

Memorandum 76-28

Subject: Study 77.180, 77.190 - Nonprofit Corporations (Winding Up and Dissolution)

Existing Law

Under existing law, "[a] nonprofit corporation may . . . be wound up or dissolved, or both, in the same manner and with the same effect as a stock corporation, under the General Corporation Law." Corp. Code § 9800. There are only two other sections in the General Nonprofit Corporation Law dealing with winding up and dissolution. These are Sections 9801 (disposition of assets) and 9802 (subordinate body whose charter is surrendered to or taken away by the head or national body). In general, therefore, the winding up and dissolution of a nonprofit corporation is governed by General Corporation Law. See Westbrook v. Social Center Hall Ass'n., 148 Cal. App.2d 815, 307 P.2d 638 (1957); Abalian v. Townsend Social Center, 112 Cal. App.2d 441, 246 P.2d 965 (1952).

The revised General Corporation Law (Cal. Stats. 1975, Ch. 682) recodifies the provisions for winding up and dissolution and puts them in Chapters 18 (Involuntary Dissolution), 19 (Voluntary Dissolution), and 20 (General Provisions). The staff has adhered to this format in preparing the draft of the provisions for winding up and dissolution of nonprofit corporations.

General Approach to Drafting Proposed Provisions for Winding
up and Dissolution of Nonprofit Corporations

Attached to this memorandum is a staff draft of Chapters 18 (Involuntary Dissolution) and 19 (Voluntary Dissolution) of the proposed General Nonprofit Corporation Law. Chapter 20 (General Provisions) will be submitted to the Commission in the near future. The proposed provisions are patterned closely after the corresponding provisions of the revised General Corporation Law. The term

"member" has been substituted throughout for "shareholder," "membership" for "share," and "activities" for "business" except where "business" is appropriate. In accordance with the Commission's decision, "nonprofit" has been inserted before "corporation" wherever appropriate. Many sections of the revised General Corporation Law have been broken down into shorter sections, and the chapters have been subdivided into articles.

Outline of Proposed Chapters 18 and 19

Proposed Chapters 18 and 19 are outlined as follows:

Chapter 18. Involuntary Dissolution

Art. 1. Application of Chapters

§ 6810. Application of chapter

Art. 2. Proceedings by Directors or Members

§ 6820. Persons who may commence proceedings

§ 6821. Grounds for proceedings

§ 6822. Appointment of provisional directors

Art. 3. Proceedings by State

§ 6830. Grounds for proceedings

§ 6831. Notice to nonprofit corporation

§ 6832. Powers of the court

§ 6833. Service of process

Art. 4. General Provisions Concerning Involuntary Dissolution

§ 6840. Appointment of a receiver

§ 6841. Decrees and orders of the court

§ 6842. When proceedings for winding up commence

§ 6843. Persons who shall conduct the winding up

§ 6844. Corporate activities during winding up

§ 6845. Notice of winding up

- § 6846. Jurisdiction of the court in proceeding for winding up
- § 6847. Time to present claims; notice to creditors and claimants
- § 6848. Holders of secured claims
- § 6849. Unmatured, contingent or disputed claims
- § 6850. Time to commence suits on rejected claims
- § 6851. Order for winding up and dissolution
- § 6852. Cessation of corporate existence
- § 6853. Filing of copy of decree of dissolution

Chapter 19. Voluntary Dissolution

Art. 1. Application of Chapter

- § 6910. Application of chapter

Art. 2. Election to Dissolve; Revocation

- § 6920. Voluntary dissolution by members
- § 6921. Voluntary dissolution by board
- § 6922. Certificate of election to wind up and dissolve
- § 6923. Revocation of election to wind up and dissolve

Art. 3. Commencement and Conduct of Proceedings

- § 6930. Commencement of proceedings
- § 6931. Powers of board during proceedings
- § 6932. Corporate activities during winding up
- § 6933. Notice of winding up
- § 6934. Supervision by court upon petition
- § 6935. Certificate of dissolution

