

VOLUNTARY DISSOLUTION OF NOT-FOR-PROFIT CORPORATIONS WITH NO ASSETS



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**Guidance Document
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This booklet is for dissolving Not-for-Profit corporations that meet the following criteria:

- ✓ **The corporation has no assets or liabilities at the time of dissolution.**

Corporations that have assets to distribute or liabilities at the time of dissolution should use the booklet entitled “Voluntary Dissolution of Not-For-Profit Corporations with Assets to Distribute,” which is available on the Attorney General’s website at <http://www.charitiesnys.com>.

The information in this booklet is not a substitute for legal advice from an attorney but has been drafted to provide guidance to not-for-profit corporations that are seeking to dissolve and the lawyers who represent them.

This booklet and other information of interest to not-for-profit corporations may be found on the Attorney General’s Internet site: <http://www.charitiesnys.com>.

INTRODUCTION

The Attorney General's Charities Bureau prepared this guidance to assist not-for-profit corporations that have no assets or liabilities at the time of dissolution to fulfill the requirements for dissolution pursuant to Article 10 of the Not-for-Profit Corporation Law ("N-PCL").

Dissolving corporations that are required to be registered with the Charities Bureau must update their registration and annual filings prior to dissolution.¹ *See* Appendix F for a summary of registration requirements.

NOTE: This booklet reflects changes to the Not-for-Profit Corporation Law that are included in the Nonprofit Revitalization Act of 2013.

¹ The officers and directors of charitable organizations are obligated to administer their assets responsibly, and comply with the duties of care, loyalty and obedience. If the assets are not being used for their intended purposes, they must be distributed to another charitable organization with similar purposes.
NPCL §§ 720(a)(1)(A); 1001(d)(3)

SUMMARY OF PROCEDURES FOR A NO ASSET DISSOLUTION

Step 1:

The Board of Directors adopts a Plan of Dissolution ("Plan"). *See* Appendix B for a sample Plan. A quorum must be present and at least a majority of the directors present must vote for dissolution. Alternatively, the Board may adopt the Plan by unanimous written consent if not prohibited by the certificate of incorporation or by-laws. If there are fewer than three directors, the affirmative vote of all remaining directors is required to adopt the Plan. If only one director remains, that person should be identified as the "sole remaining director."

Quick Statutory Reference Guide	
Board of directors' adoption and authorization of Plan of Dissolution	N-PCL §§ 1001(a), 1002(a) & 1002(b)
Quorum and required vote for board approval of Plan	N-PCL §§ 1002(a)(1)(i), 707, 708 & 709
If there are fewer than the number of directors required for a quorum, the vote of the remaining directors must be unanimous	N-PCL § 1002(a)(1)(ii)

Step 2:

If the corporation has members entitled to vote, after the board of directors has authorized the Plan, the Plan is submitted to the membership for approval. A vote of at least two-thirds of the members with a quorum present at a meeting is required for approval. Alternatively, the plan may be approved without a meeting by unanimous written consent of all the members entitled to vote if the corporation's documents permit.

If the organization has no voting members, *i.e.*, members who elect the board of directors, the Plan is deemed authorized upon adoption by the board.

Quick Statutory Reference Guide	
Submission of Plan to members for approval	N-PCL § 1002(a)(2)
Quorum and required vote for membership approval	N-PCL §§ 1002(a)(2), 612, 613(c) and 614
Authorization requirements if there are no members	N-PCL § 1002(b)

Step 3:

If approval of any governmental body or officer was required for the formation of the corporation, the corporation must get written approval of the dissolution from the same governmental body or officer. To determine whether any approvals are necessary, see N-PCL §§ 404(b)-(v) and 1002(c). Please refer to Appendix F for list of required government approvals.

NOTE: The **original** of any required approvals must be attached to the original Certificate of Dissolution.

