

MEMORANDUM

I. Dissolution after Commencement of Business

Note: Once the corporation has commenced business, the election to dissolve must originate with a resolution of the board of directors recommending voluntary dissolution [15 Pa. Cons. Stat. §1972].

1. Advise directors to call directors' meeting
2. Prepare resolution of directors that [15 Pa. Cons. Stat. §1972]
3. Have resolution submitted to shareholders entitled to vote on dissolution at meeting [15 Pa. Cons. Stat. §1974].

Note: The directors' resolution may be submitted to the shareholders at either their regular meeting or at a special meeting of the shareholders entitled to vote on the question [15 Pa. Cons. Stat. §1972].

- a. If special meeting of shareholders is to be called to consider resolution:
 - i. Draft notice of meeting stating that purposes include discussion of advisability of voluntary dissolution (*see* 15 Pa. Cons. Stat. §1973(a)).
 - ii. Give notice to each shareholder of record entitled to vote on resolution at least ten days prior to meeting date [*see* 15 Pa. Cons. Stat. §§1704(b)(1), 1973(a)].
- b. If resolution is to be considered at regular meeting of shareholders, state in notice of meeting that purposes include discussion of advisability of voluntary dissolution (15 Pa. Cons. Stat. §1973(a)).

Note: Notice of the meeting must be given at least ten days before the meeting is called [15 Pa. Cons. Stat. §1704(b)].

4. Prepare Shareholders' resolution for dissolution to be adopted if resolution receives both of following [15 Pa. Cons. Stat. §1974(a)]:
 - a. Majority of votes cast by all shareholders entitled to vote on issue.
 - b. If any class of shares is entitled to vote on resolution as a class, majority of votes cast in each class vote.
5. After winding up proceedings (see next section) are completed, prepare articles of dissolution [15 Pa. Cons. Stat. §1977(a)].
6. Have articles of dissolution signed by one duly authorized corporate officer [15 Pa. Cons. Stat. §1109(a)].

7. Deliver following to Department of State, Corporation Bureau, 308 North Office Building, Harrisburg, PA 17120-0029 [15 Pa. Cons. Stat. §1977(b)]:
 - a. Original of articles of dissolution.
 - b. Filing fee [see 15 Pa. Cons. Stat. §153(a)(1)].
 - c. Tax clearance certificates evidencing payment of all taxes and charges required by law [see §§29.140, 29.331] Note: this step takes substantial amount of time for turn around.
 - d. Any necessary governmental approvals.
 - e. To receive confirmation of file date prior to receiving microfilmed original of articles from Department of State, either of the following:
 - i. Self-addressed, stamped postcard with filing information noted.
 - ii. Self-addressed, stamped envelope with copy of filing document.

Note: If the articles meet the state's filing requirements [see 15 Pa. Cons. Stat. §135], the Department of State will file the articles, certify that they have been filed by endorsing that fact and the date of filing on the articles, and return the microfilmed original to the corporation [15 Pa. Cons. Stat. §136(a). On the filing of the articles of dissolution by the Department of State, the existence of the corporation ceases [15 Pa. Cons. Stat. §1977(c)].
8. Include microfilmed original returned from Department of State in corporate records.

II. Procedural Guide to Winding Up of Business Corporation

Note: In a voluntary dissolution, the board of directors of a business corporation has full power to wind up and settle the affairs of the corporation [15 Pa. Cons. Stat. §1975(a)].

1. After approval by shareholders of proposal that corporation voluntarily dissolve, advise corporate officials to cease to carry on corporate business except for activities necessary for winding up of business [see 15 Pa. Stat. §1975(c)].
2. Prepare notice of winding up proceedings [15 Pa. Cons. Stat. §1975(c)].
3. Mail notice of winding up proceedings by certified or registered mail to following:
 - a. Each known creditor and claimant of corporation.
 - b. Each municipality in which corporation's registered office or principal place of business in Pennsylvania is located.
4. Arrange for notice of winding up to be published once in county in which corporation's registered office is located in two newspapers published in English language [15 Pa. Cons. Stat. §§1103, 1975(b)].

Note: One newspaper must be a newspaper of general circulation, and the other the legal newspaper, if any, has been designated by the rules of court for the publication of legal notices. Otherwise, both newspapers must be newspapers of general circulation published in the county in which the registered office is located. If there is only one newspaper of general circulation published in any county, publication in that paper is sufficient [15 Pa. Cons. Stat. §1103].

5. File affidavit evidencing mailing and publication in corporate minute book.
6. Apply for judicial supervision of liquidation, if desired [see 15 Pa. Cons. Stat. §1976].

Note: The board of directors has the right to petition the court, at any time during winding up proceedings, to have the proceedings continued under court supervision. The petition must be made to the court of common pleas of the county in which the registered office of the corporation is located [15 Pa. Cons. Stat. §§1103, 1976].

7. Advise directors to adopt resolution implementing winding up and liquidation [see §29.230].
8. Have directors adopt resolution proposing plan of liquidation.
9. Arrange for proposed plan of liquidation to be approved by shareholders, either by their written consent [see §29.233] or by separate resolution.

