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[Chapter] 14

DISSOLUTION

Subchapter
A. Voluntary Dissolution
B. Administrative Judicial Dissolution
C. Judicial Dissolution
D. Miscellaneous

D. Administrative Dissolution

[Subchapter] A

VOLUNTARY DISSOLUTION

§ 14.01101. Dissolution by incorporators or directors.
§ 14.02102. Approval of dissolution.
§ 14.06106. Known claims against dissolved corporation.
§ 14.07107. Other claims against dissolved corporation.
§ 14.08108. Court proceedings.
§ 14.09. Director duties Limitation on director liability.

§ 14.041101. DISSOLUTION BY INCORPORATORS OR DIRECTORS
A majority of the incorporators or directors of a nonprofit corporation that has not commenced activity, or of a membership corporation that has not admitted any members, may dissolve the corporation by delivering to the secretary of state of state for filing articles of dissolution that set forth:

1. the name of the corporation;
2. the date of its incorporation;
3. either:
   (i) that the corporation has not commenced activity; or
   (ii) that the corporation is a membership corporation and has not admitted any members;
4. that no debt of the corporation remains unpaid;
5. that, except as provided in the articles of incorporation or bylaws, the net assets of the corporation remaining after winding up have been distributed to the members, if members were admitted; and
6. that a majority of the incorporators or directors authorized the dissolution.


CROSS-REFERENCES

Claims against dissolved corporation, see §§ 14.061106 and 14.071107.
“Deliver” defined, see § 1.401102.
Dissolution by board of directors and members, see § 14.021102.
Effective date of dissolution, see § 14.031103.
Effect of dissolution, see § 14.051105.
Filing fees, see § 1.22162.
Filing and signature requirements, see § 1.20160.
Incorporators, see § 2.041201.
Initial directors, see § 2.051205.
Revocation of dissolution, see § 14.041104.

OFFICIAL COMMENT
Under the act, a nonprofit corporation is dissolved on the effective date of its articles of dissolution. The act uses the term “dissolution” in this specialized sense, and not to describe the final step in the liquidation of the corporate activities and assets. Section 1105 provides that dissolution does not terminate the corporation’s existence, but that section does require the corporation to wind up its affairs and liquidate.

Section 14.011101 provides a simple method of voluntary dissolution for a nonprofit corporation that has not admitted any members or commenced activity. These provisions are alternative: a corporation may utilize Section 14.011101 if it has not admitted members (even though it has commenced activity) or if it has admitted members but has not commenced activity. Dissolution may be accomplished in either of these situations simply by a majority vote of the incorporators or directors. (See Section 2.05205 and its Official Comment for a discussion of the roles of “incorporators” or “initial directors” in the organization of a corporation.)

This simple method of dissolution is likely to be used by name-holding corporations or by nonprofit corporations formed for the initiation of a new venture when the reasons for the initial creation of the corporation have been completely realized or will never come to fruition.

The form of articles of dissolution provided in Section 14.011101 takes account of the fact that a nonprofit corporation may utilize this section even though it has received contributions from the admission of members or has incurred liabilities either from the commencement of activity without admitting members or from its organization; hence the articles must state that no debts remain unpaid, and that the net assets of the corporation remaining after winding up have been distributed to the members, if members have been admitted, subject to any provision of the articles of incorporation or bylaws restricting the distribution of assets.

The authority of the board of directors under this section may be vested by the articles of incorporation or bylaws in a designated body. See Section 8.12812.

§ 14.021102. APPROVAL OF DISSOLUTION

(a) The board of directors of a membership corporation may propose dissolution for submission to the members by first approving the dissolution.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the members, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members; and

(2) the members entitled to vote must approve the proposal to dissolve as provided in subsection (e).
(c) The board of directors may condition its submission set conditions for the approval of the proposal for dissolution on any basis by the members or the effectiveness of the dissolution.

(d) The nonprofit membership corporation must give notice to each member entitled to vote of the proposed meeting of members. The notice must also state:

1. that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation; and

2. how the assets of the corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.

(e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of members to be present, the adoption of the proposal to dissolve by the members requires the approval of the members at a meeting at which a quorum exists, and, if any class of members is entitled to vote as a separate group on the proposal, the approval of each such separate voting group at a meeting at which a quorum of the voting group exists.

(f) If the nonprofit corporation does not have any members entitled to vote on its dissolution, a proposal to dissolve shall be deemed adopted by the corporation when it has been adopted by the board of directors.

(g) A charitable corporation must give the attorney general notice in the form of a record that it intends to dissolve before the time it delivers articles of dissolution to the secretary of state.


CROSS-REFERENCES

Director standards of conduct, see § 8.30.
Dissolution by consent of members, see § 7.04704.
Effect of dissolution, see § 14.051105.
Notice generally, see § 1.41103.
Notice of members’ meeting, see § 7.05705.
Quorum at members’ meeting, see § 7.25725.
As noted in the Official Comment to Section 1101, a nonprofit corporation is dissolved under the act on the effective date of its articles of dissolution. The act uses the term “dissolution” in this specialized sense, and not to describe the final step in the liquidation of the corporation’s activities and assets. Section 1105 provides that dissolution does not terminate the corporation’s existence, but that section does require the corporation to wind up its affairs and liquidate.

Section 14.021102(b) requires the board of directors, after approving a proposal to dissolve, to submit the proposal to the members entitled to vote thereon, if any, for their approval. When submitting the proposal the board of directors must make a recommendation to the members that the plan be approved, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should make no recommendation. For example, the board of directors may make such a determination to refrain from a recommendation because the majority of directors have personal interests in the dissolution or the board is evenly divided as to the merits of the proposal but is able to agree that the members should be permitted to consider dissolution. If the board of directors makes such a determination, it must describe the conflict of interest or special circumstances, and communicate the basis for the determination, when submitting the proposal to dissolve to the members. The exception for conflicts of interest or other special circumstances is intended to be sparingly available. Generally, members should not be asked to act on a proposal for dissolution in the absence of a recommendation by the board of directors. The exception is not intended to relieve the board of directors of its duty to consider carefully the proposed dissolution and the interests of the corporation and its members.

Section 14.021102(c) permits the board of directors to condition its submission of a proposal for dissolution on any basis. Among the conditions that a board might impose are that the proposal will not be deemed approved unless it is approved by a specified vote of the members, or by one or more specified classes of members, voting as a separate voting group, or by a specified percentage of disinterested members. The board of directors is not limited to conditions of these types.

