

Closing the Doors: FAQs for New York Nonprofits Contemplating Dissolution

When a nonprofit corporation stops conducting operations, it will need to go through a formal dissolution process in order to end its corporate existence. For a charitable nonprofit incorporated in New York, the dissolution process can be quite involved, particularly if the organization has assets that it needs to distribute. The organization may need to seek several rounds of approval from the New York State Attorney General’s Charities Bureau, obtain clearances from state and local tax authorities, file a certificate of dissolution with the New York Department of State, and submit final filings to the Internal Revenue Service (“IRS”) and state charities regulators. Nonprofit corporations formed in other states may be able to go through a shorter process. This legal alert describes the process of dissolving a charitable New York nonprofit corporation formed under the New York Not-for-Profit Corporation Law (“N-PCL”).¹

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¹ Non-charitable New York nonprofit corporations may also have to follow the procedures in this legal alert if they have assets required to be used for specific purposes. There are additional or alternative methods for closing organizations formed under other New York laws. For example, religious corporations seeking to dissolve will follow procedures governed by Section 18 of the Religious Corporations Law. See <https://perlmanandperlman.com/the-end-dissolving-new-york-nonprofit-corporations/>.

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Overview

1. Why would a nonprofit consider dissolving?

Nonprofit corporations decide to dissolve for many reasons. They may decide that they have achieved their mission and are no longer needed, or that it is no longer feasible to carry out the mission. They may be prompted by financial considerations, such as an inability to obtain necessary funding to continue programs or meet financial obligations to staff, consultants, and vendors.

A properly handled dissolution achieves at least two important goals. First, it puts the corporation beyond the reach of creditors and other claimants. Second, it allows a nonprofit to fulfill its legal obligation to properly distribute the corporation’s assets, if any remain. While there are several legal alternatives to closing a nonprofit, including bankruptcy, this legal alert provides key considerations for New York nonprofit corporations considering dissolution.

2. When should nonprofits consider the processes required to dissolve?

Dissolution is typically a last resort, after an organization has considered and rejected alternative ways to allow the organization to continue operating.² Dissolution is appropriate when the nonprofit’s leadership has determined that it is in the best interest of the nonprofit’s purposes to cease operations. It is important to consult with an attorney to discuss whether dissolution is appropriate for your entity.

3. What types of dissolutions are available to New York nonprofits?

The N-PCL sets out two options for voluntary dissolution: seeking consent from a New York court (known as judicial dissolution), or seeking consent from the Office of the Attorney General’s Charities Bureau (known as non-judicial dissolution). If the organization is insolvent (meaning that it cannot meet all of its liabilities in the ordinary course of business), then it is not eligible for non-judicial dissolution.³

Non-judicial dissolutions are generally easier to accomplish than judicial dissolutions, but both require significant time and resources. Both methods involve a number of steps designed to secure the approval of all necessary state agencies with oversight of the not-for-profit corporation. The process can take over a year from the initial decision of the Board to dissolve until the final dissolution of the corporation.

² For a discussion of some alternatives to dissolution, see our legal alert on strategic alliances: https://lawyersalliance.org/userFiles/uploads/legal_alerts/Structuring_a_Strategic_Alliance_PPE_Legal_Alert.pdf. In addition, small business reorganization rules may be applicable: see <https://www.pillsburylaw.com/en/news-and-insights/profit-motive-not-required-for-subchapter-v-eligibility.html>.

³ N-PCL § 1102(a)(1)(A).

Although this legal alert discusses the dissolution of charitable nonprofits, note that non-charitable not-for-profit corporations with restricted assets must also obtain the Charities Bureau's approval when dissolving.⁴

Judicial Dissolution

4. When is judicial dissolution appropriate, and what steps are required to initiate the process?

A nonprofit corporation with liabilities exceeding assets at the time of dissolution *must* file for a judicial dissolution, while a nonprofit corporation with assets exceeding liabilities has the *option* to present a petition for judicial dissolution. Depending on the geographic location, a voluntary judicial dissolution may be more time-consuming and costlier than a non-judicial dissolution as it requires approval from the Supreme Court ("the Court") *and* the Attorney General. However, this is not always the case.

