GUIDE TO DISSOLUTION
OF
ILLINOIS NOT FOR PROFIT CORPORATIONS

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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 dissolution of a not for profit corporation, or who would like to avoid involuntary dissolution or reinstate an already-dissolved corporation. This brochure focuses on dissolution procedures and requirements under the Illinois General Not For Profit Corporation Act of 1986, as amended (the **"Act"**). 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.**

I. WHAT IS DISSOLUTION?

A. 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.

B. 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 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 itself 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 by court action initiated by creditors, individual corporation directors or members, or even the corporation itself.

C. 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 entails converting to cash or other "liquid" form any of the company's assets that are not readily distributable to creditors or other parties qualified to receive a distribution of company assets. Liquidation may occur prior to a corporation's final dissolution, or after dissolution as part of the "winding up" process.

D. 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, nonprofit corporations cannot be forced into bankruptcy by creditors. However, nonprofit 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 nonprofit 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.

E. Kinds of Dissolution: Voluntary and Involuntary

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 below in Sections II and III. Section IV provides a brief overview of dissolution-related requirements and recommended procedures in connection with other local, state and federal laws.

II. VOLUNTARY DISSOLUTION

A. 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.[1]

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.

B. Financial Issues in Dissolution

(1) Duties to Creditors. When a corporation enters the zone of insolvency, 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, director 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

[1] 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 at *Section II.H*.)

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.

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

In comparison to other states, the Act is unusual in that it provides that the directors of a not for profit corporation having no members entitled to vote on dissolution may not vote to dissolve if the corporation is unable to pay its debts. This is a troublesome provision, since in many cases the inability to pay debts is the main reason a nonprofit 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 nonprofit corporations do not have members, so the debts restriction does not appear logical in the nonprofit context.

Nonetheless, the payment of debts restriction is a legal one. Therefore, directors of Illinois not for profit corporations without members entitled to vote may not approve voluntary dissolution unless the no-debts requirement is satisfied.[2] Disregarding such requirement could later enable creditors or others to challenge the legality of the dissolution, and expose directors who approved dissolution to potential legal liability. However, not for profit corporations that have no members and 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) Determine Amount of Actual Debts. First, the corporation should try to identify its true "debts" as opposed to "obligations", "liabilities" or other "claims". While Illinois law does not provide clear guidance regarding the distinction among such terms, "debts" are typically understood to represent obligations to pay money for goods, services or other items already received, as opposed to obligations to make payments in the future for goods or services to be received at a later time, or a potential or contingent obligation 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."

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[2] 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 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.

(2) Resolution of Outstanding Debts. Once the corporation has determined its outstanding debts, it may find that it has sufficient funds to pay such debts, even though it does not have enough funds to pay its other obligations and liabilities. In such case, the directors would be able to approve voluntary dissolution consistent with the Act. However, if the corporation is unable to pay its debts, it could attempt to eliminate such debts by approaching its debtors, and trying to negotiate a settlement arrangement under which the corporation would pay a percentage of the debt, in exchange for a settlement and release from the debtor that would effectively terminate the debt. In addition, for corporations that are 501(c)(3) corporations, a director or other "friend" of such organization could give a tax-deductible contribution to the corporation to enable it to satisfy unpaid debts.

(3) Creation of Members; Judicial Dissolution. If a nonprofit corporation that has no members remains unable to pay its debts, it will be unable to effect voluntary dissolution under the provisions relating to corporations without members entitled to vote on dissolution. However, it could still dissolve under other Sections of the Act relating to voluntary dissolution. First, 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. Second, as discussed at *subsection (5)*, the corporation could apply for judicially-supervised dissolution.

(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 corporation. 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-down 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 Section II.I below.)* Such delay runs the risk that appropriate winding down 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 would then be empowered to conduct the winding down process, for a fee (paid by the corporation) and subject to the court's ultimate supervision.

D. 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 noted in *Section II.C* above 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[3]; 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 written consent. The procedures for both of these methods of dissolution approval are set forth below.