Section 14.021102(d) provides that if the proposal is required to be approved by the members, and if the approval is to be given at a meeting, the nonprofit corporation must give notice to each member entitled to vote of the meeting of members at which the proposal is to be submitted. Requirements concerning the timing and content of a notice of meeting are set out in Section 7.05705. The explanation of how the distribution of assets will be determined may be in general in terms if the board will have the authority to make those determinations.

Section 14.021102(e) provides that approval of a proposal for dissolution requires
approval of the members at a meeting at which a quorum consisting of a majority of the votes
titled to be cast on the proposal exists. If a quorum is present, then under Sections 7.24724 and
7.25725 the proposal will be approved if more votes are cast in favor of the proposal than against
it by each voting group or separate voting groups entitled to vote on the proposal.

The act does not mandate separate voting by voting groups in relation to dissolution
proposals on the theory that, upon dissolution, the rights of all classes of members are fixed by
the articles of incorporation or bylaws. Of course, group voting rights may be conferred by the
articles or bylaws or by the board of directors, acting pursuant to subsection Section 1102(c).

The authority of the board of directors or members under this section may be vested by
the articles of incorporation or bylaws in a designated body. See Section §12.012.

When a proposal to dissolve is being prepared, consideration should be given to including
in the proposal the provision permitted by Section 14.041104(b) that dissolution may be revoked
by action of the board of directors alone.

§ 14.031103. ARTICLES OF DISSOLUTION

(a) At any time after dissolution is authorized, the nonprofit corporation may dissolve
by delivering to the secretary of state for filing articles of dissolution setting forth:

1. the name of the corporation;
2. the date that dissolution was authorized; and
3. if dissolution was approved by the members, a statement that the
   proposal to dissolve was duly approved by the members in the manner required by this [act]
   and by the articles of incorporation and bylaws.

(b) The articles of dissolution shall take effect at the effective date determined in
accordance with Section 163 (effective time and date of filing). A nonprofit corporation is
dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this [subchapter], “dissolved corporation” means:

1. a nonprofit corporation whose articles of dissolution have become
effective, and includes a successor entity to which the remaining assets of the corporation are
   transferred subject to its liabilities for purposes of liquidation; or
2. a corporation whose period of duration stated in its articles of
   incorporation has expired.

Source Note: Patterned after Model Nonprofit
Corporation Act, 3rd Ed. (2008), § 14.03. Cf Model
The act of filing the articles of dissolution makes the decision to dissolve a matter of public record and establishes the time when the nonprofit corporation must begin the process of winding up and cease carrying on its activities except to the extent necessary for winding up. If dissolution was approved by the members, the articles of dissolution must state that dissolution was duly approved by the members in the manner required by the act and the articles of incorporation and bylaws of the corporation.

Under the act, articles of dissolution may be filed at the commencement of winding up or at any time thereafter. This is the only filing required for voluntary dissolution. No filing is required to mark the completion of winding up since the existence of the nonprofit corporation continues for certain purposes even after its activities are wound up and all of its assets have been distributed. No time limit for filing the articles is specified, and it may sometimes be desirable to postpone filing until winding up is far along or even complete.

A nonprofit corporation is dissolved on the date the articles of dissolution are effective. After this date the corporation is referred to as a “dissolved corporation,” although its existence continues under Section 14.051105 for purposes of winding up.

Section 14.031103(c) defines “dissolved corporation” for purposes of Subchapter 1411A to include successor entities to which assets are transferred subject to liabilities for purposes of liquidation. This provision covers the situation where a liquidating trust or other successor entity is used to complete the liquidation, but it is not intended to include an interest holder or transferee to which assets are permanently transferred as a distribution or for consideration.

§ 14.041104. REVOCATION OF DISSOLUTION
(a) A nonprofit corporation may revoke its dissolution after:

1. the effective date of its articles of dissolution; or
2. the date stated in its articles of incorporation as the end of its period of duration.

(b) Revocation of dissolution under subsection (a)(1) must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members.

(c) After the revocation of dissolution is authorized under subsection (ba)(1), the nonprofit corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

1. the name of the corporation at the time of dissolution;
2. a new name of the corporation if its prior name is not available at the time of the filing of the articles of revocation of dissolution;
3. the effective date of the dissolution that was revoked;
4. the date that the revocation of dissolution was authorized;
5. if the corporation was dissolved under Section 1101 (dissolution by incorporators or directors) or the corporation did not have any members entitled to vote at the time of dissolution, a statement that revocation of dissolution was authorized by action of the corporation’s board of directors or incorporators;
6. if the corporation’s board of directors revoked the dissolution as authorized by the members, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization; and
7. if member action was required to revoke the dissolution, a statement that the revocation of dissolution was duly approved by the members in the manner required by this Act and by the articles of incorporation and bylaws.

(d) A nonprofit corporation may revoke its dissolution under subsection (a)(2) by adopting an amendment to its articles of incorporation to delete or change its stated period of duration and delivering articles of amendment to the secretary of state for filing.

(e) Articles of revocation of dissolution shall take effect at the effective date determined in accordance with Section 163 (effective time and date of filing).
Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution under subsection (c) or the articles of amendment under subsection (d) or the articles of revocation of dissolution under subsection (e).

When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the nonprofit corporation resumes carrying on its activities as if dissolution had never occurred, except for the rights of a person arising out of an action or omission in reliance on the dissolution before the person knew or had reason to know of the revocation.


CROSS-REFERENCES

Articles of amendment, § 906.
Articles of dissolution, see § 14.031103.
“Deliver” defined, see § 1.401102.
Dissolution by:
board of directors and members, see § 14.021102.
incorporators or directors, see § 14.011101.
consent of members, see § 7.04704.
Effective date of dissolution, see § 14.031103.
Effective time and date of filing, see § 1.23163.
Filing fees, see § 1.22162.
Filing and signature requirements, see § 1.20160.

OFFICIAL COMMENT

Voluntary dissolution may be revoked at any time. As a practical matter, however, revocation should normally occur relatively soon after dissolution. Because of the importance and finality of dissolution, the decision to revoke dissolution generally requires member authorization (unless the dissolution was approved solely by the directors or incorporators under Section 14.011101). Section 14.041104(b), however, contemplates that the board of directors may revoke dissolution if it is granted that authority in advance by the members when approving the dissolution. Such authorization is often included in proposals to dissolve that are contingent upon the effectuation of another transaction, such as a sale of corporate assets not in the ordinary course.