For a judicial dissolution, the corporation submits a petition for approval of its Plan of Dissolution ("Plan") to the Court in the judicial district where the corporation's principal office is located. The corporation has the option to submit the petition to the Attorney General for review prior to filing in Court, or it may submit the petition to the Court on notice to the Attorney General.⁵

In practice, the Attorney General's Office prefers when applicants submit draft papers to the Attorney General before submitting them to the Court. This allows applicants to resolve concerns raised by the Attorney General and, in most cases, avoids the Attorney General's Office objecting to the Plan.⁶

Although this legal alert exclusively focuses on *voluntary* dissolutions, note that the Attorney General may also bring an action for a judicial dissolution against nonprofits out of compliance with state law.⁷

5. Are there additional steps to take if the nonprofit is insolvent?

As mentioned, a not-for-profit corporation that is insolvent, i.e. with liabilities exceeding assets, can only apply for judicial dissolution; it is not permitted to apply for non-judicial dissolution. In addition, if a not-for-profit corporation is insolvent, its creditors must receive notice of the judicial dissolution.⁸ In some cases, bankruptcy may be appropriate. Insolvent nonprofits should consult with counsel to identify the best path forward based on the specific circumstances.

⁴ "The plan of dissolution and distribution of assets shall have annexed thereto the approval of the attorney general in the case of a charitable corporation, and in the case of any non-charitable corporation which at the time of dissolution holds assets legally required to be used for a particular purpose." N-PCL § 1002(d)(1).

⁵ N-PCL § 1002(d)(3). A petition to the Court for an order approving a Plan should be submitted on 10 days' notice to the Attorney General.

⁶ "Voluntary Dissolution of Not-for-Profit Corporations with Assets," Office of the New York State Attorney General, Charities Bureau, Issued 2018, Revised 2024, https://ag.ny.gov/sites/default/files/publications/dissolution_with_assets.pdf, page 9. If the application for approval of the Plan is made to the Court on notice to the Attorney General and the Attorney General has no objection to the Plan, the nonprofit's attorney will receive written confirmation that will waive service of the Petition. The Petition can then be submitted to the Court. If a hearing or other proceeding is scheduled, the Petitioner must give notice of such proceeding to the Attorney General and submit a copy of the signed order to the Attorney General.

⁷ N-PCL § 1101.

⁸ N-PCL § 1104(c).

Non-judicial Dissolution

6. How can a nonprofit with assets that exceed liabilities initiate a non-judicial dissolution (aka Voluntary Dissolution with Assets)?

The first step in the non-judicial dissolution process is to obtain the Board of Directors' approval of a Plan of Dissolution.⁹ A sample Plan is available [here](#). When the corporation has assets, the Plan must include the value of the assets, whether any asset must be used for a particular purpose, and how those assets will be distributed. Additionally, if formation of the corporation required approval from any governmental body or officer, the corporation must secure the governmental agency or officer's written approval of the Plan.¹⁰

The Plan must be approved by a vote of two-thirds of the directors, or by the number of directors required under the corporation's certificate of incorporation or bylaws.¹¹ If the number of remaining directors has fallen below the threshold required to constitute a quorum, the remaining directors must unanimously approve the Plan.¹²

If the corporation does not have voting members, the Plan is deemed authorized upon adoption by the Board.¹³ However, if the corporation has voting members, extra steps are required.

7. What is the procedure for adopting the Plan of Dissolution if the nonprofit is governed by members?

If the corporation has voting members, the Board must adopt the Plan as described above and then submit it to the members for a vote. Approval by the members requires one of the following: 1) a vote of at least two-thirds of the members approving the Plan, 2) a vote by the number of members required under the certificate of incorporation or bylaws, or 3) the unanimous written consent of all members.¹⁴

8. What documents should a nonprofit submit to move forward with a non-judicial dissolution, and what happens next?

After the dissolution has been authorized by the Board (and by the members, if required), the process that it must follow depends on the size of the corporation's remaining assets and liabilities, as we explain in the next few paragraphs.

a. Corporation with assets over \$25,000 or liabilities over \$10,000

If the corporation has assets over \$25,000 or liabilities over \$10,000, it must submit a Verified Petition ("Petition") to the Attorney General for approval of the Plan along with necessary exhibits.¹⁵

If the entity is a charitable corporation with assets exceeding \$25,000. The Attorney General's Office will determine if any additional material is required, if there are any objections to the Plan, or if any

⁹ N-PCL §§ 1001(a). A sample Plan is available in Appendix A beginning on page 12: https://ag.ny.gov/sites/default/files/publications/dissolution_with_assets.pdf.