Quick Statutory Reference Guide	
Government approvals of Plan of Dissolution	N-PCL §§ 404(b) - (v) and 1002(c)

Step 4:

The corporation prepares a Certificate of Dissolution with a Legal Back. *See* the form of Certificate of Dissolution linked here to the Department of State website: [<https://www.dos.ny.gov/forms/corporations/1561-f-a.pdf>]. The Certificate of Dissolution confirms that, at the time of dissolution, the corporation had no assets and no liabilities. The Certificate of Dissolution must be signed by an officer, director, attorney-in-fact or another duly authorized person and must identify the name of such person and the capacity in which the person signs.

Quick Statutory Reference Guide	
Preparation of Certificate of Dissolution with a Legal Back	N-PCL §§ 104(d) and 1003(a)
Attachment of Approvals to Certificate of Dissolution	N-PCL §§ 1003(b)(1) and 404(b) - (v)

Step 5:

The corporation prepares a Petition to the Attorney General for Approval of the Certificate of Dissolution. *See* Appendix C, and files it with the appropriate office of the Attorney General. *See* Appendix E for Attorney General offices.

Quick Statutory Reference Guide	
Preparation of Petition for Approval of the Certificate of Dissolution	N-PCL § 1003(c)

Step 6:

The corporation submits the following to the Attorney General (please refer to Appendix E for a list of offices of the Attorney General and the counties they serve):

- A. The Petition with all required attachments:
 - (i) a copy of the Certificate of Incorporation together with any amendments, and the current by-laws,
 - (ii) the Plan of Dissolution,
 - (iii) copies of any required government approvals (attached to the Certificate of Dissolution), and

(iv) either the unanimous written consent of the board, or certified copies of resolutions adopted at a meeting and, if applicable, the same for the corporation’s membership.

B. The **original** Certificate of Dissolution with the **original** of any governmental consents, if required.

C. All required financial reports, including a final report. Please *See* Appendix D and the sample Verified Petition for a list of final reports.

If acceptable, the Attorney General will place an endorsement on the original Certificate of Dissolution and return it to the corporation or to its attorney if submitted by an attorney to then be filed with the Department of State.

Quick Statutory Reference Guide	
Verified Petition to the Attorney General	N-PCL § 1003(c)

Step 7:

The organization must request a *Consent to Dissolution of a Corporation* from the New York State Department of Taxation and Finance (“Tax Department”). The process and the documentation you will need depend on whether your organization has been granted tax exempt status. Some charitable organizations may not have been granted tax exempt status by NY State. Instructions and forms for securing the Tax Department’s consent are posted at: https://www.tax.ny.gov/bus/doingbus/vol_dissolution.htm.

Note - If your organization has done business in New York City and has incurred tax or other liabilities under the New York City Administrative Code, it will also need the consent of the Commissioner of Finance of New York City. A “Request for Consent to Dissolution” form is posted at: http://www1.nyc.gov/assets/finance/downloads/pdf/collections/request_dissolution.pdf.

Quick Statutory Reference Guide	
Consent of the NYS Department of Taxation	N-PCL § 1004(a)
Consent of New York City Commissioner of Finance	N-PCL § 1004(b)

For those corporations filing outside New York City, check the requirements of your local commissioner of finance.

Step 8:

The corporation (or its attorney) sends the original Certificate of Dissolution with the original NYS Department of Taxation and Finance clearance and the original of any required governmental body or officer consents, along with a check for the required filing fee² payable to the NYS Department of State to:

NYS Department of State
Division of Corporations
One Commerce Plaza - 99 Washington Avenue
Albany, New York 12231

Step 9:

The Department of State will send to whomever is identified as the filer on the certificate's Legal Back a receipt indicating that the Certificate of Dissolution has been filed.

Step 10:

The corporation sends a copy of the Department of State's receipt to the Attorney General. Once the corporation files its final annual and financial report with the Charities Bureau (as requested by the Petition to the Attorney General), the corporation will no longer be required to file with the Charities Bureau and its registration will be closed.

Step 11:

The corporation may need to file certain documents with the Internal Revenue Service.