An amendment adopted under subsection Section 1104(d) changing the period of duration of a nonprofit corporation is adopted in the same manner as any other amendment of the corporation’s articles of incorporation.
Articles of revocation of dissolution must be filed to reflect the decision to resume the activities of the nonprofit corporation. The information required in these articles parallels the information required in the original articles of dissolution.

The effect of articles of revocation of dissolution is to eliminate the requirement that the nonprofit corporation cease to conduct its activities except as part of the winding-up process and permit it to resume its activities without limitation and as if dissolution had never occurred. Thus, effectiveness of articles of revocation of dissolution dates back to the effective date of the articles of dissolution.

The authority of the board of directors or members under this section may be vested by the articles of incorporation or bylaws in a designated body. See Section §12812.

§ 14.051105. EFFECT OF DISSOLUTION

(a) A dissolved nonprofit corporation continues its corporate existence but the dissolved corporation may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

   (1) collecting its assets;

   (2) disposing of its properties that will not be distributed in kind;

   (3) discharging or making provision for discharging its liabilities;

   (4) distributing its remaining property as required by law and its articles of incorporation and bylaws; and otherwise as approved when the dissolution was approved or among the members per capita; and

   (5) doing every other act necessary to wind up and liquidate its activities and affairs.

(b) Dissolution of a nonprofit corporation does not:

   (1) transfer title to the corporation’s property;

   (2) subject its directors, members of a designated body, or officers to standards of conduct different from those prescribed in [Chapter] 8 (directors and officers);

   (3) change:

      (i) quorum or voting requirements for its board of directors or members; change

      (ii) provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
(iii) provisions for amending its articles of incorporation or bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) terminate the authority of the registered agent of the corporation.

(c) Property held in trust or that is otherwise dedicated to a charitable asset purpose may not be diverted from its purpose by the dissolution of a nonprofit corporation unless and until the corporation obtains an order of [court] [the attorney general] to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

(d) A person who is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with the dissolution of the corporation unless the person is a charitable corporation, a charitable trust, or an unincorporated entity that has a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.


CROSS-REFERENCES

Administrative dissolution, see §§ 14.20-14.231140 through 1143.
Claims against dissolved corporation, see §§ 14.061106 and 14.071107.
Deposit with state treasurer, see § 14.331130.
Dissolution by:
   board of directors and members, see § 14.021102.
   incorporators or directors, see § 14.011101.
“Dissolved corporation” defined, see § 14.031103.
DistributionDistributions, see § 6.40§ 640, 641, and 832.
Effective date of dissolution, see § 14.031103.
Judicial dissolution, see §§ 14.30—14.331120 through 1123.
“Proceeding” defined, see § 1.401102.
Revocation of dissolution, see § 14.041104.
Service of process on registered agent, see § 5.04223.
Section 14.051105(a) provides that dissolution does not terminate the corporate existence but simply requires the nonprofit corporation thereafter to devote itself to winding up its affairs and liquidating its assets; after dissolution, the corporation may not carry on its activities except as may be appropriate for winding up.

The act uses the term “dissolution” in the specialized sense described above and not to describe the final step in the liquidation of the corporate activities. This is made clear by section 14.051105(b), which provides that Chapter 1411 dissolution does not have any of the characteristics of common law dissolution, which treated corporate dissolution as analogous to the death of a natural person and abated lawsuits, vested equitable title to corporate property in the members, imposed the fiduciary duty of trustees on directors who had custody of corporate assets, and revoked the authority of the registered agent. Section 14.051105(b) expressly reverses all of these common law attributes of dissolution and makes clear that the rights, powers, and duties of members, the directors, members of a designated body, and the registered agent are not affected by dissolution and that suits by or against the corporation are not affected in any way.

§ 14.061106. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION

(a) A dissolved nonprofit corporation may dispose of the known claims against it by delivering notice to its known claimants of the dissolution at any time after its effective date.

(b) The notice must be in the form of a record and:

(1) describe the information that must be included in a claim which must be in a record;
(2) provide a mailing address where a claim may be sent;
(3) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved nonprofit corporation must receive the claim; and
(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved nonprofit corporation is barred:

(1) if a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or
if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of after the rejection notice is effective.

(d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.


CROSS-REFERENCES

Administrative dissolution, see § 14.21 through 1143.
“Deliver” defined, see § 1.40102.
Dissolved corporation, see § 14.031103.
Distributions, see §§ 6.40640, 641, and 8.33832.
Effective date of dissolution, see § 14.031103.
Judicial dissolution, see § 14.32 through 1123.
Notice, see § 1.41103.
“Proceeding” defined, see § 1.40102.
Unknown claims, see § 14.071107.

OFFICIAL COMMENT

Sections 14.061106 and 14.071107 provide a simplified system for handling known and unknown claims against a dissolved nonprofit corporation, including claims based on events that occur after the dissolution of the corporation. Section 14.061106 deals solely with known claims while Section 14.071107 deals with unknown or subsequently arising claims. A claim can be a “known” claim even if it is unliquidated; a claim that is contingent or has not yet matured or in certain cases has matured but has not been asserted is not a “known” claim (see Section 14.061106(d)). For example, an unmatured liability under a guarantee or a potential default under a lease would not be a “known” claim.

Known claims are handled in Section 14.061106 through a process of notice to claimants; the notice must contain the information described in Section 14.061106(b). Section 14.061106(c) then provides fixed deadlines by which claims are barred under various circumstances, as follows:

(1) If a claimant was given effective notice satisfying Section 14.061106(b) but fails to file the claim by the deadline specified by the dissolved corporation, the claim is barred by Section 14.061106(c)(1). See Section 1.41103 as to the effectiveness of notice.
If a claimant receives notice satisfying Section 14.061106(b) and files the claim as required:

(i) but the dissolved corporation rejects the claim, the claimant must commence a proceeding to enforce the claim within 90 days of the rejection or the claim is barred by Section 14.061106(c)(2); or

(ii) if the dissolved corporation does not act on the claim or fails to notify the claimant of the rejection, the claimant is not barred by Section 14.061106(c) until the dissolved corporation notifies the claimant.

If the dissolved corporation publishes notice under Section 14.071107, a claimant who was not notified in a record is barred unless a proceeding is commenced to enforce the claim within three years after publication of the notice.

If the dissolved corporation does not publish notice, a claimant who was not notified in a record is not barred by Section 14.061106(c) from pursuing the claim.