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[3] 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.

(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 3 days prior to execution of Articles of Dissolution (discussed below), the corporation must give written notice of the board's decision to dissolve the corporation to all of the directors, whether or not present at the board meeting.

(b) Approval by 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.

E. 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 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:

(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.

(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 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[4] is present, whether in person or by proxy[5], 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 required to approve dissolution.

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[4] The Act provides that quorum is met if at least one-tenth of the votes entitled to be cast. If the Bylaws do not specify what number of members constitutes a quorum, the Act applies; however, the Bylaws may specify a different number (such as a majority of all members) as constituting a quorum for meeting of members.

[5] 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.

F. Adopting a Plan of Dissolution: 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 dissolution of corporate assets.

(1) What is a Plan of Dissolution. A plan of dissolution is a detailed description of how corporate debts and obligations will be paid or satisfied, and how and to whom any remaining assets will be distributed. 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 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 corporation's dissolution must be so conveyed. *(This Section may apply in the case of art works, religious artifacts or other unique items previously given by a party to the corporation.)*

(c) If the corporation holds some or all of its assets for assets for a charitable, religious, eleemosynary, benevolent, educational or similar use (other than 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 of assets for charitable or other uses are consistent with the Act, **the corporation's directors and any eligible members must still approve a written plan of distribution to implement such dissolution transfer provisions.** If the corporation is tax-exempt, the corporation must ensure that the plan of distribution is consistent with IRS requirements[6]. 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.

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[6] 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.

(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 dissolution. 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 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[7], at a meeting of members for which appropriate notice was given (*see Section II.E(2)(b) above*). 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 at *Section II.E(1)* above are satisfied.

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[7] Assuming that proxy voting by members is not prohibited by the corporation's Articles or Bylaws.

(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 dissolution 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.

G. 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 web site, at http://www.sos.state.il.us/departments/business_services/nfp.html (*current copies of the form are attached at the end of this Booklet, at Appendix A).*

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

(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.

H. The Winding-up Process: Liquidation and Distribution of Assets, and Providing Notice to Creditors

(1) 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, 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 at Section II.I below*);

(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 *(see discussion at Section II.F(1) above)*; and

(f) Engaging in other acts necessary to wind up and liquidate the corporation's operations.

(2) 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.

(3) 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.

(4) 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 (1) above 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 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.

I. 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 the end of this Booklet, at *Appendix B*.

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: No Preferencing of Creditors: If there are not sufficient funds to pay all creditors identified after completion of the creditor-notice process, the corporation should not simply "pick and choose" among creditors of the same class (such as secured, or unsecured) and pay some at a more preferential rate than others. Outside the bankruptcy context, such payments could be challenged under the Illinois Uniform Fraudulent Transfer Act and may be voidable by a court. In addition, decisions to prefer some similar-class creditors over others could result in claims of breach of the fiduciary duty of directors of an insolvent corporation to all of its creditors, or even of fraud by the organization and any organization representatives involved in the dissolution process. If such claims were made and found to be valid, directors of an Illinois tax-exempt corporation that would otherwise enjoy exemption from liability for their acts under Illinois law could be found personally liable if the improper transfers were deemed to involve "willful or wanton" conduct. *(See discussion of director liability shields at Section J below.)* If the corporation were to subsequently elect to undergo voluntary bankruptcy, such transfers could also be challenged as improper, preferential transfers.

J. 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[8], 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 or 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.

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[8] Distributions after dissolution must conform to the requirements set forth at *Section II.E(1)*. 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.

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 known claims against the corporation by following the procedure described in *Section II.I*, the directors of the corporation shall be jointly and severally liable for failing to take reasonable steps to cause the notice described in such Section to be given 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, enters the "zone of insolvency," 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 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 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 $5,000 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."

K. Revoking Voluntary Dissolution

After Articles of Dissolution have been filed, dissolution may 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 commence 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. The current Revocation of Dissolution form provided by the Illinois Secretary of State is set forth at *Appendix A-2*.

