



Guidebook for Tennessee Nonprofits

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Reviewing Nonprofits and Charitable Trusts/Gifts

✓ Nonprofit Mergers, Sales, and Dissolutions

Tennessee law requires nonprofit organizations to notify the Attorney General of certain extraordinary events: any merger involving a nonprofit organization, the sale of substantially all of a nonprofit organization's assets, the conversion of a nonprofit corporation to any other business entity form, or the dissolution of a nonprofit organization.

Effective January 1, 2015, Tennessee law requires notice to the Attorney General of these events at least 45 days prior to the close of the event. Once notice is given, the Attorney General's Office will request information from the nonprofit organization about the transaction. Depending on the size or complexity of the transaction, the information request may be brief or extensive.

Model information requests are available for review using the links below but may be tailored if the specific transaction is unusually large or complex. The Attorney General's Office will then review the information provided to make sure that nonprofit assets are being protected consistent with Tennessee law. In particular, the Attorney General's Office will evaluate the transaction to determine if the nonprofit organization is receiving fair market value for its assets.

✓ Nonprofit Complaints

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MARCH 17, 2018

TECHNICAL ADVISORY SERVICE
NEWSLETTER NO. 18-09
“WHERE SCHOOL FINANCE MEETS SCHOOL LAW”

NOTICE TO THE OFFICE OF TENNESSEE ATTORNEY GENERAL: DISSOLUTION PROCEDURES

ISSUE: Required notice to the Office of Tennessee Attorney General upon dissolution of school support organizations

ANALYSIS: As established in Newsletter No. 17-08 (dated December 14, 2016), school districts, and its schools, at a minimum, have oversight responsibilities over school support organizations. As part of that fiduciary responsibility, ensuring that school support organizations properly dissolve is as important as ensuring school support organizations properly form. TCA §49-2-601, *et seq.*, sets forth, in detail, specific procedures for school support organizations to form; however, the statute is silent as to dissolution. For dissolution proceedings, we turn to TCA, Title 48, Chapter 64.

School support organizations can dissolve in one (1) of three (3) ways

- (1) Voluntary Dissolution (TCA §48-64-101, *et seq.*);
- (2) Administrative Dissolution (TCA §48-64-201, *et seq.*); or
- (3) Judicial Dissolution (TCA §48-64-301, *et seq.*).

Within this newsletter, we focus on voluntary dissolution, administrative dissolution, and notice to the Office of Tennessee Attorney General. If a school support organization dissolves, either voluntarily by vote of its directors, or administratively by action of the Tennessee Secretary of State, Form SS-4411, Articles of Dissolution Nonprofit Corporations (attached), is required to be filed with the Tennessee Secretary of State. TCA §48-64-104 provides

- (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:
 - (1) The name of the corporation;
 - (2) The date dissolution was authorized;

- (3) A statement that the resolution was duly adopted by the members;
- (4) If approval by members was not required, a statement that the resolution was duly adopted by a majority of the board of directors;
- (5) A copy of the resolution or the written consent authorizing the dissolution;
- (6) If approval of dissolution by some third person or persons other than the members, directors, or incorporators was required, a statement that such approval was obtained; and
- (7) If the corporation is a public benefit corporation, a statement that the notice to the attorney general and reporter required by § 48-64-103(a) has been given.

(b) Unless a delayed effective date is specified in the articles of dissolution, a corporation is dissolved when the articles of dissolution are filed.

Common within each type of dissolution is a requirement to notify the Office of Tennessee Attorney General prior to distribution of any assets. TCA §48-64-103, provides

(a) A public benefit corporation shall give the attorney general and reporter written notice that it intends to dissolve at or before the time it delivers the articles of dissolution to the secretary of state. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until forty-five (45) days after it has given the written notice required by subsection (a) to the attorney general and reporter or until the attorney general and reporter has consented in writing to, or indicated in writing that the attorney general and reporter will take no action in respect to, the transfer or conveyance, whichever is earlier.

DISCLAIMER: The opinions and views expressed herein are those of the author and were developed based upon email received from various schools who are members of the Technical Advisory Service. These opinions and views are given to provide guidance to school administrators in their day-to-day decision-making process; however, it is not the author's intent for these opinions and views to override the sound judgment of the school systems' or schools' administrative team. The author is cognizant to the fact that all material issues may not have been disclosed by emails received from members of the Technical Advisory Service.

Published and Produced by David W. Huss, Attorney-at-Law, Certified Public Accountant, for Members of the Technical Advisory Service.

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(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general and reporter a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the address of each person (other than creditors) who received assets and indicate what assets each received.

