



Letitia James

New York State Attorney General

Transactions

Charities, Nonprofits & Fundraisers

Charities transaction search

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Transactions frequently asked questions (FAQs)

Mergers



› What is the difference between a merger and a consolidation?

In a merger, two or more corporations combine into a single corporation and the resulting entity is one of the constituent corporations (corporation A merges into corporation B, with corporation B as the surviving corporation). In a consolidation, two or more corporations combine into a single corporation and the resulting entity is a new corporation (corporation A and corporation B combine into new corporation C).

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- › If the constituent corporations are located in different counties, where is the court application filed?

The merger application is filed in the county where the surviving or consolidated corporation is located, or in the county where the principal office of one of the New York constituent corporations is located.

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- › Which corporation makes the court application?

The court application is made jointly by all of the constituent corporations in the form of a petition or joint affidavit.

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- › Can corporations merge if they have completely unrelated purposes and activities?

Generally, the purposes and activities of the merging corporations

should be similar and compatible.

- › Does the Not-for-Profit Corporation Law (N-PCL), Article 9, cover mergers of churches and other corporations incorporated under the Religious Corporations Law?

If all of the constituent corporations are incorporated under the Religious Corporations Law, the merger is governed solely by the Religious Corporations Law. Court approval is required, but the Attorney General is not a party to the merger. However, if one of the churches incorporated under the N-PCL or the Membership Corporations Law, then N-PCL Article 9 is applicable to the merger.

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- › Can a not-for-profit corporation merge with a business corporation?

Only under limited circumstances. A not-for-profit corporation may merge or consolidate into a business corporation, but only if the not-for-profit corporation is a Type A or Type C corporation.

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- › Do Type A corporations require court approval for mergers?

No, but the mergers of Type A trade associations require approval from the Attorney General's Antitrust Bureau.

Sales of assets



› How much is "all or substantially all" of a corporation's assets?

There is no arithmetic test for determining how much is "substantially all." We use a commonsense approach. If the asset in question constitutes most of the corporation's assets, court approval should be obtained. Even if the asset is a small percentage of the corporation's total assets, if the transaction will affect the ability of the corporation to carry out its corporate purposes, it is considered to be substantial, and court approval should be obtained. If the asset is the corporation's main premises or a house of worship, court approval should be obtained. When in doubt, it is prudent to obtain court approval.

› Do not-for-profit corporations require court approval for mortgages?

No. However, certain financing transactions (such as Industrial Development Authority bond-financing transactions) require the lease or conveyance of property serving as collateral for the loan. If such property constitutes all or substantially all of the corporation's assets, court approval is required for the transfer or lease in connection with the mortgage. Religious corporations require court approval under the Religious Corporations Law (RCL) section 12 for mortgages of any of its real property, unless the mortgage is a purchase money mortgage.

› Can the sale contract be assigned?

If the sale contract is to be assigned at or prior to closing, the assignment must be disclosed in the petition and order and the assignment agreement must be included as an exhibit. If the assignee is a limited-liability company (LLC) or other entity created by the purchaser

for purposes of taking title at closing, these facts should be explained in the petition. If the assignee is an unrelated third party, new board and membership resolutions approving the assignment will be required.

› If a church is incorporated under the Not-for-Profit Corporation Law (N-PCL) or the Membership Corporations Law instead of the Religious Corporations Law, is it subject to RCL section 12?

Yes. RCL section 12 is applicable to any corporation that acts as a house of worship and meets for religious worship services, even if it incorporated under a different statute.

› If a corporation's house of worship is in Brooklyn (Kings County) but the property that is the subject of the sale is located upstate, in which county should the petition be brought?

Kings County. The venue is determined by the county in which the corporation's principal office is located and where it carries out its corporate purposes.

› If a dormant church no longer conducts worship services and no longer has a congregation, can it sell its real property under RCL section 12?

In many cases, no. If a dormant church no longer has a congregation that can approve the proposed sale, it cannot meet the statutory requirement of obtaining a membership resolution approving the sale. In such cases, the church should dissolve pursuant to RCL section 18 and

seek court approval for the sale of its real property as part of the dissolution proceeding. However, denominations that do not have voting memberships under the RCL can still proceed under RCL section 12.

› Can the corporation use an appraisal obtained by the purchaser?

No. The corporation must obtain its own independent appraisal valuing the property as of the contract date. Furthermore, the appraisal cannot be prepared by the real estate broker who handled the sale.

› Is an appraisal necessary if a church is transferring real property to another religious or charitable corporation for nominal consideration?

No. RCL section 12(8) provides that a religious corporation can sell real property to another religious, membership, educational, municipal, or not-for-profit corporation for nominal consideration. However, the petitioner religious corporation must be solvent and there must be a showing that the claims of creditors will not be impaired. The petition should include a full explanation.