These principles, it should be emphasized, do not lengthen statutes of limitation applicable under general state law. Thus, claims that are not barred under the foregoing rules—for example, if the corporation does not act on a claim—will nevertheless be subject to the general statute of limitations applicable to claims of that type. The act does not require that a dissolved corporation take the actions set out in Sections 1106 and 1107, but if it does not do so the protections those sections provide are not available to it.

Even though the directors are not trustees of the assets of a dissolved nonprofit corporation (see Section 14.051105(b)(32)), they must discharge or make provision for discharging the corporation’s liabilities before distributing its remaining assets. See Section 14.091109.

The nonprofit corporation is free, of course, to negotiate with creditors or claimants and to compromise some or all of the corporation’s debts or other claims against the corporation.

§ 14.071107. OTHER CLAIMS AGAINST DISSOLVED CORPORATION

(a) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

   (1) be:
(i) be published one time in a newspaper of general circulation in the county where the principal office of the dissolved nonprofit corporation (or, if none in this state, its registered office) is or was last located; and

(ii) posted conspicuously for at least 30 days on the dissolved corporation’s website, if any;

(2) describe the information that must be included in a claim and provide a mailing address where the claim must be sent; and

(3) state that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within by a stated date which must be at least three years after the publication later of the date the notice is published and, if applicable, the 30 day period stated in Section 1107(b)(1)(ii) has expired.

(c) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three years after by the publication date of the newspaper notice stated in Section 1107(b)(3):

(1) a claimant who was not given notice under Section 14.061106 (known claims against dissolved corporation);

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on by the corporation; or

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by subsection (c) or Section 14.061106(b) or Section 14.07(c) may be enforced:

(1) against the dissolved nonprofit corporation, to the extent of its undistributed assets; or

(2) except as provided in Section 14.081108(d) (court proceedings), if the assets have been distributed in liquidation, against any person, other than a creditor of the dissolved corporation, to whom the corporation distributed its property to the extent of the distributee’s pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less, but a distributee’s total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

Nonprofit Corporation Act (1987) § 14.08, except that the limitations period has been reduced from five years to three years. (2016 Revision), § 14.07.

CROSS-REFERENCES

Administrative dissolution, see § 14.21140 through 1143.
“Claim” defined, see § 14.061106.
“Deliver” defined, see § 1.40102.
“Dissolved corporation” defined, see § 14.031103.
Distributions, see §§ 6.40640, 641, and 8.33832.
Effective date of dissolution, see § 14.031103.
Judicial dissolution, see § 14.321120 through 1123.
Known claims, see § 14.061106.
Notice, see § 1.41103.
“Principal office”: defined, see § 1.40102.
designated in annual report, see § 16.21421.
“Proceeding” defined, see § 1.40102.
Registered office:
designated in annual report, see § 16.21421.
required, see §§ 2.02, 5.01, 202 and 15.07220.

OFFICIAL COMMENT

The prior version of the act did not recognize the serious problem created by possible claims that might arise long after the dissolution process was completed and the corporate assets distributed. The application of the act’s provisions (and of the state dissolution statutes phrased in different terms) to this problem led to confusing and inconsistent results. The problems raised by these claims are intractable: on the one hand, the application of a mechanical limitation period to a claim for injury that occurs after the period has expired involves obvious injustice to the plaintiff. On the other hand, to permit these suits generally makes it impossible ever to complete the winding up of the nonprofit corporation, make suitable provision for creditors, and distribute the balance of the corporate assets.

The solution adopted in Section 14.07 is to continue the liability of a dissolved nonprofit corporation for subsequent claims for a period of three years after it publishes notice of dissolution. It is recognized that a three year cut-off is itself arbitrary, but it is believed that the bulk of post-dissolution claims that can be estimated will arise during this period. This provision is therefore believed to be a reasonable compromise between the competing considerations of providing a remedy to injured plaintiffs and providing a basis for directors to estimate liabilities so that dissolved corporations may distribute remaining assets free of all claims and distributees may receive them secure in the knowledge that they may not be reclaimed. The period of three years for asserting claims is within the range of time periods adopted by state statutes.

Directors must generally discharge or make provision for discharging the nonprofit
corporation’s liabilities before distributing the remaining assets. See Section 14.091109(a). Many
claims covered by this section are of a type for which provision may be made by the purchase of purchasing insurance or by the setting aside of a portion of the assets, thereby permitting prompt distributions in liquidation. Claimants, of course, may always have recourse to the remaining assets of the dissolved corporation. See Section 14.071107(d)(1). Further, where unbarred claims arise after distributions have been made in liquidation, Section 14.071107(d)(2) authorizes recovery against the distributees receiving the earlier distributions. The recovery, however, is limited to the smaller of the distributees’ pro rata share of the claim or the total amount of assets received as liquidating distributions from the corporation. The provision Section 1107(d)(2) ensures that claimants seeking to recover distributions will try to recover from the entire class of distributees rather than concentrating only on the larger distributees and protects the limited liability of members. Members also may be liable to directors for recoupment under Section 8.33832(b)(2).

§ 14.081108. COURT PROCEEDINGS

(a) A dissolved nonprofit corporation that has published a notice under Section 14.071107 (other claims against dissolved corporation) may file an application with the [name or describe] court of the county where the dissolved corporation’s principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 14.071107(c).

(b) Within 10 days after the filing of the application, notice of the proceeding must be given by the dissolved nonprofit corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved nonprofit corporation.

(d) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the court under Section 14.08 subsection (a) satisfies the dissolved corporation’s obligations with respect to claims that are contingent, have not been made known to the dissolved corporation, or are based on an event occurring after the effective date of dissolution, and such those claims may not be enforced against a person who received assets in liquidation.

Section 14.08 adds a provision to the act allowing a dissolved nonprofit corporation to initiate a proceeding to establish the provision that should be made for unknown or contingent claims before a distribution in liquidation is made. Similar proceedings are authorized in several states to remove the risk of director and member liability for inadequate provision for claims. Section 14.081108(a) authorizes the court proceeding to establish the provision that should be made for unknown or contingent claims and specifies that provision for unknown and contingent claims can be made only for those claims that are estimated to arise after dissolution that are not expected to be barred by Section 14.071107(dc). The same analysis may be made by the board of directors under Section 14.091109(a) if court proceedings are not used. As a result, estimates for unknown or contingent claims need only be made only for those claims that the court determines are reasonably anticipated to be asserted within three years after dissolution. Such estimates might reasonably be based on the claims experience of the corporation prior to its dissolution.

