

OPINION 26-02: OPINION REGARDING THE DISPOSAL OF POST ASSETS AFTER A POST HAS SURRENDERED THEIR CHARTER

The process for voluntarily dissolving a nonprofit corporation (Post) without court action involves both the California Attorney General and the California Secretary of State. The Secretary of State is involved in the voluntary dissolution process because a California corporation is formed when the Post files its Articles of Incorporation with the Secretary of State. The Office of the Attorney General is involved in the dissolution process because the Attorney General has the primary responsibility to supervise charitable nonprofit organizations and protect charitable assets.

The first step in the voluntary dissolution process is the approval by the majority of the Post Executive Committee or members, or both, to elect to wind up and dissolve the nonprofit corporation. (Corp. Code, §§ 5033, 5034, 6610, 6610.5, 8610, 8610.5, 9680.) After the Post Executive Committee and/or Post membership vote to dissolve, a certificate evidencing the election to wind up and dissolve must be filed with the Secretary of State and also forwarded to the Attorney General's Registry of Charities and Fundraisers. (Corp. Code, §§ 6611, 8611, 9680.) The submission to the Registry of Charities and Fundraisers of the Certificate of Election to Wind Up and Dissolve initiates the Attorney General's review of the proposed disposition of the nonprofit corporation's charitable assets. (Corp. Code, §§ 6716, 8716, 9680.) To finalize dissolution with the Secretary of State, a nonprofit corporation is required to obtain from the Attorney General either a written waiver of objections to the dissolution concerning the distribution of the corporation's assets or a written confirmation that the corporation has no assets. (Corp. Code, §§ 6716, 8716, 9680.)

The Corporations Code requires that nonprofit public benefit corporations, nonprofit mutual benefit corporations holding assets in charitable trust, and nonprofit religious corporations obtain from the Attorney General a waiver of objections to distribution of assets. (Corp. Code, §§ 6716, 8716, 9680.) This waiver must be obtained from the Attorney General whether or not the corporation ever operated or obtained a tax-exempt status.

After obtaining the waiver of objections letter from the Attorney General, the nonprofit corporation must submit a copy of the letter with a Certificate of Dissolution to the Secretary of State in order to finalize the dissolution process. Note: The Secretary of State will not accept the Certificate of Dissolution without the Attorney General's waiver of objections letter.

When a California 501(c)(19) veterans' organization ceases operations and sells its building, it must report the transaction and formally dissolve with the California Department of Justice (DOJ). The Attorney General's Registry of Charities and Fundraisers tightly regulates charitable assets and requires specific documentation during a wind-down. Key Steps for Reporting to the California DOJ. To dissolve legally and withdraw your organization from the Registry, the nonprofit organization must submit a formal notification packet to the California DOJ. This packet must generally include:

A Notification Letter: A written notice stating the decision to dissolve, requesting a "waiver of objections" to the distribution of assets, and signed by a director or attorney.

Financials: Balance sheets for the current incomplete year and the last three years of operation.

Asset Distribution: Clear documentation on who receives the building sale proceeds. Federal and state laws require that remaining assets from a tax-exempt organization be transferred only to another tax-exempt organization or for a public/governmental purpose.

Founding Documents: Copies of the Articles of Incorporation and any amendments, as well as any documents that outline restrictions on the use of your organization's assets.

Corporate Forms: Copies of the executed California Secretary of State Certificate of Election to Wind Up and Dissolve and the Certificate of Dissolution

Respectfully Submitted,

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Joseph F. Fenton, Esq.
Department Judge Advocate

John E Hudson
Department Associate Judge Advocate