPENDIX C

Sample Request for Attorney General Waiver of Objections

[Corporation]

[Address]

[Date]

California Attorney General's Office
Registry of Charitable Trusts
P. O. Box 903447
Sacramento, CA 94203-4470

Re: Dissolution and Disposition of Assets of [Corporation] ([Corporate number])
Request for Dissolution Waiver of Objections

Ladies and Gentlemen:

In accordance with California Corporations Code § 6716(c), the undersigned Director of [Corporation] ("Corporation") requests that the Attorney General's Office issue a written waiver of objections to the disposition of the remaining assets in connection with the dissolution of the Corporation. The following information is submitted in support of this request:

1. A copy of the Corporation's Articles of Incorporation.
2. A signed copy of Corporation's [Certificate of Election to Wind Up and Dissolve and] Certificate of Dissolution prepared for submission to the Secretary of State.
3. A copy of the Corporation's [IRS Form 990, Form 990-EZ or Form 990-PF] for the last three accounting periods and a balance sheet for the current incomplete accounting period.

[Alternative paragraph 3 language for use if the nonprofit does not file one of the foregoing IRS informational returns:

3. Copies of the Corporation's financial statements showing receipts and disbursements and a balance sheet for the three most current accounting periods, together with financial statements for the current incomplete accounting period.]
4. The present assets of the Corporation are the cash and property described in the enclosed balance sheet. The proposed distribution is as follows:
 - a. [For each recipient* list full legal name, address and telephone number; the type and value of each asset to be distributed; the proposed date of distribution; any restrictions on the use of the asset(s) to be distributed. Also, include for each recipient a copy of its Articles of Incorporation and exemption determination letter(s).]

[*Note: Recipients of assets must (i) have the same IRS tax exemption as stated in the dissolution clause of the dissolving nonprofit's Articles of Incorporation, (ii) have the

same charitable purpose as the dissolving nonprofit, and (iii) be current in its reporting obligations to the Attorney General's Registry of Charitable Trusts.]

Please do not hesitate to contact me at [contact information] should you have any questions.
Thank you for your assistance.

Sincerely,

[Name], Director

Enclosures

APPENDIX D

Summary of Dissolution Processes Available

Standard Dissolution	
Requirements	<ul style="list-style-type: none"> • Good standing with the Secretary of State • Corporation has federal and state tax-exempt status
Why choose it?	<ul style="list-style-type: none"> • Standard method for dissolving a nonprofit corporation
Process	<ul style="list-style-type: none"> • Resolution to dissolve approved by Board of Directors and/or members • Nonprofit must pay all debts and liabilities • Nonprofit must distribute remaining assets to another nonprofit with approval from Attorney General • Certificate of Dissolution filed with Secretary of State
Voluntary Dissolution with Pre-Dissolution Tax Abatement	
Requirements	<ul style="list-style-type: none"> • Organization has ceased all business activities • One of the following must be met: <ol style="list-style-type: none"> 1. Corporation was operating and previously obtained FTB tax-exempt status and the tax-exempt status was revoked for failure to file a return or pay a balance due 2. Corporation was operating and previously obtained tax-exempt status with the IRS and the tax-exempt status was revoked for failure to file a return or notice 3. Corporation was never doing business after the time of its incorporation in California • Corporation does not have any outstanding debts and liabilities and does not own real property
Why choose it?	<ul style="list-style-type: none"> • Can abate unpaid FTB taxes and penalties without reinstating corporate and tax-exempt status
Process	<ul style="list-style-type: none"> • Corporation must file form 3502 with the FTB • Once approved by the FTB, a Certificate of Dissolution is filed
Short Form Dissolution	
Requirements	<ul style="list-style-type: none"> • The corporation was created in error • Nonprofit has not issued memberships • Corporation has been in existence for 24 months or less • The corporation cannot have any assets or debts, excluding taxes
Why choose it?	<ul style="list-style-type: none"> • Streamlined process for dissolution of nonprofits that meet the strict requirements
Process	<ul style="list-style-type: none"> • Corporation must file the Short Form Certificate of Dissolution with the Secretary of State, upon which the corporation is dissolved
Court Supervised Dissolution	
Requirements	<ul style="list-style-type: none"> • Good standing with Secretary of State and federal and state taxing agencies
Why choose it?	<ul style="list-style-type: none"> • If debts and liabilities exceed value of assets and unable to come to agreement with outstanding creditors, court-supervised process helps avoid director or officer liability for improper distribution of assets

Process	<ul style="list-style-type: none"> • Corporation petitions Superior Court to supervise dissolution or order declaring corporation is dissolved
Administrative Dissolution	
Requirements	<ul style="list-style-type: none"> • The Secretary of State OR the FTB have the power to initiate the dissolution of a nonprofit corporation that has been suspended by the FTB for 48 continuous months • The corporation has no assets and no liabilities other than accrued taxes
Why choose it?	<ul style="list-style-type: none"> • It is easier to wait for this process rather than filing for dissolution • All accrued taxes are abated
Process	<ul style="list-style-type: none"> • FTB will mail a written notice of dissolution to the corporation • The corporation has 60 days to object • If the corporation does not object, the Secretary of State will dissolve the corporation and all accrued taxes will be abated