



Dissolution

A Guide for Alberta Non-Profits

Centre for Public Legal Education Alberta

©October 2010

All legal information contained herein is provided as an information service by the Centre for Public Legal Education Alberta. Nothing in this document constitutes accounting or legal advice. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal or tax-related decision-making. To obtain advice concerning the specifics of your particular situation, please consult a qualified tax specialist or lawyer.

Disclaimer

The contents of this booklet are provided as general information only. It is not legal advice. If you have a legal problem, you should consult a lawyer.

Your use of the information in this booklet is your responsibility and is at your own risk. This information is provided 'as is', without warranty of any kind. The information contained in this booklet was correct at the time it was printed October 2010. Be aware that there may have been subsequent changes which make the information outdated at the time you are reading it.

Charity Central (CC), and Centre for Public Legal Education Alberta (CPLEA) will not be responsible for any loss arising from reliance on, or action taken (or not taken) as a result of, this information.

Developed by: Lesley Conley

Reviewed by: Laird Hunter, LLB

Edited by: Teresa Mitchell, LLB



The Muttart Foundation

Charity Central gratefully acknowledges the support of The Muttart Foundation.

Special Thanks to the Board Development Program for their assistance and input into the development of this material.

ISBN: 978-0-919792-51-7

© October 2010, Centre for Public Legal Education Alberta, Edmonton, Alberta

This publication is available for download at www.charitycentral.ca/node/622

Production of this booklet has been made possible by a financial contribution from the Canada Revenue Agency.



Canada



Contents

What is Dissolution?	4
The Need to Look at Governing Documents	5
What are Governing Documents?	5
Provincial Incorporation	7
Federal Incorporation	8
General Process.....	9
Reconciling Liabilities and Assets.....	10
Statutory Liabilities	11
What Happens in the Event of Bankruptcy?	11
Registered Charities	12
Forms	13
Provincial.....	13
Federal	13
Books and Records	14
Additional Resources	15

What is Dissolution?

Just like people, organizations have a life span; they come into existence on registration and pass on when they are dissolved. This document looks at what is involved for non-profit organizations at the end stage of an organization's life.

The technical details vary by statute but generally, dissolution is the last stage of liquidation; the process by which an incorporated organization or company is ended and its assets and liabilities are reconciled and any remaining property distributed. Liquidation is sometimes called winding-up, and dissolution usually refers to the last stage of that process. Liquidation itself can be either compulsory or voluntary. For example, liquidation may be compelled by creditors who want some compensation for debts. It may also involve a bankruptcy, in which case bankruptcy rules must be followed first. Or, the members or shareholders of a non-profit can decide that the organization is no longer required and take steps to end it.

This document reviews the various steps involved in the dissolution of a non-profit organization.

If your organization is a registered charity under the *Income Tax Act* you should review the information in this document under the heading "Registered Charities" first.

The Need to Look at Governing Documents

What are Governing Documents?

Governing documents are the legal documents that provide the framework for your organization. They include your incorporation document, certificate of incorporation, objects, bylaws and any policies your organization may have developed. They also include the legislation under which your organization was incorporated.

You should familiarize yourself with the legislation your organization was incorporated under.

A not-for-profit can be incorporated provincially or federally. The main statutes used to incorporate not-for-profit organizations in Alberta are:

- the *Societies Act*, (www.qp.alberta.ca/Laws_Online.cfm)
- the *Companies Act* as a Part 9 Non Profit Company or (www.qp.alberta.ca/Laws_Online.cfm)

- the *Canada Corporations Act*, R.S.C 1970, c32 (Part II)¹
(www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs02145.html)
 - When your organization was approved for incorporation, the registrar issued a Certificate of Incorporation (provincial) or Letters Patent (federal).
 - Check the Certificate to confirm under which legislation your organization was incorporated.
 - Get a copy of the legislation. Read what it says to do to dissolve the organization.



Not sure what legislation your organization was incorporated under?