If the dissolved nonprofit corporation elects to initiate a proceeding, it must give notice of the proceeding within 10 days after filing the court application to each holder of a contingent claim whose claim is shown on the records of the corporation. Notice to holders of guarantees made by the corporation typically would be required under this subsection. The notice required by Section 1108(b) includes notice to holders of guarantees made by the corporation.

Section 14.081108(c) allows the court to appoint a guardian ad litem for unknown claimants, but does not make the appointment mandatory. Reasonable fees and expenses of the guardian ad litem are to be paid by the dissolved nonprofit corporation. Section 14.081108 is designed to permit the court to adopt procedures appropriate to the circumstances.

If the proceeding is completed, Section 14.081108(d) establishes that the dissolved nonprofit corporation is deemed to have satisfied its obligation to discharge or make provision for discharging its liabilities (that obligation is inferred from the corporation’s power to discharge or make provision for discharging its liabilities, see Section 14.051105(a)(3)). With respect to claims that have not matured, directors are protected from liability by Section
If a court determines that the nonprofit corporation is dissolving for the primary purpose of avoiding anticipated claims of future tort claimants, it is expected that the court will use its general discretionary powers and deny the protections of Section 14.081108 to the dissolved corporation.

§ 14.091109. LIMITATION ON DIRECTOR DUTIES LIABILITY

(a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets after payment or provision for claims.

(b) Directors of a dissolved nonprofit corporation that has disposed of claims under Sections 14.06, 14.07, or 14.08 shall not be liable for breach of Section 14.09(a) with respect to claims against the dissolved corporation that are barred or satisfied under Sections 14.06, 14.071106, 1107, or 14.081108.


CROSS-REFERENCES

“Claim” defined, see § 14.061106.
Directors’ liability for unlawful distributions, see § 8.33832.
“Dissolved corporation” defined, see § 14.031103.
Known claims, see § 14.061106.
Other claims, see § 14.071107.
Proceeding to determine security for contingent claims, see § 14.081108.

OFFICIAL COMMENT

Section 14.09(a) establishes the duty of directors to discharge or make provision for claims and to make distributions of the remaining assets. The earlier version of Chapter 14 inferred the obligation from Section 14.05(3) and (4) concerning the powers of the nonprofit corporation to pay claims and make distributions upon dissolution. Liability of directors formerly was based on violations of Section 6.40 concerning distributions. Section 6.41(c) removed distributions in liquidation from the coverage of Section 6.40.

Section 14.09(b)1109 provides that directors of a dissolved nonprofit corporation that complies with Sections 14.06, 14.071106, 1107, or 14.081108 are not liable for breach of Section 14.09(a) with respect to claims that are disposed of under those sections. For example, directors need not make provision for claims of known creditors who are barred under Section 14.061106 for failure to file a claim or commence a proceeding within the specified times, for contingent
claimants whose estimated claims are barred by the three-year period after publication, pursuant to Section [14.07](107)(c), or for claimants such as guarantors if provision for the claims have been approved by a court under Section [14.08](108)(d).

Section [14.09](b)(109) leaves unchanged the Section [8.33](832) provision that director liability is to the corporation. There are, however, cases that under various theories recognize liability directly to creditors for wrongful payments in liquidation. While there might be circumstances under which direct creditor claims are appropriate, the basic approach of Chapter [14](11) is that claims for breach of duty of directors for breach of Section [14.09](a) in handling claims and claims for recoupment of amounts improperly distributed in liquidation should be mediated through the corporation.

If the articles of incorporation or bylaws vest some or all of the authority of the board of directors with respect to dissolution in a designated body, this section applies to the members of the designated body. See Section [8.42](812).

[Subchapter] B

ADMINISTRATIVE/JUDICIAL DISSOLUTION

§ 14.20. Grounds for administrative/judicial dissolution.


§ 14.22. Reinstatement following administrative dissolution.


§ 14.20. GROUNDS FOR ADMINISTRATIVE DISSOLUTION

The secretary of state may commence a proceeding under Section [14.21] to administratively dissolve a nonprofit corporation if:

(1) the corporation does not pay within 120 days after they are due any taxes or penalties imposed by this [act] or other law which are collected by the secretary of state;

(2) the corporation does not deliver its annual report to the secretary of state within 120 days after it is due; or

(3) the corporation is without a registered agent or registered office in this state for 120 days or more.

Source Note: Patterned after Model Business Corporation Act, 3d Ed. (2002) § 14.20. Derived from Revised Model Nonprofit Corporation Act (1987) § 14.20, except that the period in paragraph (4) has been increased to 120 days.

CROSS-REFERENCES

Annual report, see § 16.22.

Appeal from administrative dissolution, see § 14.23.

“Deliver” defined, see § 1.40.

Duration of corporation, see § 3.02.

Judicial dissolution, see §§ 14.30—14.33.

Registered office and agent, see Ch. 5.

Reinstatement following administrative dissolution, see § 14.22.
Voluntary dissolution, see §§ 14.01 and 14.02.

OFFICIAL COMMENT

The experience in most states has been that administrative dissolution, or the threat thereof, is an effective enforcement mechanism for a variety of statutory obligations. A requirement of judicial dissolution would be inappropriate for many of these violations because of its cost and the diversion of limited legal resources, particularly since most violations reflect the abandonment of the corporation.

The advantages of administrative dissolution in these circumstances are compelling: it not only reduces the number of records maintained by the secretary of state, but also avoids further wasteful attempts to compel compliance by the abandoned nonprofit corporations and returns the corporate name promptly to the status of available names. Therefore, the act includes, in Sections 14.20 through 14.23, a model provision for the administrative dissolution of corporations in certain limited circumstances. These circumstances are set forth in Section 14.20 and closely parallel provisions found in most state statutes on this subject.

§ 14.21. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION

(a) If the secretary of state determines that one or more grounds exist under Section 14.20 for dissolving a nonprofit corporation, the secretary of state shall serve the corporation with notice in the form of a record of that determination under Section 5.04.

(b) If the nonprofit corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is perfected under Section 5.04, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under Section 5.04.

(c) A nonprofit corporation that is administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to:

(1) wind up and liquidate its activities and affairs under section 14.05 and notify claimants under sections 14.06 and 14.07; or

(2) apply for reinstatement under section 14.22.

(d) The administrative dissolution of a nonprofit corporation does not terminate the authority of its registered agent.