² Check N-PCL § 104-A(l) to determine the amount of the required filing fee.

APPENDIX A - CHECKLIST OF DOCUMENTS FOR A NO ASSET DISSOLUTION

Following is a list of the forms and documents necessary for a no asset dissolution:

___ Plan of Dissolution (to be an attachment to the Petition)

___ Original Certificate of Dissolution

Other than an approval by the Attorney General, all required governmental body and officer approvals attached.

___ Petition to the Attorney General for Approval of Certificate of Dissolution

___ Attachments to Petition for Approval of Certificate of Dissolution:

- Copy of the Certificate of Incorporation together with all amendments, and the current by-laws.
- Plan of Dissolution.
- Resolutions of the Board and if appropriate, the membership.

___ Final Financial Report (and any other required final reports)

Please submit this checklist, signed by the Petitioner, with the Verified Petition.

APPENDIX B – SAMPLE FORM FOR A PLAN OF DISSOLUTION NO ASSETS

Plan of Dissolution

of

The Board of Directors of [name of corporation] has considered the advisability of voluntarily dissolving the corporation and has determined that dissolution is in the best interest of the corporation.

1. The Corporation has no assets or liabilities.
2. If applicable: Since the date of its incorporation on (date), (name of corporation) has never been funded and has never had any assets. (NOTE: This statement applies only to corporations that have never received any funds or other assets from any source.)
3. (A.) In addition to Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.

[list governmental approvals]

or

(B.) Other than the approval of the Attorney General, no approval of the dissolution of the corporation by any governmental body or officer is required.

4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

(Name of Officer and Title)

(Date)

APPENDIX C - SAMPLE VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF CERTIFICATE OF DISSOLUTION W/OUT ASSETS

-----X
 In the Matter of the Application of
 (Name of Corporation) : VERIFIED PETITION
 For Approval of Certificate of
 Dissolution pursuant to :
 Section 1002 of the Not-for -Profit
 Corporation Law. :
 -----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 (Street Address)
 (City/Town) , New York (Zip Code)

Petitioner, (Name of Corporation) by (Name and Title of Signatory) of the corporation, for its Verified Petition alleges:

1. (Name of Corporation) , whose principal address is located in the county of (Name of County), was incorporated pursuant to New York’s Not-for-Profit Corporation Law on (Date of Incorporation). A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit ____.³

2. The names, addresses and titles of the corporation’s directors and officers are as follows:

Name	Title	Address
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3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation [or relevant amendment] at paragraph ____ thereof and are as follows:

[insert a description of the purposes of the corporation]

4. The corporation is a [charitable] [non-charitable] corporation.

5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit _____ (the “Plan”).

6. The corporation is dissolving because [add a brief explanation of reasons for dissolution.] [Please also note here if the corporation is aware of any ongoing or completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years or if the corporation paid any

³ Please check the Department of State website to confirm that your stated date of incorporation is consistent with their records.

excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.]

7. (A.) The Board of Directors met at a duly called meeting on proper notice on [date] at which a quorum of ____ directors out of ____ total directors was present, and [unanimously approved] [approved by ____ votes in favor ____ votes against] resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit ____.

or

(B.) [The Board of Directors by unanimous written consent] [The sole remaining director by written consent] dated _____ approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit ____.

8. (A.)(i). [Include one of these paragraphs only if the corporation has members with voting rights.] After the Board of Directors approved the Plan, the members received and reviewed the Plan and adopted a resolution approving the Plan at a duly called meeting on proper notice on [state date] at which a quorum of ____ members was present [by at least a two-thirds majority consisting of ____ members out of a total of ____ votes, in favor **or** unanimous vote.] Such resolution, certified by the Secretary or other duly authorized officer, is attached hereto as Exhibit ____.

or

(ii). After the Board of Directors approved the Plan, the members received and reviewed it and by unanimous written consent voted in favor of adoption of the Plan. Such unanimous written consent is attached hereto as Exhibit ____.

or

(B.) The corporation does not have any members.