III. "INVOLUNTARY" DISSOLUTION BY ADMINISTRATIVE ACTION OR COURT ORDER

In addition to voluntary dissolution initiated by a corporation's board of directors and/or its members entitled to vote on dissolution, the corporation may be dissolved "involuntarily," that is, due to actions by persons other than corporation representatives. Such involuntary dissolution may occur through administrative dissolution by the Illinois Secretary of State or by a court acting on the application of the initiative of the Illinois Attorney General, creditors, or individual members or directors of a not for profit corporation.

A. Administrative Dissolution by the Secretary of State

(1) Reasons for Administrative Dissolution. The Act permits the Secretary of State to dissolve a not for profit corporation administratively (that is, without requiring a judicial hearing) for any of the following reasons:

(a) Failure to file the corporation's annual report;

(b) Failure to file any other report required to be filed with the Secretary of State;

(c) Failure to appoint and maintain a registered agent in the State; and

(d) In the case of corporations organized as a not-for-profit club, for retail sale of alcohol without a retailer's license.

(2) Notice of Delinquency and Prospective Dissolution. If the Secretary of State determines that one or more of the reasons set forth above for administrative dissolution of an Illinois not for profit corporation are present, the Secretary must attempt to notify the corporation by mailing a Notice of Delinquency to the corporation's registered office, or if there is no known registered office, to the president or another principal officer at such officer's last-known office (as shown on the Secretary of State's records). *Note: Since one of the common factors resulting in administrative dissolution are inattention of the registered agent or change of address of the corporation and/or its registered office, a corporation that did not receive its annual report form because it was sent to an old address is also likely to not receive a Notice of Delinquency warning of an impending administrative dissolution. Thus, a corporation may have been administratively dissolved for some time before the officers of the corporation discover the problem.*

If a corporation does not correct the failure that led to the Notice of Delinquency within 90 days after the Delinquency Notice was sent, the Secretary of State will dissolve the corporation administratively, by issuing a Certificate of Dissolution, one copy of which is mailed to the corporation at its last-known registered office address. The administrative dissolution will also be reflected on all Secretary of State records, including its website listings of Illinois corporations.

(3) Effect of Administrative Dissolution. Administrative dissolution has the same legal effect as voluntary dissolution described above. However, if the corporation is subsequently reinstated as set forth in *subsection (4)* below, the corporation's existence will also be retroactively reinstated for all purposes. If a corporation has been administratively dissolved and it is either not possible or desirable to reinstate the corporation's good standing and existence, the corporation's affairs should be wound up, its assets liquidated and all debts and obligations paid or otherwise satisfied. In particular, it is beneficial to go through

the notice to creditors process described above in *Section II.I*. Such process provides the benefit of forever barring claims of creditors who do not respond during the required notice period.

(4) Reinstating a Corporation that Has Been Administratively Dissolved. A corporation that has been administratively dissolved may reinstate its corporate existence within 5 years from the date of the Secretary of State's issuance of a certificate of dissolution. To accomplish reinstatement, the corporation must file with the Secretary of State an application for reinstatement (see current form of such application at *Appendix A-3*), as well as all corporate annual and other reports due and outstanding. Such fillings must be accompanied by payment of all outstanding fees and penalties; the Secretary of State's office can advise what filings, fees and penalty payment need to be filed with the reinstatement application. It is possible that a dissolved corporation seeking reinstatement may discover that its former corporate name has been taken by another corporation. In such cases, unless the other corporation agrees to give up such name, the dissolved corporation will need to choose a different name for the corporation once it is reinstated. Once reinstatement occurs, the dissolution is treated as never having occurred. Therefore, all acts taken by the corporation after the administrative dissolution but prior to reinstatement are deemed after reinstatement to have been the legal acts of a corporation in good standing.

(5) 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 in *Section II.I* above, (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.