(e) A person is not liable in contract, tort, or otherwise solely by reason of being a director, member of a designated body, officer, or member of a nonprofit corporation that was dissolved under this [subchapter], with respect to the activities or affairs of the corporation that have been continued, with or without knowledge of the dissolution.


CROSS-REFERENCES
Many failures to comply with statutory requirements that may give rise to administrative dissolution under Section 14.20 occur because of oversight or inadvertence by responsible corporate officers of nonprofit corporations that are continuing their activities. Such failures are usually corrected promptly when brought to the corporation’s attention. Sections 14.21(a) and (b) therefore provide a mandatory notice by the secretary of state to each corporation subject to administrative dissolution and a 60-day grace period following the notice before the certificate of administrative dissolution may be filed.

In most instances, the issue of whether the nonprofit corporation is subject to administrative dissolution will not be controverted. If a corporation is administratively dissolved, it may petition the secretary of state for reinstatement under Section 14.22 and, if this is denied, it may appeal to the courts under Section 14.23.

§ 14.22. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION

(a) A nonprofit corporation administratively dissolved under Section 14.21 may apply to the secretary of state for reinstatement. The application must state:

(1) the name of the corporation at the time of its administrative dissolution;
(2) a new name of the corporation if its prior name is not available at the time of the filing of the application for reinstatement;
(3) the effective date of its administrative dissolution; and
(4) that the grounds for dissolution either did not exist or have been eliminated.

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the nonprofit corporation under Section 5.04.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the nonprofit corporation resumes carrying on its activities as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.


CROSS-REFERENCES

Appeal from denial of reinstatement, see § 14.23.
Effective date of administrative dissolution, see § 14.21.
Filing fees, see § 1.22.
Filing requirements, see § 1.20.
Grounds for administrative dissolution, see § 14.20.

OFFICIAL COMMENT
This section may apply when a nonprofit corporation through inadvertence or a failure to maintain a registered agent fails to receive or respond to the predissolution notice of default required by Section 14.21. A corporation that is reinstated pursuant to this section resumes carrying on its business as before dissolution. There is not time limit on when a corporation may apply for reinstatement.

In order to be eligible for reinstatement, a nonprofit corporation must comply with all statutory requirements at the time it seeks reinstatement. It must establish, for example, that all taxes and fees have been paid. Because dissolution makes its name available for use by another person, a corporation may need to change its name when it files the application for reinstatement.

§ 14.23. PETITION FOR REINSTATEMENT

(a) If the secretary of state denies a nonprofit corporation’s application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under Section 5.04 with a notice in the form of a record that explains the reason for denial.

(b) The nonprofit corporation may petition the court within 90 days after service of the notice of denial is perfected to set aside the dissolution. The petition must have attached to it copies of the secretary of state’s certificate of dissolution, the corporation’s application for reinstatement, and the secretary of state’s notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved nonprofit corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.


CROSS-REFERENCES
Effective date of service, see § 5.04.
Grounds for administrative dissolution, see § 14.20.
Notice, see § 1.41.
Reinstatement following administrative dissolution, see § 14.22.

OFFICIAL COMMENT
Section 14.23 provides for an appeal from a decision by the secretary of state denying a petition for reinstatement. The court with jurisdiction over an appeal should be specified, and states adopting this section of the act should specify who has the burden of proof on appeal and the standard for judicial review. See the Official Comment to Section 1.26.

§ 14.30. GROUNDS FOR JUDICIAL DISSOLUTION

The court or courts may dissolve a nonprofit corporation:

(1) in a proceeding by the attorney general, if it is established that:
(i) the corporation obtained its articles of incorporation through fraud;

or

(ii) the corporation has exceeded or abused, and is continuing to exceed or abuse the authority conferred upon it by law;

(2) except as provided in the articles of incorporation or bylaws, in a proceeding by 50 members or members holding at least 5% of the voting power, whichever is less, or by a director or member of a designated body, if it is established that:

(i) the directors or a designated body are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the corporation or its mission is threatened or being suffered because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have, or otherwise would have, expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members;

(3) in a proceeding by a creditor, if it is established that:

(i) the creditor’s claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in a record that the creditor’s claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Administrative dissolution, see §§ 14.20-14.231140 through 1143.
Director action, see §§ 8.20-8.24820 through 824.
Election of directors, see § 8.03§ 727 and 804.
Revocation of articles of incorporation by state, see § 2.03203.
Member voting, see §§ 7.24-7.26724 through 727.
Ultra vires acts, see § 3.04304.
Voluntary dissolution, see §§ 14.01-14.051101 through 1105.

OFFICIAL COMMENT

Section 14.301120 provides grounds for the judicial dissolution of nonprofit corporations at the request of the state, a member, a creditor, a director, a member of a designated body, or a corporation that has commenced voluntary dissolution. This section states that a court “may” order dissolution if a ground for dissolution exists. Thus, there is discretion on the part of the court as to whether dissolution is appropriate even though grounds exist under the specific circumstances.

1. INVOLUNTARY DISSOLUTION BY STATE

Section 14.301120(1) preserves long standing and traditional provisions authorizing the state to seek to dissolve involuntarily a nonprofit corporation by judicial decree. While this power has been exercised only rarely in recent years, this right of the state involves a policing action that provides a means by which the state may ensure compliance with, and nonabuse of, the fundamentals of corporate existence. Section 14.301120(1) limits the power of the state in this regard to grounds that are reasonably related to this objective.

The legality of proposed corporations or of proposed actions has sometimes been tested by the secretary of state’s refusal to accept documents for filing. The role of the secretary of state in reviewing documents for filing has been restricted by the act (see Section 1.25 and its Official Comment). It is intended that suits under this subchapter will replace those actions.

2. INVOLUNTARY DISSOLUTION BY MEMBERS OR OTHERS

Section 14.311120(2) provides for involuntary dissolution at the suit of a member, director, or member of a designated body under circumstances involving deadlock or significant abuse of power by controlling members or other persons.

a. Deadlock

Dissolution because of deadlock is available if the board of directors or a designated body is deadlocked, but only if (1) the members are unable to break the deadlock, and (2) “irreparable injury” to the corporation or its mission is being threatened or suffered. Dissolution because of deadlock at of the board of directors or a designated body is not dependent on the lapse of time during which the deadlock continues.

