

STEPS TO DISSOLVE AN ILLINOIS NOT FOR PROFIT CORPORATION



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This communication is provided by The Law Project (TLP), a project of the Chicago Lawyers' Committee for Civil Rights. It provides general information about dissolving an Illinois not for profit corporation as a public service, solely for informational purposes. It does not constitute legal advice. The information in this communication is current as of the date it is written. However laws change, and as a result the information may no longer be accurate. If you have questions about this process and/or concerns about potential liability, you should consult a lawyer familiar with not for profit law and/or TLP.

Steps to Dissolve an Illinois Not for Profit Corporation

1. Review Bylaws.

- a. Does anything limit or control how Board votes for dissolution and who has authority to vote for dissolution?
- b. Is organization a member or nonmember organization?

2. Review articles of incorporation. Is there anything that impacts voting, quorum, ability to act or asset distribution?

3. Catalog all outstanding obligations; include name of creditor, amount owed, when \$ was, is or will be due and if there is a written obligation.

- a. Is money owed a debt or an obligation/liability?
In considering dissolution of a nonmember Illinois not for profit, the distinction between debt and obligation/liability is a critical one (See 6b).
- b. Debt is generally understood to be money already owed for goods or services received or to be received in the near future. For example, past due lease payments or a current utility bill.
- c. Obligations are generally understood to be money payable in the future or a contractual obligation to pay in the future. For example, future lease payments.
- d. Is an asset of the organization collateral or security for a loan?
- e. Identify any amounts owed to Federal or State taxing authorities. (See # 18.a.)



4. Identify all of the organization's assets and determine

- a. Is it a charitable asset?
- b. Is it an asset that requires return upon a certain condition?
- c. Is it collateral or security for a loan?
- c. What is the fair market value of the asset?
- d. Are there restricted funds in an account? If so, contact the funder about the decision to dissolve and return/use of the funds.

5. Negotiate with creditors. If there are insufficient funds to pay all debts and obligations, consider taking the following steps.

- a. Sell unencumbered assets to pay all debts and obligations.
- b. Pay all debts before obligations.
- c. Negotiate settlements on all debts.
- d. Negotiate settlements on all obligations.
- e. If insufficient funds, always consider paying debts in full before future obligations. (See # 6 b.)

6. If there are insufficient funds to pay all debts and you cannot reach a settlement with every debt holder and
- the organization is a membership organization with members entitled to vote on dissolution, the membership may vote to dissolve. (See # 7 for next steps.)
 - the organization is not a membership organization or it is a membership organization but it does not have members entitled to vote, the board may not vote to dissolve. (See options in # 8.)

7. Membership organizations with members entitled to vote on dissolution.

- Dissolution may be authorized by informal action of the members even if there are unpaid debts.
- Dissolution may be proposed by the Board or by the members.
- Members may vote to dissolve at the annual or special meeting or without a meeting if consent is in writing and signed by members having the required votes to take the action.
- The directors are not required to vote if the members have the authority to do so.
- The Board may adopt a resolution proposing voluntary dissolution and directing question be submitted for a vote by the members. Need 2/3rds vote of those present and voting in person or by proxy.
- If there is a vote to dissolve, a plan of distribution should be developed. A plan of distribution must be adopted if any assets are going to be conveyed.
- Skip to # 10 for next steps.



8. If the organization is not a membership organization or it is a membership organization but it does not have members entitled to vote, the board may not vote to dissolve or approve a plan of dissolution if there are unresolved debts. The board may take the following steps.

- Judicial dissolution.
- Vote to dissolve with the understanding that the action may expose the Board to liability for acting outside the statutory authority. (See #18.)
 - If they vote to dissolve, the board should put together a plan of distribution. Written notice of the vote to dissolve must be provided to the Board not less than 3 days before Articles of Dissolution are signed. There must be a quorum and a majority vote to approve the plan of distribution and to file the articles of dissolution.
 - A plan of distribution must be adopted if any assets are going to be conveyed.
- Amend bylaws to create a member org or give the current membership the right to vote.
 - Consider this if the organization is operating with a membership but the membership currently does not vote or is not memorialized in the bylaws. For example: A private school where the parents are involved.