9. The corporation has no assets or liabilities as of the date hereof.

10. The corporation has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, if required.

or

The corporation is submitting herewith as Exhibit ____ a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate filing fee.

or

The corporation acknowledges its obligation to file a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and is submitting herewith as Exhibit ____ such draft. The corporation gives its assurance that (i) the final financial report shall be the same in all material respects to that which is attached hereto and (ii) the corporation shall duly file its final CHAR500 report with all required attachments with the Charities Bureau.

or

The corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.

11. (A.) Other than the approval of the Attorney General, no approval of the dissolution of the corporation is required by any governmental body or officer.

or

(B.) Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.

12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of (Name of Corporation), a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed This ____ day of _____, 20 ____, by

Signature

(Name of Signatory and Title)

**PLEASE NOTE - THE
SIGNATURE MUST BE
VERIFIED - SEE NEXT PAGE**

APPENDIX D - REGISTRATION REQUIREMENTS AND FINAL REPORTS

A not-for-profit corporation seeking to dissolve must be in compliance with the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law. The full text of both statutes as well as a summary of the registration and reporting requirements may be found on the Attorney General's Internet site at: <http://www.charitiesnys.com>.

If the not-for-profit corporation is subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law, but has failed to comply, it must register, file annual financial reports (e.g., Attorney General's Form CHAR500 with federal form 990) for the last three years and pay all required filing fees.

If the not-for-profit corporation is subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law, but has been exempt from filing annual financial reports, it must submit a summary annual report⁴ for the last six years. No filing fees are required to accompany such reports.

A not-for-profit corporation that is not subject to the registration and reporting requirements of section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law must submit a summary annual report³ for the last six years. No filing fees are required to accompany such reports.

⁴ A sample summary annual report is provided on the following page.

Sample Financial Report for Dissolving Entities Not Otherwise Required to File Annual Reports

Note: This schedule is for informational purposes only and illustrates the type of information the Office of the Attorney General reviews regarding dissolving entities otherwise exempt from filing annual financial reports. Such entities may also submit financial reports maintained in the ordinary course of their operations that contain similar information.

Year ended

/ /	/ /	/ /	/ /	/ /	/ /
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STATEMENT OF REVENUES & EXPENSES

1	Beginning cash balance					
2	Contributions received					
3	Investment income (interest, dividends)					
4	Rental income					
5	Gains/(losses) from sale of securities					
6	Net proceeds from sale of assets					
7	Other income (itemize)					
8	Total income (add lines 1-7)					
9	Salaries					
10	Legal fees					
11	Accounting fees					
12	Other expenses of dissolution					
13	Occupancy/Rent					
14	Contributions paid (itemize)					
15	Other expenses: (itemize)					
16	Total expenses (add lines 9-15)					
17	Ending cash balance (Line 1 + Line 8 - Line 16)					

BALANCE SHEETS

18	Cash, savings, investments					
19	Other assets (itemize)					
20	Total assets (Line 18 + Line 19)					
21	Total liabilities (itemize)					
22	Net assets or fund balances (Line 20 - 21)					

Appendix E

**Offices of the New York State Attorney General
and the counties covered by each:**

ALBANY -

Charities Bureau
The Capitol
Albany, NY 12224-0341
518-776-2160

Counties: Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington (note: Sullivan and Ulster for trusts and estates matters only)

BINGHAMTON REGIONAL OFFICE

44 Hawley Street, 17th Floor
Binghamton, NY 13901-4433
607-251-2770

Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga and Tompkins

BUFFALO REGIONAL OFFICE

Main Place Tower - Suite 300A
Buffalo, NY 14202
716-853-8400

Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming

NASSAU REGIONAL OFFICE

200 Old Country Road, Suite 240
Mineola, NY 11501-4241
516-248-3302

Counties: Nassau (note: trusts and estates matters are handled by NYC)