If you are unsure of your organization's status, you can search the registries of provincially and federally incorporated organizations. See "Organizing your Corporate Documents" – Resources - "A Guide to Searching Government Registries". If you are still unsure you may want to consult with a lawyer for assistance with dissolving the organization.

¹ NOTE: New federal legislation is in the works. Bill C-4, the *Canada Not-for-Profit Corporations Act* received Royal Assent on June 22, 2010. It is anticipated that it will take at least a year for the Act and regulations to come into force. Once that happens, nonprofits incorporated under the *Canada Corporations Act*, R.S.C 1970, c32 (Part II) will be required to bring their governing documents into compliance with the new legislation. There will be a 3-year transition period for nonprofit organizations to incorporate under the new Act. The *Canada Not-for-Profit Corporations Act* will enable organizations to incorporate faster, improve their financial accountability, clarify the roles and responsibilities of directors and officers, and enhance the protection of members' rights. Registered charities with status under the *Income Tax Act*, are required to provide a copy of any amendments to their bylaws to the Charities Directorate.

Provincial Incorporation

Under both the Alberta *Societies Act* and the *Companies Act* there is no requirement that an organization's bylaws describe the procedure for dissolution.

The *Societies Act* addresses dissolution under the following sections:

- Section 33 – Dissolution for cause
- Section 34 – Voluntary dissolution
- Section 35 – Winding Up – It refers the reader to Part 17 (Liquidation and Dissolution) of the *Business Corporations Act* (www.qp.alberta.ca/Laws_Online.cfm).

The *Companies Act* sets out the requirements for dissolution (both voluntary and for cause) in Part 10 of the Act.

Both Acts refer to the completion of the dissolution process by filling in and filing of the form Articles of Dissolution (www.servicealberta.gov.ab.ca/pdf/Forms/REG3038.pdf), *Business Corporations Act* Sections 211 and 212. You will note there is no reference on the form to your incorporating Act. Not to worry; you have the correct form. (See more information provided under Forms on page 11)

Get a copy of your organization's bylaws.

- What, if anything, do your bylaws say to do in the event of dissolving the organization?
- Look at the information contained in the clause for dissolution. Follow the process outlined.
 - If your organization's bylaws do not address dissolution, you need to review the statute under which you were incorporated to determine the correct procedure. Go to the section "General Process" on page 7 of this guide and follow the steps.

If you are unable to locate a copy of your organization's bylaws contact a provincial Registry Office (www.servicealberta.gov.ab.ca/1641.cfm) and request a copy of your bylaws that are filed with Corporate Registries. For federally incorporated organizations you can contact Corporations Canada (www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03991.html) to request a copy of your bylaws.

Federal Incorporation

If your organization isn't incorporated under provincial legislation, then it may well be incorporated under federal legislation.

If you find that your organization is incorporated under the current federal legislation (see Note 1 on page 4.) then the following applies:

Canada Corporations Act Part II – Policy Statement 13.9

Surrender of Charter Pursuant to Subsection 32(1)

(www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs03448.html)

The purpose of this policy is to help submit an application, pursuant to subsection 32(1) to surrender the charter of a not-for-profit corporation under Part II of the *Canada Corporations Act* (CCA). Subsection 32(1) applies to a corporation that has been operational. Subsection 32(2) applies to a corporation that has not gone into *bona fide* operation or has been inoperative for three or more consecutive years. In both situations, the corporation is required to have no debts, liabilities or other obligations, or to have provided for all debts, liabilities or other obligations.

If applicable, read this policy carefully and comply with all requirements.

Or

Canada Corporations Act Part II – Policy Statement 13.10

Surrender of Charter Pursuant to Subsection 32(2)

(www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs03439.html)

The purpose of this policy is to help organizations submit an application, pursuant to subsection 32(2), to surrender the charter of a not-for-profit corporation under Part II of the *Canada Corporations Act* (CCA). Subsection 32(2) applies to a corporation that has not gone into *bona fide* operation or has been inoperative for three or more consecutive years. In both situations, the corporation is required to have no debts, liabilities or other obligations, or to have provided for all debts, liabilities or other obligations.