Dissolution is also available because of deadlock at the members’ level if the members
are unable to elect directors over a two-year period. Dissolution under Section 14.301120(2)(iii)
is not dependent on irreparable injury or misconduct by the directors then in office; if injury
or misconduct is present, a deadlocked member may proceed under another clause of Section
14.301120(2).

b. Abuse of power

A member may sue for involuntary dissolution upon proof either that those in control of
the nonprofit corporation are acting illegally, oppressively, or fraudulently (Section
14.301120(2)(ii)) or that the corporate assets are being misapplied or wasted (Section
14.301120(2)(iv)). The application of these grounds for dissolution to specific circumstances
obviously involves judicial discretion in the application of a general standard to concrete
circumstances. The court should be cautious in the application of these grounds so as to limit
them to genuine abuse rather than instances of acceptable tactics in a power struggle for control
of a corporation.

3. DISSOLUTION BY CREDITORS

Creditors may obtain involuntary dissolution only when the nonprofit corporation is
insolvent and only in the limited circumstances set forth in Section 14.301120(3). Typically, a
proceeding under the federal Bankruptcy Act is an alternative in these situations, although
nonprofit corporations are not subject to involuntary bankruptcy petitions. See 11 U.S.C. §
303(a).

4. DISSOLUTION BY CORPORATION

A nonprofit corporation that has commenced voluntary dissolution may petition a court to
supervise its dissolution. Such an action may be appropriate to permit the orderly liquidation
of the corporate assets and to protect the corporation from a multitude of creditors’ suits or suits
by dissatisfied members.

§ 14.311121. PROCEDURE FOR JUDICIAL DISSOLUTION

(a) Venue for a proceeding by the attorney general to dissolve a nonprofit corporation
lies in [name the county or counties]. Venue for a proceeding brought by any other party named
in Section 14.301120 (grounds for judicial dissolution) lies in the county where a corporation’s
principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make members, directors, or members of a designated body
parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them
individually.

(c) A court in a proceeding brought to dissolve a nonprofit corporation may issue
injunctions, appoint a receiver or custodian pendente lite during the proceeding with all powers
and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.


CROSS-REFERENCES

Custodian, see § 14.321.
Grounds for judicial dissolution, see § 14.301.
“Principal office”: defined, see § 1.401.
designated in annual report, see § 16.214.
Receiver, see § 14.321.
Registered office:
designated in annual report, see § 16.214.
required, see §§ 2.02, 5.01, and 15.07.

OFFICIAL COMMENT

Section 14.311 designates the attorney general as the officer to bring suits for involuntary dissolution by the state. The county or counties where these suits must be commenced should be specified; it typically is either the state capital or the county in which the corporation’s principal office is located. See the Official Comment to Section 1.26. Suits brought by other persons for judicial dissolution under Section 14.30 must be brought where the corporation’s principal office is located or, if not located in this state, where its registered office is or was last located.166.

Section 1121 also sets out other procedures for judicial dissolution generally.

§ 14.3211. RECEIVERSHIP OR CUSTODIANSHIP

(a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after giving notice to notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign nonprofit corporation or eligible entity as a receiver or custodian. If a foreign corporation or foreign eligible entity is appointed as a receiver or custodian, it must be registered to do business in this
The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers, the receiver or custodian has the power:

(1) in the case of a receiver, to:

(i) may dispose of all or any part of the assets of the nonprofit corporation wherever located, at a public or private sale, if authorized by the court; and

(ii) may sue and defend in his or her own name as receiver of the corporation in all courts of this state;

(2) in the case of a custodian may, to exercise all of the powers of the corporation, through or in place of its board of directors and any designated body, to the extent necessary to manage the affairs of the corporation consistent with its mission and in the best interests of its members, if any, and creditors.; and

(3) to exercise such other powers as the court may direct in the appointing order.

(d) During a receivership, the court may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is consistent with the mission of the nonprofit corporation and in the best interests of the corporation, its members, and creditors. The order appointing a receiver or custodian may be amended from time to time in any other manner the court considers appropriate.

(e) The court from time to time during the receivership or custodianship may order compensation paid, and expense disbursements or reimbursements made expenses paid or reimbursed, to the receiver or custodian and counsel from the assets of the nonprofit corporation or proceeds from the sale of the assets.

(f) This section does not apply to a nonprofit corporation that is a religious organization.


CROSS-REFERENCES
In many states, general statutes or rules of court regulate the appointment of receivers or custodians and define their duties. Section 14.321 is designed to supplement these general provisions and grant the court power to take the steps it considers necessary to resolve the internal corporate problem or to effect liquidation of the nonprofit corporation in an efficient manner.

§ 14.331. DECRD E OF DISSOLUTION

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 14.30 (grounds for judicial dissolution) exist, it may enter a decree dissolving the nonprofit corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it for filing.

(b) After entering the decree of dissolution, the court shall oversee the winding-up and liquidation of the nonprofit corporation’s affairs in accordance with Section 14.05 (effect of dissolution) and the notification of claimants in accordance with Sections 14.06 and 14.07 (known claims against dissolved corporation) and 1107 (other claims against dissolved corporation).


CROSS-REFERENCES

Claims, see §§ 14.06106 and 14.071107.
Custodianship, see §§ 14.311121 and 14.321122.
“Deliver” defined, see § 1.40102.
Deposit with state treasurer, see § 14.401130.
Dissolution does not terminate authority of registered agent, see § 14.051105.
Receivership, see §§ 14.341121 and 14.351122.
Secretary of state’s filing duties, see § 1.25165.
Winding-up, see § 14.051105.

OFFICIAL COMMENT
A court decree ordering that a nonprofit corporation be dissolved involuntarily has the
same legal effect as articles of dissolution. See Section 14.33. Section 1123 requires that the
secretary of state receive and file a copy of the decree. Thereafter the corporation’s activities and
affairs are to be wound up as provided in Sections 14.05, 14.06, 1105, 1106, and 14.07.

[Subchapter] DC
MISCELLANEOUS ADMINISTRATIVE DISSOLUTION

§ 1131. Procedure for administrative dissolution.
§ 1132. Reinstatement following administrative dissolution.
§ 1133. Appeal from denial of reinstatement.

§ 14.40 DEPOSIT WITH STATE TREASURER

§ 1130. GROUNDS FOR ADMINISTRATIVE DISSOLUTION

Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant, or
member of the corporation who cannot be found or who is not competent to receive them shall
be reduced to cash and deposited with the state treasurer or other appropriate state official for
safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement
to the amount deposited, the state treasurer or other appropriate state official shall pay the
amount held.