¹⁰ N-PCL § 1002(c). To determine whether any government approvals are necessary, see N-PCL §§ 404(b)-(v).

¹¹ N-PCL § 1002(a)(1)(i) and (ii).

¹² N-PCL § 1002(a)(1)(iii).

¹³ N-PCL § 1002(b).

¹⁴ N-PCL §§ 614(a) and 1002(a)(2).

¹⁵ N-PCL § 1002(d)(2).

individuals or entities should receive notice of the Petition. This review stage often takes months or even years and can require considerable dialogue with the Charities Bureau.

When developing the Plan, the nonprofit must take into account its obligation to distribute its assets for 501(c)(3) purposes. This usually entails distributing assets to one or more charitable organizations engaged in substantially similar activities.¹⁶ If the corporation holds assets for a specific purpose required by any gift instrument, the recipient entity must agree to the same restriction.¹⁷ Other distribution rules contained in the certificate of incorporation, bylaws, or other documents may also apply. The Charities Bureau will pay close attention to the nonprofits or other recipients to which the corporation proposes to distribute the remaining charitable assets. The corporation must submit the governing documents and other information about each proposed recipient.¹⁸

The Petition must be verified under penalties for perjury and the following exhibits must be attached:

- 1) the Plan with required information and extensive documentation concerning proposed recipients of the remaining assets;
- 2) copies of the Board's resolution approving the Plan and, if applicable, the members' resolution;
- 3) copies of all required governmental approvals;
- 4) copies of the corporation's Certificate of Incorporation and all amendments;
- 5) a copy of the corporation's current bylaws;
- 6) a financial statement covering the period from the date of the corporation's most recently filed IRS Form 990 through the date of the petition; and
- 7) a proposed Attorney General's Approval (sample available [here](#)).¹⁹

After the review is complete, the Attorney General will provide written confirmation ("Attorney General Approval"). However, the Attorney General may decline to approve the Petition. If that happens, the corporation can revise the Plan or file the Petition with the Court directly with notice to the Attorney General. See FAQ #4 about judicial dissolution for details.

b. Corporation with assets under \$25,000 and liabilities of \$10,000 or less

As opposed to the procedures for the dissolution of a corporation with assets, if a corporation does not have assets exceeding \$25,000 or liabilities exceeding \$10,000, the Attorney General's Office does not need to review or approve the Plan prior to its execution.²⁰ Also, the corporation may not need to attach to the Petition all of the documents that are usually required.

A simplified dissolution procedure is available for corporations that meet three requirements:

¹⁶ N-PCL § 1001(d)(3). For a definition of charitable purposes, see N-PCL § 201(b).

¹⁷ N-PCL § 1001(d)(4).

¹⁸ For a list of the specific documents that are required, see "Voluntary Dissolution of Not-for-Profit Corporations with Assets," pages 12-13.

¹⁹ "Voluntary Dissolution of Not-for-Profit Corporations with Assets," pages 7-8. A sample is available in Appendix C, beginning on page 22: https://ag.ny.gov/sites/default/files/publications/dissolution_with_assets.pdf.

²⁰ "Voluntary Dissolution of Not-for-Profit Corporations with No Assets," Office of the New York State Attorney General, Charities Bureau, Issued 2018, Revised 2024, https://ag.ny.gov/sites/default/files/regulatory-documents/dissolution_without_assets.pdf.

- a. Wind-up expenses and liabilities: the corporation must have 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), and liabilities which do not exceed \$10,000.²¹
- b. The corporation may not have any remaining assets exceeding the value of any reserve fund that requires distribution to another tax-exempt organization.
- c. The corporation must have sufficient funds to pay all liabilities not exceeding \$10,000.

A corporation doing a simplified dissolution should file its Petition and Plan of Dissolution with the Attorney General's Office after it has already carried out the Plan, satisfied any of its remaining debts, and prepared a final financial report indicating a zero balance.²²

If a nonprofit formed but never truly started operating, the Charities Bureau does not necessarily require the extensive list of documents mentioned above. For example, if a nonprofit incorporated but never elected its Board of Directors or adopted bylaws and a conflict of interest policy, the nonprofit may be able to work out a procedure in consultation with the Charities Bureau rather than adopting governance documents as a formality before dissolving. The Charities Bureau may also allow the organization to dissolve without registering with the Charities Bureau if the organization was not required to register (i.e., did not solicit contributions in excess of \$25,000). If this applies to your organization, you should file the organizational documents you do have and include a financial statement showing you never received \$25,000, which would have triggered the nonprofit's obligation to register.