If applicable, read this policy carefully and comply with all requirements.

General Process

This suggested process generally addresses the steps for dissolving. However you must always bear in mind what your organization's bylaws and the applicable statutes say.

Who makes the decision to voluntarily cease the operations of the organization?

- It is the general membership that has the authority to dissolve the organization.
- The board of directors should call a special general meeting according to the regulations and procedures in the bylaws.
- At this special general meeting a motion to dissolve the organization must be passed at a general meeting according to the regulations of the bylaw. This will include the required **notice for the meeting**, the **quorum** and **how many votes are required** to pass a motion.
- If you have classes of membership, each class needs to pass the special resolution for dissolution, even if that class cannot vote at regular meetings of the society.
- The board of directors acting on the vote(s) takes the steps necessary to dissolve the organization. Ensure that there is documentation/minutes to this effect. The organization should no longer carry out any business except to the extent necessary for the liquidation of the corporate entity.

Reconciling Liabilities and Assets

Arrangements must be made to address all the liabilities (amounts owing) and assets (cash, property and equipment) before taking any further action towards dissolution. Of course, you are going to have to pay any monies that the organization owes and address any outstanding liabilities. Most bylaws will set out how assets are to be distributed.

- Follow your organization's bylaws when you dispose of any assets.
- If your bylaws do not indicate where the assets of the organization are to go upon dissolution, the general principal is to disperse to a group with a similar set of objectives as the organization that is dissolving. It is not recommended that the bylaws name a specific organization to receive the assets.
- Alberta Gaming and Liquor Commission (AGLC) (<http://aglc.ca/>) and the Canada Revenue Agency (CRA) (www.cra.gc.ca/chrts-gvng/menu-eng.html) have definitions of who an eligible donee (www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-e09-eng.html) is in relation to depositing of assets acquired under their regulations



Equipment purchased with money earned from gaming revenue needs to have that asset or the funds from the sale given to an organization that meets the AGLC's definition of charitable. The same is true for registered charities. You must follow the rules set out by the CRA. See information under section title "Registered Charities" for disposition of the assets of a charity.

- If you are unsure who qualifies as an eligible donee, contact the appropriate agency for their specific guidelines.

Remember no individual member of the organization can receive any of the assets or profit from the dissolution of the organization.

Statutory Liabilities

The board needs to address all staffing issues that arise from dissolution. Use the organization's policy and employment standards in dealing with the release and compensation of staff. If no policies exist, check the Alberta Employment Standards Code (www.canlii.org/en/ab/laws/stat/rsa-2000-c-e-9/latest/rsa-2000-c-e-9.html) to ensure that all requirements have been met.



The board is responsible for ensuring that the organization meets all its statutory obligations. The board should be aware of all legislation (provincial and federal) that directly affects the organization. Perhaps the most important statute to consider is the *Income Tax Act*.

What Happens in the Event of Bankruptcy?

Like liquidation or dissolution, bankruptcy can be either voluntary or compelled. If your organization is forced into bankruptcy or voluntarily chooses it, then the **bankruptcy process takes precedence and must happen first** before anything else is done under the statute which you are incorporated.

A non-profit organization can file for bankruptcy. If bankruptcy is declared, the trustee takes possession of all of the organization's assets and deals with all of the creditors. The directors co-operate with the Trustee in Bankruptcy and might assist, but are relieved of their operating duties and dealing with creditors.



This is not an easy process to undertake. You may want to seek professional assistance with this process.

For general information on bankruptcy see links in "Additional Resources"

Registered Charities

Upon dissolution, a registered charity is required to distribute its remaining assets to other registered charities. If you are a charitable organization as defined by the Canada Revenue Agency, these are the actions that you need to take.

Write to CRA to request revocation.