When school support organizations dissolve, a completed nonprofit affidavit (attached) should be completed and remitted to the Office of Tennessee Attorney General. The affidavit should be completed forty-five (45) days prior to dissolution. If the Office of Tennessee Attorney General issues a “no action” letter, the school support organization is free to dissolve with the Secretary of State.

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State of Tennessee



Department of State
Corporate Filings
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

For Office Use Only

ARTICLES OF DISSOLUTION
NONPROFIT CORPORATIONS

Pursuant to the provisions of Section 48-64-104 of the *Tennessee Nonprofit Corporation Act*, the undersigned corporation submits the following Articles of Dissolution:

1. The name of the corporation is: _____

2. The dissolution was authorized on _____

3. Please check the applicable box:

The resolution authorizing the dissolution was duly adopted by:

The members

A majority of the board of directors, as approval by the members was not required.

4. If approval by third person(s) other than the members, directors, or incorporators was required, such approval was obtained.

5. If a public benefit corporation, notice to the Attorney General, required by Section 48-64-103(a) of the Tennessee Nonprofit Corporation Act, has been given.

6. The written consent or a copy of the resolution authorizing the dissolution is attached.

7. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is:

_____ , _____
(Date) (Time)

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

Signature Date

Name of Corporation

Signer's Capacity

Signature



**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL AND REPORTER
PUBLIC INTEREST DIVISION
P.O. BOX 20207 NASHVILLE, TENNESSEE 37202
TELEPHONE: (615) 741-5573**

NONPROFIT AFFIDAVIT

I, _____, after first being sworn, and having given written notice to the Attorney General and Reporter of the proposed transaction as required by the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.*, do hereby depose and, upon personal knowledge, state as follows:

1. I am the _____ (insert your position with the nonprofit) of _____ (the "Nonprofit").
The Nonprofit's Federal Employer Identification Number is _____. The Nonprofit's **Tennessee Secretary of State Control Number** is _____.

2. The Nonprofit intends to engage in a dissolution transaction (the "Transaction"; please briefly describe the Transaction below):¹

Attached hereto are true and correct copies of the Nonprofit's charter, bylaws, any amendments, the most recent three (3) years' annual reports filed with the Tennessee Department of State, and the most recent three (3) years' tax returns filed with the Internal Revenue Service. **I UNDERSTAND THAT THE ATTORNEY GENERAL MAY REQUIRE ADDITIONAL DOCUMENTATION CONCERNING THE NONPROFIT AND THE TRANSACTION.**

3. I attest that the proposed closing date for the Transaction is _____ (MM/DD/YYYY).

¹ Please note that this Nonprofit Affidavit may only be used for simple dissolution transactions. For complex dissolutions or other transactions, please fill out the appropriate Complex Request for Information Packet.

4. At the time the Transaction was approved by the Nonprofit's board of directors and/or members, the total value of the Nonprofit's assets was: \$ _____.

5. A list of distributions made during the past twelve (12) calendar months is as follows (include the name of the person or entity receiving each distribution and the value of each distribution; attach additional pages if necessary):

6. I attest that none of the directors and/or officers of the Nonprofit have any conflict of interest with regard to the Transaction, including but not limited to financial interest, self-interest, or self-dealing.

7. I attest that none of the directors and/or officers of the Nonprofit are currently or were previously directors and/or officers of any entity that will benefit from the Transaction.

8. I attest that none of the directors and/or officers of the Nonprofit plan to become directors and/or officers of any entity that will benefit from the Transaction.

9. The following is the Nonprofit's mission statement (or other statement of the Nonprofit's purpose):

10. Please identify the organization or person (including address, telephone number and, if an organization, contact person) to whom the Nonprofit will transfer or convey any assets in connection with the dissolution. **Please include the dollar value of each asset to be transferred or conveyed.** Attach additional pages, if necessary.

11. I attest that the Nonprofit's assets will be distributed in accordance with the Nonprofit's charter and bylaws and in compliance with the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.*

- 12. I attest that the Transaction was brought before the board of directors and/or members upon proper vote, resolution, or by written consent, and was duly considered in accordance with the Nonprofit's charter and bylaws and in compliance with the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.* **Please provide a copy of such vote, resolution or other manner by which this action was memorialized.**

- 13. If additional information about the proposed transaction is required, the appropriate individual to contact is listed below. (If the appropriate contact person changes while the Attorney General is conducting his review, the Nonprofit must notify the Attorney General in writing and provide updated contact information.)

Name: _____
 Title: _____
 Address: _____

 Phone: _____
 Email: _____

I, _____, certify upon personal knowledge and **under penalty of perjury** that this affidavit is true, accurate, and complete.

FURTHER AFFIANT SAITH NOT

 Affiant's Signature

 Date

Sworn and subscribed before me this _____ day of _____, 20_____.

 Notary Public

My Commission expires: _____