B. Dissolution by Judicial Action Initiated by the Attorney General

Involuntary dissolution of a not for profit corporation may also as a result of judicial action initiated by the Illinois Attorney General. The grounds upon which the Attorney General may sue for dissolution of an Illinois not for profit corporation are the following:

(1) The corporation obtained its certificate of incorporation through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law, or has continued to violate the law, after notice of such excess, abuse or violation has been given to the corporation by personal delivery or registered mail;

(3) An interrogatory [i.e., a list of questions] submitted by the Secretary of State to the corporation, its officers or directors, has been answered falsely or has not been answered fully within 30 days after the mailing of such interrogatories (or any longer period of time granted by the Secretary of State);

(4) The corporation has fraudulently solicited money, fraudulently used money solicited, or failed to use solicited money for the purpose for which it was solicited; or

(5) The corporation has substantially and willfully violated the provisions of the Consumer Fraud and Deceptive Business Practices Act.

C. 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.

D. 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.

E. Judicial Actions in Lieu of Requested Dissolution

A court considering an involuntary 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 provide notice to creditors pursuant to the procedures set forth in *Section II.I* above. The court will retain jurisdiction over the corporation until the liquidation and winding-up process is complete.

IV. REGULATORY FILINGS, NOTICES AND OTHER ACTIONS RELATING TO DISSOLUTION

A. State and Local Tax Filings

As part of the dissolution and winding-down 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 in *Section II.I*, 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.

B. 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.

C. 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 described in *Section II.I* above.

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.

D. 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.

E. 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, or (such as in response to a regulatory inquiry) are stored in an accessible location.

APPENDIX A

SECRETARY OF STATE DISSOLUTION FORMS

APPENDIX A-1

Articles of Dissolution

Form NP-112.20

Please see the Illinois Secretary of State Website at

http://www.cyberdriveillinois.com/publications/businesspub.html

APPENDIX A-2

Articles of Revocation of Dissolution

Form NP-112.25

Please see the Illinois Secretary of State Website at

http://www.cyberdriveillinois.com/publications/businesspub.html

APPENDIX A-3

Application for Reinstatement
Of Domestic or Foreign Corporations

Form NP-112.45/113.60

Please see the Illinois Secretary of State Website at

http://www.cyberdriveillinois.com/publications/businesspub.html

APPENDIX B

SAMPLE NOTICE TO CREDITORS FOR DISSOLVED ILLINOIS NOT FOR PROFIT CORPORATION*

NOTICE OF DISSOLUTION OF DO-GOOD DEVELOPMENT CORPORATION
AND INSTRUCTIONS FOR SUBMITTING NOTICE OF CLAIM

______________ _, 200_[1]

<u>Certified Mail [or specify other delivery method]</u>
Creditor Corporation
1111 Pleasepay Lane
Chicago, IL 606___ [2]

[Alternative: TO CREDITORS OF DO-GOOD DEVELOPMENT CORPORATION:]

You are here by notified that DO-GOOD DEVELOPMENT CORPORATION has been dissolved, effective ______________ _, 200_.

To file notice of a claim against Do-Good Development Corporation, you must send the following information to the address below, no later than ______________ _, 200__:[3]

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 person/entity in charge of winding-up process or other appropriate representative]

PLEASE NOTE: Failure to file notice of your claim by ______________ _, 200_[4] 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 Do-Good Development Corporation or any of its officers, directors, members, agents or employees.

[Optional] [If you have any questions, please contact ___________ at ___________.]

DO-GOOD DEVELOPMENT CORPORATION

*** [NOTE TO FORM USERS: 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 1-4 represent one approach to determining what information is "essential" to permit appropriate verification of the claim. However, a nonprofit 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.**

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[1] Notice must be given within 60 days after the effective date of dissolution (i.e., the date a Certificate of Dissolution was issued by the Illinois Secretary of State).

[2] 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.

[3] This date must be <u>at least</u> 120 days after the effective date of the corporation's dissolution.

[4] Insert same date as stated in second paragraph of notice.