Note that the dissolving corporation cannot transfer or donate its remaining assets to another tax-exempt organization in order to qualify for a simplified dissolution. However, organizations can spend down in the ordinary course of business. For example, grant-making nonprofits can spend down their assets by making charitable grants to other tax-exempt organizations in the ordinary course of their operations.²³

9. What steps must a nonprofit take after it submits the Plan and Petition to the Attorney General?

Corporations with assets to distribute that receive approval to carry out the Plan must complete additional "wind-up" tasks before submitting a final Petition to the Attorney General for Approval of the Certificate of Dissolution. Within 270 days after the Attorney General or Court's approval of the Plan, the corporation must close its business in accordance with the Plan.²⁴ Key wind-up tasks include fulfilling or discharging contracts, discharging or paying liabilities, distributing assets, and doing any other appropriate acts to liquidate the corporation. Assets to be distributed to creditors who are unknown or

²¹ N-PCL § 1003(a)(8).

²² "Voluntary Dissolution of Not-for-Profit Corporations with No Assets," Office of the New York State Attorney General, Charities Bureau, Issued 2018, Revised 2024, https://ag.ny.gov/sites/default/files/regulatory-documents/dissolution_without_assets.pdf, page 6.

²³ See "Frequently Asked Questions For Charities, Non-Profits & Fundraisers," Office of the New York State Attorney General, <https://ag.ny.gov/resources/organizations/charities-non-profits-fundraisers/charities-non-profits-fundraisers-faqs>.

²⁴ N-PCL § 1002-A.

cannot be found must ultimately be paid to the state comptroller.²⁵ After the corporation's assets have been fully distributed, the corporation must prepare a final financial report showing no assets or liabilities.²⁶

10. What steps must a nonprofit complete after carrying out its Plan of Dissolution?

After the Plan has been fully authorized and carried out, the corporation must complete a Certificate of Dissolution and submit a Verified Petition to the Attorney General for Approval of the Certificate of Dissolution.²⁷ Along with the Certificate of Dissolution, the corporation must include the final financial report and any required governmental approvals.²⁸ If the Attorney General Petition and the Certificate of Dissolution are acceptable, the Attorney General will endorse the submitted Certificate of Dissolution.²⁹

Notice to Local, State, and Federal Authorities

11. Does a nonprofit need to notify New York State and New York City agencies about its decision to dissolve?

Yes. Once the Attorney General endorses the Certificate of Dissolution, the corporation must request a Consent to Dissolution of a Corporation from the New York State Department of Taxation and Finance ("Tax Department").³⁰ The process and documentation needed depends on whether the corporation had previously applied for and been granted state tax-exempt status.³¹ In addition, if a dissolving corporation has done business in New York City and thus incurred tax or other liabilities under the New York City Administrative Code, it will need consent from the Commissioner of Finance of New York City.³²

After obtaining consent from the Tax Department, the organization must file the Consent to Dissolution of a Corporation and the Certificate of Dissolution with the New York State Department of State, along with the required fee.³³

²⁵ N-PCL § 1002-A(d). The corporation may give notice to its creditors and claimants by publication in a newspaper for two consecutive weeks, and by mailing the same notice to known creditors or claimants. Creditors and claimants generally have at least six months to present claims. N-PCL § 1007(a).

²⁶ N-PCL § 1003(c). Note that properties can generally only be distributed after the corporation has paid off all of its debts and liabilities.

²⁷ N-PCL §§ 1003(a). See the form Certificate of Dissolution to the Department of State: <https://dos.ny.gov/system/files/documents/2018/12/1561-f.pdf>.

²⁸ N-PCL § 1003(c).

²⁹ "Voluntary Dissolution of Not-for-Profit Corporations with Assets," Office of the New York State Attorney General, Charities Bureau, Issued 2018, Revised 2024, https://ag.ny.gov/sites/default/files/publications/dissolution_with_assets.pdf, page 10.