2. If the organization has a reasonable argument that it should operate as a membership organization. For example: Organizations where Board members serve on the Board as representatives of other organizations. Under this circumstance it is reasonable to create a membership organization with the other organizations as the members with the right to vote for the directors and for dissolution.
9. After the vote to dissolve, file articles of dissolution with the Illinois Secretary of State. The articles of dissolution are effective on the date they are filed by the secretary of state.
10. After the vote to dissolve, all programs must cease. The only allowable activities are those to liquidate and wind down the affairs of the organization.
11. Notify funders of decision to dissolve immediately, even before plan is adopted, include an explanation of the treatment of restricted funds, if any, a timeline for the dissolution and contact information for the responsible party going forward and final paperwork.
12. Employees should be provided with the proper notice required under the organization's personnel policies, federal and state law. Employees may not continue working unless they will be paid and may only perform the tasks necessary to liquidate and wind down the affairs of the organization.
13. Complete the tasks set out in the plan of distribution.
 - a. Negotiate settlement and release of any outstanding obligations or liabilities (O/L) and document this in writing.
 - b. Return any assets required to be returned by a donor restriction or a creditor.
 - c. Secured obligations: Determine the fair market value of any assets held as collateral, negotiate compromise with return of asset to creditor and obtain release of debt.
 - d. Charitable assets remaining after debts, obligations/liabilities are paid or settled must be distributed to a similar charitable organization. Before making any transfers, make sure action doesn't conflict with any provision in bylaws, Articles or original conveyance to the organization and that the transfer provided for in the Plan of Distribution is approved by the Board.
 - e. Eliminate any ability to make online donations and return any donations that are received.
14. Notice to creditors to bar claims.



- a. Send notice within 60 days of effective date of dissolution.
 - b. Notice must provide a deadline for filing claims.
 1. The deadline may be not less than 120 days from the effective date of dissolution.
 2. Notice must provide the date of dissolution, the address for filing claims and that claim will be barred if not filed within timeframe.
 - c. If claim made, the organization may reject it but must notify claimant that it was rejected and claim will be barred if suit not filed within 90 days of date of rejection notice.
 - d. The organization may not bar contingent liabilities, claims arising after the date of dissolution or claims arising from failure to pay any tax, penalty or interest related thereto.
 1. It is critical that the Board ascertain and resolve all outstanding obligations before walking away.
 2. Failure to proceed in accordance with the Illinois General Business Not for Profit Corporation Act or any other applicable laws may result in liability. (See #18.)
15. Notify IRS and IL Attorney General of dissolution via final 990 filings. The due date for these reports is based on the date of the filing of the articles of dissolution, not the fiscal year end. The IRS 990 will be due the 15th day of the 5th month following the date the articles of dissolution are filed by the secretary of state. The Illinois AG 990 will be due within six months of the filing of the articles of dissolution.
16. Post office notification- make sure to forward mail to a party identified who will keep all documents to be retained.
17. Cancel licenses/permits.
18. Potential director liability issues. There are too many factors to provide a definitive guide here about director liability. But be advised that-
- a. Failure to pay employee withholding taxes to Federal or State governmental taxing authorities before or after filing Articles of Dissolution may result in the personal liability of the Board members.
 - b. Any actions other than those necessary to cease operations after filing Articles of Dissolution may result in board liability.
 - c. It is in every director's interest to continue participating in board decisions throughout the dissolution process to avoid accusations of avoiding fiduciary duties to the organization.



- d. Most board decisions, if made in the best interest of the organization and not contrary to any statutory or regulatory authority, with sufficient information to make a wise decision at the time, will be found to be reasonable and not expose the board to liability.
- e. Sometimes issues are decided regardless of the legal authority. This should only be done after carefully weighing the potential risk to the organization and the directors.



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