VOLUNTARY DISSOLUTION OF NOT-FOR PROFIT CORPORATIONS WITH ASSETS IN NEW YORK

NAIFA-NYS
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NOT-FOR-PROFIT CORPORATIONS IN NEW YORK

- Supervised by the Office of the Attorney General.
- Activities, including dissolution, governed by the New York Not-for-Profit Corporation Law, Chapter 35 of New York’s Consolidated Laws.
TO BEGIN THE PROCESS

- Review the company Articles of Incorporation and By-laws for any mention of a dissolution process.

- The company develops a “Plan of Dissolution” which describes why the company wishes to dissolve and what the company would like to do with its assets. Also, the plan should provide the final payment of any company financial obligations.

- If the company wishes its assets to be transferred to another not-for-profit company it must enter into an agreement with that company that those assets will be used to further the mission of the dissolving company.
NEXT STEP: OBTAIN COMPANY APPROVAL OF THE PLAN OF DISSOLUTION

- The company directors must adopt a resolution, by majority vote, adopting the plan and approving the dissolution.
  - A quorum of directors must be present when voting on the resolution.

- If the company by-laws empower the members to vote, then the dissolution must be approved at a meeting of the membership by 2/3 of those present at such meeting, provided a quorum of members are present.
  - Alternative method – unanimous written consent of all of the members.
  - Notice of the meeting must be given to all members of the company.
  - Your weaknesses relative to competitors.
NEXT STEP: PREPARE VERIFIED PETITION FOR GOVERNMENTAL APPROVAL

- Form of the Verified Petition developed by the Attorney General’s Office.

- Necessary attachments to the Verified Petition
  - The Plan of Dissolution as approved by the company including the intended disposition of the company assets along with agreement with receiving party that the assets will be used in accordance with the dissolving company mission.
  - Company Certificate of Incorporation and its current By-laws
  - Copies of the Board and Membership resolutions approving the dissolution and proof of their adoption.
  - Proposed Attorney General Approval (AG form)
NEXT STEP: FILING THE PETITION WITH THE ATTORNEY GENERAL’S OFFICE.

- The AG will review petition and advise if any further information required.

- If the AG determines that all statutory requirements have been met the AG will inform the petitioner that the petition is approved.

- If the AG may determine, however, that NYS Supreme Court approval is necessary and in such a case the petitioner must file the petition in the local Supreme Court.

- The AG may also decline approval if his objections (if any) to the dissolution have not been resolved. In such a case the petitioner may then seek approval in Supreme Court but Court approval is unlikely if the AG submits opposition.
FINAL STEP: EXECUTE THE DISSOLUTION

- After AG or Court approval, whichever is the case, the company has 270 days to carry out the plan of dissolution.
  - All company liabilities must be paid.
  - Assets must be distributed in accordance with the plan.
  - After distribution, the company must prepare a final financial report showing no assets or liabilities.
  - The company must prepare a Certificate of Dissolution. (Form on the NYS Department of State website)
  - Company must prepare a Verified Petition to the AG for approval of the Certificate of Dissolution with final financial report attached.
  - If acceptable, the AG will endorse the original Certificate.
  - Company must request Consent of the NYS Commissioner of Taxation and Finance if tax exempt status granted by that department.
  - The original Certificate of Dissolution with AG and Tax Department Consent should be filed with the NYS Secretary of State.
MISCELLANEOUS

- IRS must be notified.
- Copy of the Secretary of State’s filing receipt must be sent to the AG.