Note: To save time and expense, the plan of liquidation may be included in the documents authorizing dissolution (that is, the shareholders' written consent or the directors' and shareholders' resolutions), rather than in separate consents or resolutions at this stage.

10. Have corporation collect all sums due or owing it [see 15 Pa. Cons. Stat. §1975(c)].
11. Have corporation collect any amounts remaining unpaid on subscriptions for shares.
12. Have corporation sell and convert into cash corporate assets as necessary to pay corporate debts and liabilities [15 Pa. Cons. Stat. §1975(c)].
13. Determine amount of recapture of investment credit on sale of property [see former I.R.C. §47].

Note: Although former Internal Revenue Code 47 was repealed by the Revenue Reconciliation Act of 1990, the former section may still be applicable to certain corporations [Pub. L. No. 101-508, §§11801(c)(8)(A), 11821(b)]. Under a savings provision, (1) if any of the provisions amended or repealed by the Act applied to (a) any transaction occurring before the date of enactment of the Revenue Reconciliation Act of

1990, (b) any property acquired before the date of the enactment, or (c) any item of income, loss, deduction or credit taken into account before the date of enactment; and (2) the treatment of the transaction, property or item under the former provision would (without regard to the amendments made by the Act) affect liability for tax for periods ending after the date of enactment of the Act, then nothing in the amendments are to be construed to affect the treatment of the transaction, property or item for purposes of determining liability for tax periods ending after the date of enactment of the Revenue Reconciliation Act of 1990 [Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, §11821(b)].

14. If real property sold was subject to fast depreciation, determine amount of recapture of depreciation as applicable [*see* I.R.C. §1250].
15. Determine amounts and validity of all debts, liabilities and obligations of corporation, and as to each, determine whether it will be paid, rejected or assumed by shareholders.
16. Have shareholders execute written assumption agreements for any liabilities to be assumed.
17. Have corporation pay, or make adequate provision for discharge of, all debts, liabilities and obligations deemed payable [15 Pa. Cons. Stat. §1975(c); *see also* 15 Pa. Cons. Stat. §1977(a)(5)(i)].

Note: At this point, the corporation may elect to proceed under Subchapter H of the Business Corporation Law of 1988 [15 Pa. Cons. Stat. §§1991-1998], relating to post-dissolution claims. That election constitutes the making of adequate provision for the liabilities of the corporation [*see* 15 Pa. Cons. Stat. §1977(a)(5), (6)].

18. If corporate property and assets are insufficient to satisfy and discharge corporate debts, liabilities and obligations, apply property and assets fairly and equitable, as far as they will go, to payment [*see* 15 Pa. Cons. Stat. §1975(c); *see also* 15 Pa. Cons. Stat. §1977(a)(5)(ii)].
19. Select one of following methods for handling any claim contested by creditor:
 - a. Delay distribution of assets to shareholders until contest has been finally resolved.
 - b. Deposit sufficient funds in escrow to provide for payment, and proceed with distribution procedure.
20. Determine value of assets available for distribution to shareholders after payment and settlement of all debts, liabilities and obligations of corporation.
21. Determine amount to be distributed to each shareholder, taking into account:

- a. Liquidation preferences, if any, entitling certain shareholders to be paid amount of their preferences before distribution to remaining shareholders.
 - b. Cash value of any assets to be distributed in kind.
22. Prepare and execute all documents necessary to assign corporate assets to shareholder.
23. Distribute assets to shareholders [*see* Pa. Cons. Stat. §1975(c)].
24. Report and deliver to Secretary of Revenue portion of assets to be distributed to shareholder who is unknown or cannot be found and who does not claim distributive portion within two years of date for final distribution [*see* 72 Pa. Stat. Ann. §§1301.1, 1301.7, 1301.11, 1301.13].
25. Obtain written receipt from each shareholder acknowledging receipt of assets, and obtain executed assumption of liability from each shareholder who is assuming corporate liabilities.
26. Complete procedures for obtaining tax clearance certificates.

Note: The Department of State will not accept the articles of dissolution for filing unless they are accompanied by the required tax clearance certificates [*see* 15 Pa. Cons. Stat. §§134, 1977(b)].
27. Prepare and file following federal information returns:
 - a. Internal Revenue Service (IRS) Form 966 within thirty days after adoption of resolution or plan to dissolve corporation [*see* I.R.C. §6043(a)].
 - b. On or before February 28 of year following calendar year in which distributions are made to shareholders pursuant to dissolution proceedings, IRS Forms 1099-DIV and 1096 for each shareholder receiving distributions totaling \$600 or more in preceding calendar year [Treas. Reg. §1.6043-2(a)].
28. Obtain and cancel all outstanding stock certificates.
29. If corporation is authorized to do business under laws of another state, implement all applicable procedures under those laws for surrender of corporation's certificate of authority.
30. Revise or cancel corporation's insurance policies.
31. Arrange for storage of corporate records.