Simplified dissolutions

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› When can a dissolving corporation use the simplified dissolution procedure?

A dissolving corporation may use the simplified dissolution procedure if it has no more than \$25,000 in a reserve fund to pay for the costs of winding up its affairs (e.g., legal and accounting fees), including liabilities that do not exceed \$10,000.

› Can a corporation do a simplified dissolution if it has any remaining assets that require distribution to another tax-exempt organization?

No. In such cases, the dissolving corporation must follow the procedures for the dissolution of a corporation with assets and obtain court approval for the distribution of its remaining assets to a charitable organization with substantially similar activities and purposes, even if the amount to be distributed is less than \$25,000.

› Can a dissolving corporation transfer or donate its remaining assets to another tax-exempt organization in order to qualify for a simplified dissolution?

No. If a dissolving corporation has remaining assets in excess of any reserve fund, it must do one of the following:

- follow the procedures set forth in Article 10 of the N-PCL for the dissolution of a corporation with assets
 - seek court approval via N-PCL sections 510 and 511 to sell or otherwise dispose of its remaining assets prior to filing a petition for a simplified
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dissolution

Grant-making private foundations can spend down their assets by making charitable grants to other tax-exempt organizations in the ordinary course of their operations. However, in order for a grant-making private foundation to transfer its assets to another private foundation, the dissolving foundation would need court approval either via an asset dissolution or a sections 510/511 petition.

› Can a corporation do a simplified dissolution if its assets are insufficient to pay all of its liabilities?

No. A corporation must have sufficient funds to pay all liabilities, which cannot exceed \$10,000, in order to do a simplified dissolution. If the dissolving corporation has arranged for the reduction or forgiveness of any debts and liabilities with its creditors and can thereby qualify for a simplified dissolution, it should attach a copy of any relevant agreements as exhibits to its petition. Insolvent corporations must follow the procedures for a judicial dissolution as outlined in Article 11 of the N-PCL.

› When should a corporation using the simplified dissolution procedure file its plan of dissolution with the Attorney General's Office?

A corporation doing a simplified dissolution should file its plan of dissolution with our office after it has already carried out such plan, satisfied any of its remaining debts, and prepared a final financial report indicating a zero balance. As opposed to the procedures for the dissolution of a corporation with assets, the Office of the New York State Attorney General does not need to review or approve the plan of dissolution prior to its execution for the dissolution of a corporation with

no assets. There need be no reference to carrying out the plan of dissolution in the certificate of dissolution if the dissolving corporation had no assets or liabilities when it adopted such plan.

- › After a corporation submits its petition for a simplified dissolution to the Charities Bureau, how long does it take for the Attorney General to endorse its certificate of dissolution?

The length of time of the Attorney General's review varies depending on the number and nature of the issues flagged by our office. We will contact you in writing or by telephone with any follow-up questions we have.

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- › Are Type A not-for-profit corporations subject to the simplified dissolution procedure?

No. Generally, Type A corporations do not require court or Attorney General approval to dissolve, and the simplified dissolution procedure is not applicable. However, dissolving Type A trade associations must get approval from the Attorney General's Antitrust Bureau. In addition, if a Type A corporation holds assets for Type B charitable purposes, or holds donor-restricted funds, it must follow the procedures for an asset dissolution (see N-PCL section 201(b) for descriptions of the different corporate types).

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- › Is the Attorney General's approval required for the dissolution of a religious corporation?
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No. The dissolutions of religious corporations are governed solely by section 18 of the Religious Corporations Law. Court approval is required but the Attorney General is not a party.

› Must a dissolving corporation pay any fees to the Attorney General when it submits its petition for a simplified dissolution?

No. However, the dissolving corporation will have to submit a filing fee made payable to the New York Department of State when it files its original endorsed certificate of dissolution with the New York State Department of Taxation and Finance.

Resources

Resources

Appraisals of Property for Not-for-Profit and Religious Corporations Seeking Approval of Property Transactions by the Attorney General or the Court

Mergers and Consolidations of Not-For-Profit Corporations

Nonprofit and Religious Corporations Seeking Relief from Tax Liens on Their Property

Procedures for Forming and Changing a New York Not-For-Profit Corporation

Religious Corporations: Sales and Other Disposition of Assets

The Sale of Nonprofit Nursing Homes Pursuant to the Not-for-Profit Corporation Law

Voluntary Dissolution of Not-For-Profit Corporations with No Assets

Voluntary Dissolution of Not-for-Profit Corporations with Assets

A Guide to Sales and Other Disposition of Assets by Not-For-Profit Corporations

