

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_npdis.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.

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.

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.