NEW YORK CITY

Charities Bureau
Transactions Section
28 Liberty Street
New York, NY 10005
212-416-8401

Counties: Bronx, Kings, New York, Queens and Richmond (note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester – trusts and estates matters only)

PLATTSBURGH REGIONAL OFFICE

43 Durkee Street, Suite 700
Plattsburgh, NY 12901-2958
518-562-3288

Counties: Clinton, Essex and Franklin

POUGHKEEPSIE REGIONAL OFFICE

One Civic Center Plaza - Suite 401
Poughkeepsie, NY 12601-3157
845-485-3900

Counties: Dutchess, Orange, Sullivan and Ulster (note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany)

ROCHESTER REGIONAL OFFICE

144 Exchange Boulevard
Rochester, NY 14614-2176
716-546-7430

Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates

SUFFOLK REGIONAL OFFICE

300 Motor Parkway
Hauppauge, NY 11788-5127
631-231-2424

Counties: Suffolk (note: trusts and estates matters are handled by NYC)

SYRACUSE REGIONAL OFFICE

615 Erie Blvd. West, Suite 102
Syracuse, NY 13204
315-448-4800

Counties: Cayuga, Cortland, Madison, Onondaga and Oswego

UTICA REGIONAL OFFICE

207 Genesee Street, Room 508
Utica, NY 13501-2812
315-864-2000

Counties: Herkimer and Oneida

WATERTOWN REGIONAL OFFICE

Dulles State Office Building
317 Washington Street
Watertown, NY 13601-3744
315-523-6080

Counties: Jefferson, Lewis and St. Lawrence

WESTCHESTER REGIONAL OFFICE

44 South Broadway
White Plains, NY 10601
914-422-8755

Counties: Putnam, Rockland and Westchester (note: trusts and estates matters are handled by NYC)

APPENDIX F – LIST OF GOVERNMENTAL APPROVALS

Section of NPCL	Organizational Purpose	When is consent required?	Which State Agency?
404(b)(1)	Destitute children, adult care facility, residential program for youth, unmarried mothers	Pre filing	Department of Health
404(b)(2)	Child day care center	Post filing	Office of Children and Family Services
404(c)	Hospital Service, health service of medical/dental expense indemnity plan	Pre filing	Department of Health
404(d) ¹	Operation of a school, college or university, museum or library	Pre filing	NYS Education Department
404(d)	Any other corporation whose purposes might be chartered by the Regents	Post filing	NYS Education Department
404(e)	Cemetery Corporation	Pre filing	NYS Cemetery Board
404(f)	Fire Corporations	Pre filing	Village, Town or City Board
404(g)	Prevention of cruelty to animals	Pre filing unless dispensed with	American Society for the Prevention of Cruelty to Animals
404(h)	YMCAs	Pre filing	National YMCA
404(i)	Support of armed forces in USA or foreign country	Pre filing	
404(j)	Labor Unions	Pre filing	Industrial Board of Appeals
404(k)	Savings bank or life insurance	Pre filing	Superintendent of Banks
404(l)	Licensed insurance agents or brokers or underwriters	Pre filing	Superintendent of Insurance
404(m)	Political Parties	Pre filing	County Committee of said Party
404(n)	American Legions	Pre filing	Dept. of NY American Legion
404(o)	Hospital Corporations	Pre filing	Public Health and Health Planning Council
404(p)	Medical Corporation	Pre filing	DOH and Public Health
404(q)	Mental Health Facility	Pre filing	Commissioner of Mental Health
404(r)	Health Maintenance Organization	Pre filing	DOH
404(t)	Facility providing health related services	Pre filing	Public Health and Health Planning Council
404(u)	Substance Abuse Programs	Pre filing	Office of Alcoholism and Substance Abuse Services
404(v)	Non-profit property/casualty insurance	Pre filing	Superintendent of Insurance

¹404(d) has two parts as noted: actual educational organization such as school, library, museum or college there require “pre filing” all others require post filing. All post filings are done within 30 days.