The secretary of state may commence a proceeding under Section 1131 (procedure for
administrative dissolution) to administratively dissolve a nonprofit corporation if:

(1) the corporation does not pay within [six months] after they are due any
fees, taxes, interest, or penalties imposed by this [Act] or other law which are collected by the
secretary of state;

(2) the corporation does not deliver its annual report to the secretary of state
within [six months] after it is due;

(3) the corporation is without a registered agent or registered office in this
state for [60] consecutive days or more;

(4) the corporation’s period of duration, if any, stated in its articles of
incorporation expires.

Source Note: Patterned after Model Business
Derived from Revised Model Nonprofit Corporation
Model Business Corporation Act (2016 Revision), §
14.20.

CROSS-REFERENCES
OFFICIAL COMMENT

Section 14.40 is a deposit provision, not an escheat provision. It does not provide for ultimate disposition of unclaimed funds. Rather, it permits a nonprofit corporation that has dissolved to pay over for safekeeping to the state treasurer (or other appropriate state official with statutory authority to receive such funds) funds belonging to a creditor, claimant, or member who cannot be found.

The experience in most states has been that actual or threatened administrative dissolution is an effective enforcement mechanism for a variety of statutory obligations. A requirement of judicial dissolution would be inappropriate for many of these violations because of its cost and the diversion of limited legal resources, particularly because most violations reflect the abandonment of the corporation.

The handling and ultimate disposition of unclaimed funds by the state treasurer or other appropriate state official is to be determined by state law other than the act.

The advantages of administrative dissolution in these circumstances are compelling: it not only reduces the number of records maintained by the secretary of state, but also avoids further wasteful attempts to compel compliance by abandoned nonprofit corporations and returns the corporate name promptly to the status of available names.

§ 1131. PROCEDURE FOR ADMINISTRATIVE DISSOLUTION

(a) In a proceeding to administratively dissolve a nonprofit corporation because the secretary of state has determined that one or more grounds exist under Section 1140 (grounds for administrative dissolution) for dissolving a nonprofit corporation, the secretary of state must serve the corporation with notice in a record of that determination under Section 223 (service on domestic and foreign nonprofit corporations).

(b) If the nonprofit corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice under Section 223, the secretary of state may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state must file the original of the certificate and serve a copy on the corporation under Section 223.
(c) A nonprofit corporation that is administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to:

(1) wind up and liquidate its activities and affairs under Section 1105 and notify claimants under Sections 1106 (known claims against dissolved corporation) and 1107 (other claims against dissolved corporation); or

(2) apply for reinstatement under Section 1132 (reinstatement following administrative dissolution).

(d) The administrative dissolution of a nonprofit corporation does not terminate the authority of its registered agent.

(e) A person is not liable in contract, tort, or otherwise solely by reason of being a director, member of a designated body, officer, or member of a nonprofit corporation that was dissolved under this [Subchapter], with respect to the activities or affairs of the corporation that have been continued, with or without knowledge of the dissolution.


CROSS-REFERENCES
Appeal from denial of reinstatement, § 1133.
Claims, §§ 1106 and 1107.
Effective date of service, § 223.
Reinstatement following administrative dissolution, § 1132.
Winding up, § 1105.

OFFICIAL COMMENT
Many failures to comply with statutory requirements that may give rise to administrative dissolution under Section 1130 occur because of oversight or inadvertence by corporate officers of nonprofit corporations that are continuing their activities. Those failures are usually corrected promptly when brought to the corporation’s attention. Section 1131(a) and (b) therefore provide a mandatory notice by the secretary of state to each corporation subject to administrative dissolution and a 60-day grace period following the notice before the certificate of administrative dissolution may be filed.

In most instances, the issue of whether the nonprofit corporation is subject to administrative dissolution will not be controverted. If a corporation is administratively dissolved, it may petition the secretary of state for reinstatement under Section 1132 and, if this is denied, it may appeal to the courts under Section 1133.
§ 1142. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION

(a) A nonprofit corporation administratively dissolved under Section 1131 (procedure for administrative dissolution) may apply to the secretary of state for reinstatement. The application must state:

1. the name of the corporation at the time of its administrative dissolution;
2. a new name of the corporation if its prior name is not available at the time of the filing of the application for reinstatement;
3. the address of the principal office of the corporation and the name and address of its registered agent;
4. the effective date of its administrative dissolution; and
5. that the grounds for dissolution either did not exist or have been eliminated.

(b) To be reinstated, a nonprofit corporation must pay all fees, taxes, interest, and penalties that were due to the secretary of state at the time of the corporation’s administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the secretary of state while the corporation was dissolved administratively.

(c) If the secretary of state determines that the application contains the information required by subsection (a), that the information is correct, and that all payments required to be made to the secretary of state by subsection (b) have been made, the secretary of state must:

1. cancel the certificate of dissolution and prepare a certificate of reinstatement that recites that determination and the effective date of reinstatement;
2. file the certificate; and
3. serve a copy on the nonprofit corporation under Section 223 (service on domestic and foreign nonprofit corporations).

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the nonprofit corporation resumes carrying on its activities as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.

OFFICIAL COMMENT

Section 1142 applies when a nonprofit corporation fails to receive or respond to the predissolution notice of default required by Section 1131. A corporation that is reinstated under this section resumes carrying on its business as before dissolution. There is no time limit on when a corporation may apply for reinstatement.

In order to be eligible for reinstatement, a nonprofit corporation must comply with all statutory requirements at the time it seeks reinstatement. It must establish, for example, that all taxes and fees have been paid. Because dissolution makes its name available for use by another person, a corporation may need to change its name when it files the application for reinstatement.

§ 1143. APPEAL FROM DENIAL OF REINSTATEMENT

(a) If the secretary of state denies a nonprofit corporation’s application for reinstatement following administrative dissolution, the secretary of state must serve the corporation under Section 223 (service on domestic and foreign nonprofit corporations) with a notice in a record that explains the reason for denial.

(b) The nonprofit corporation may appeal the denial of reinstatement to the [name or describe] court within [90 days] after service of the notice of denial. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state’s certificate of dissolution, the corporation’s application for reinstatement, and the secretary of state’s notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved nonprofit corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.


CROSS-REFERENCES

Effective date of service, § 223.
Section 1133 provides for an appeal from a decision by the secretary of state denying a petition for reinstatement. The court with jurisdiction over an appeal should be specified, and states adopting this section should specify who has the burden of proof on appeal and the standard for judicial review. See the Official Comment to Section 166.
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