³⁰ N-PCL § 1004(a). See instructions and forms for securing the Tax Department's consent: https://www.tax.ny.gov/bus/doingbus/vol_dissolution.htm.

³¹ "Voluntary Dissolution of Not-for-Profit Corporations with Assets," Office of the New York State Attorney General, Charities Bureau, Issued 2018, Revised 2024, https://ag.ny.gov/sites/default/files/publications/dissolution_with_assets.pdf, pages 10-11.

³² N-PCL § 1004(b). See the form Request for Consent to Dissolution: https://www1.nyc.gov/assets/finance/downloads/pdf/collections/request_dissolution.pdf.

³³ See instructions for filing with the Department of State: <https://dos.ny.gov/certificate-dissolution-domestic-not-profit-corporations>.

12. Does a nonprofit need to notify the IRS about its decision to dissolve?

If the corporation has 501(c)(3) tax-exempt status and has an annual filing requirement, it must file a final IRS tax return, such as Form 990-EZ, Form 990, or Form 990-PF, alongside copies of the Board resolution to dissolve, the Plan, and Certificate of Dissolution. When completing Form 990 or Form 990-EZ, the corporation should check the “Terminated” box in the header area on Page 1 of the return and include a completed Schedule N (Liquidation, Termination, Dissolution, or Significant Disposition of Assets).³⁴ The due date for an organization’s final filing is calculated as four months and 15 days from the termination date, which is the date the organization files its Certificate of Dissolution with the Secretary of State.³⁵

Form 990-N is a “notice” rather than a return, and the IRS requests that the nonprofit submit its final 990-N as soon as reasonably practicable.³⁶ When completing 990-N, answer “yes” in response to the question, “Has your organization terminated or gone out of business?” under “Organization Details.”³⁷

The IRS has specific instructions for entities that did not have annual filing requirements [here](#).

This alert was written by Equal Justice Works Legal Fellow Frances Tyler, with assistance from Legal Intern Evan Rhee. It is meant to provide general information only, not legal advice. If you have any questions about this alert please visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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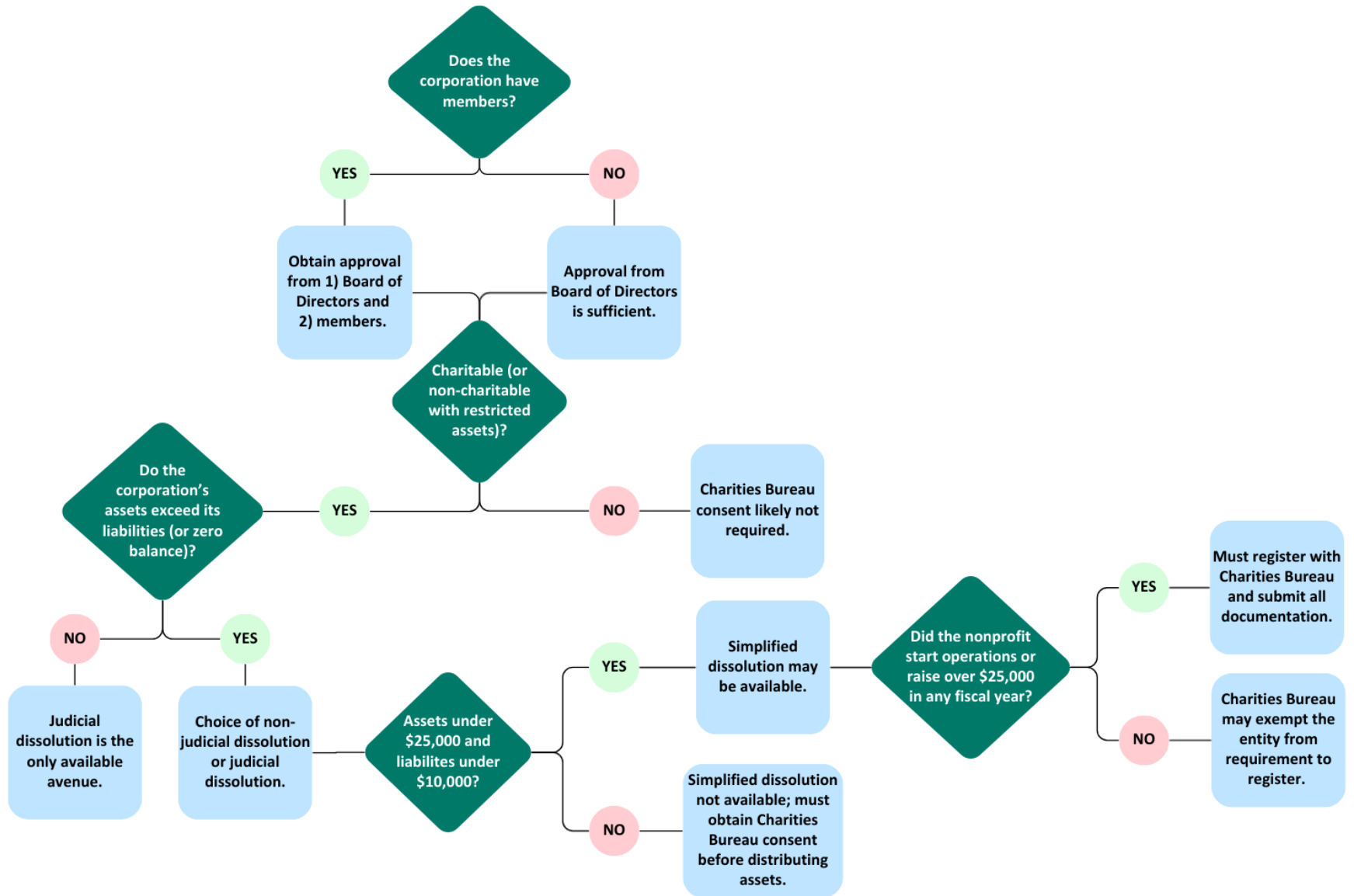
³⁴ “Termination of an exempt organization,” Internal Revenue Service, <https://www.irs.gov/charities-non-profits/termination-of-an-exempt-organization>. See Schedule N available here: <https://www.irs.gov/charities-non-profits/form-990-schedules-with-instructions>. The IRS notes, “Terminating will not cause you to have a filing requirement if you are not otherwise required to file an annual return or notice. How you notify the IRS of your termination will depend upon whether you applied for and received a determination of exemption.”