- a. Follow the requirements provided by CRA in the response to your revocation request.
- b. Ensure that you disperse your organization's assets according to CRA requirements (see Summary Policy CSP - D15 www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-d15-eng.html (Dissolution clause) and related polices. Your organization is liable to pay a revocation tax (www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-r24-eng.html) unless you transfer the organization's assets to an eligible donee (www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/csp/csp-e09-eng.html) as defined by the *Income Tax Act*.
- c. You will receive a *Notice of Intention to Revoke a Charity's Registration* (Form T2051A) advising your organization of the official revocation date by registered mail. Complete the T2046 (www.cra-arc.gc.ca/E/pbg/tf/t2046/README.html) and return it to CRA including the final financial statements within one year of receiving the *Notice of Intention to Revoke*.
- d. A notice will be published in the *Canada Gazette* (www.gazette.gc.ca/rp-pr/p1/2008/2008-02-16/html/notice-avis-eng.html) and a listing will be put on the CRA website.



You must still complete the process outlined for dissolution provincially or federally, whichever is applicable.

Go to the section on "General Process" and follow the steps outlined.

Forms

Provincial

Voluntary dissolution requires that notice of the organization's intention to surrender its incorporation certificate be provided to the Corporate Registry for a society of Part 9 Non Profit Company. This means you must complete the form "Articles of Dissolution", *Business Corporations Act* Sections 211 and 212.

- This form is available online at www.servicealberta.gov.ab.ca/840.cfm
- Complete sections 1, 2, 3, and 5 of the form; most organizations are not dissolved under Section 212 of the *Business Corporations Act* so you do not need to complete section 4.
- For section 3 of the form, you will only need to check boxes (a) and (b) unless you are dissolving under Section 212.

You should receive a Certification of Dissolution from Corporate Registries. Contact Corporate Registries (www.servicealberta.gov.ab.ca/contact.cfm) to find out the "turn around time" for the certificate.

Federal

You must complete the form called "Dissolve a Corporation". This form is available online at the Corporations Canada Online Filing Centre at www.ic.gc.ca/app/scr/cc/CorporationsCanada/hm.html?locale=en

Books and Records

Under both the *Income Tax Act* and your organization's incorporating statute the following steps must be taken.

- Arrange for the storage of the records and document of the organization. This information is required for the Articles of Dissolution Form. The form is available from www.servicealberta.gov.ab.ca/pdf/Forms/REG3038.pdf
- Books and Records include records of meetings, the general ledger, all governing documents (objectives and bylaws), financial statements, invoices/ vouchers, T3010's for a CRA registered charity, any any other accounting records and books. See more information at www.cra-arc.gc.ca/tx/bsnss/tpcs/kprc/menu-eng.html
- Books and records must be kept for six years according to the Alberta *Business Corporations Act* and two years for the federal *Income Tax Act* (see Books and Records – Retention/Destruction at www.cra-arc.gc.ca/E/pub/tp/ic78-10r5/)

Additional Resources

Alberta Corporate Registries

www.servicealberta.gov.ab.ca/Corporate_Registries.cfm

Canada Revenue Agency– Charities Directorate

www.cra-arc.gc.ca/chrts-gvng/chrts/menu-eng.html

Corporations Canada – Create/Maintain a Not-for-Profit Organization

https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs03925.html

Organizing your Corporate Documents ©2009, The Muttart Foundation

www.muttart.org/sites/default/files/downloads/publications/legal_and_ethical_1_organizing.pdf

You can download provincial legislation from the Alberta Queen’s Printer Laws

Online Catalogue site at www.qp.alberta.ca/Laws_Online.cfm

The *Canada Corporations Act* is available online at

www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/h_cs02150.html

Canadian Legal FAQs - Bankruptcy

www.law-faqs.org/wiki/index.php/Bankruptcy



This publication is available for download at www.charitycentral.ca/node/622

For more information, contact:

Diane Rhyason, Executive Director
Centre for Public Legal Education Alberta
#800, 10050 – 112 Street
Edmonton, AB T5K 2J1
Phone: 780.451.8764
Fax: 780.451.2341
Email: info@cplea.ca
Web: www.cplea.ca