³⁵ “Termination of an exempt organization,” Internal Revenue Service, <https://www.irs.gov/charities-non-profits/termination-of-an-exempt-organization#:~:text=When%20the%20final%20return%20is,its%20next%20normal%20tax%20year.>

³⁶ *Id.*

³⁷ Publication 5248 (Rev. 8-2023), “IRS Form 990-N Electronic Filing System (e-Postcard) User Guide,” <https://www.irs.gov/pub/irs-pdf/p5248.pdf>.

Appendix A: Voluntary Dissolution Decision Tree



Appendix B: Approximate Timelines¹

Timeline for Judicial Dissolution

- Board (and members, if any) adopts Plan of Dissolution
- Gather documentation and prepare Petition
- File Petition with the Supreme Court and submit copies to Attorney General
- Hearing(s)
- Supreme Court issues judgment or final order dissolving corporation and distributing assets in accordance with the Plan of Dissolution included in the Petition
- File final annual return with the IRS

Timeline for Non-Judicial Dissolution²

- Board (and members, if any) adopts Plan of Dissolution
- Gather documentation and prepare Petition (may involve obtaining consent from agencies whose consent was required to form the corporation)
- Submit Petition and all required documentation to the Attorney General
- AG consents
- Carry out the Plan, complete wind up tasks, and settle debts with creditors, if any
- Submit Certificate of Dissolution (COD) and Petition and all required documentation to the Attorney General
- Attorney General endorses COD
- Obtain consent of all required agencies and file COD with the Secretary of State
- File final annual return with the IRS

Timeline for Simplified Dissolution

- Board (and members, if any) adopts Plan of Dissolution
- Carry out the Plan, complete wind up tasks, and settle debts with creditors, if any, to reach a zero balance
- Submit Petition, including COD, and all required documentation to the Attorney General
- Attorney General endorses COD
- Obtain consent of all required agencies and file COD with the Secretary of State
- File final annual return with the IRS

¹ These precise steps may not be required in each case, and organizations are advised to work with counsel.

² See also the timeline listed here, which are only for non-judicial dissolutions: <https://perلمانandperلمان.com/the-end-dissolving-new-york-nonprofit-corporations/>.