Art. 4. General Provisions Concerning Voluntary Dissolution

- § 6940. Winding up of nonprofit corporation whose term of existence has expired
- § 6941. Petition to court in lieu of filing certificate of dissolution

Discussion of Specific Sections

Chapter 18. Involuntary Dissolution

§ 6810. Application of chapter

There is no provision closely comparable to Section 6810 in General Corporation Law. Section 1800(d) provides that that section "does not apply to any corporation subject to the Bank Act, the Public Utilities Act, the Savings and Loan Association Act or Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code." Section 6810, however, is intended by its "except" clause to permit the application of specific provisions relating to dissolution which are scattered throughout the codes. Two examples of such provisions are referred to in the Comment to Section 6810, and we will probably discover others.

The staff is inclined to put a provision similar to Section 1800(d) (quoted above) in Chapter 20 (General Provisions) which might read as follows:

§ 7xxx. No proceedings may be maintained by any person specified in Sections 6820, 6920, or 6921 for the voluntary or involuntary dissolution of a nonprofit corporation which is subject to:

(a) the Public Utilities Act unless an order is obtained from the Public Utilities Commission authorizing the nonprofit corporation either to dispose of its assets as provided in Section 851 of the Public Utilities Code or to dissolve; or

(b) the provisions of Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of the Insurance Code when the application authorized by Section 1011 of the Insurance Code has been filed by the Insurance Commissioner unless the consent of the Insurance Commissioner has been obtained.

§ 6820. Persons who may commence proceedings

Proposed Section 6820 is similar to subdivisions (a) and (c) of Section 1800, except that an additional ground upon which "any member" may seek

involuntary dissolution is added: when the charter of a "subordinate body" has been surrendered to the "head or national body" granting it. Under present Corporations Code Section 9802, whenever the charter of a subordinate body has been thus surrendered, the subordinate body "must dissolve." A similar provision will be incorporated into Chapter 20 (General Provisions).

Section 1800 is similar to prior law (Section 4650) except that (1) the requirement that shareholders seeking involuntary dissolution "have been record holders for a period of not less than six months" was eliminated and (2) a provision was added allowing an action for involuntary dissolution to be commenced by "any other person expressly authorized to do so in the articles." These changes were carried over into proposed Section 6820.

§ 6821. Grounds for proceedings

Proposed Section 6820 is similar to subdivision (b) of Section 1800 except that paragraph (5) of Section 1800(b)(close corporation: dissolution is "reasonably necessary" for protection of complaining shareholder) is not carried over. For a definition of "close corporation," see Section 158.

Section 1800(b) is similar to prior law (Section 4651) except that (1) paragraph (5) referred to above was not contained in prior law and (2) under prior law it was a ground for dissolution that the directors or shareholders were deadlocked while under Section 1800(b) both the directors and the shareholders must be deadlocked. It is noted in California Nonprofit Corporations Section 9.21, at 327 (Cal. Cont. Ed. Bar 1969), that most of the grounds specified in Section 4651 are "not applicable" to nonprofit corporations.

§ 6822. Appointment of provisional director

Proposed Section 6822 is virtually identical to Section 1802. Section 1802 is similar to prior law (Section 4655) except that the language "notwithstanding any provisions of the articles or by-laws" contained in prior law was eliminated in Section 1802. This language appears to have been

unnecessary, and its elimination would not appear to change the effect of the section. See Corp. Code § 204(d) (articles may contain provisions "not in conflict with law").

§ 6830. Grounds for proceedings [by state]

Proposed Section 6830 is virtually identical to Section 1801(a), except that an additional ground for an action by the Attorney General to dissolve a corporation is added; when the charter of a "subordinate body" has been surrendered to the "head or national body" granting it. Under present Corporation Code Section 9802, whenever the charter of a subordinate body has been thus surrendered, the subordinate body "must dissolve." A similar provision will be incorporated into Chapter 20 (General Provisions).

Section 1801(a) is virtually identical to prior law (Section 4690).

§ 6831. Notice to nonprofit corporation

Proposed Section 6831 is virtually identical to Section 1801(b) which, in turn, is virtually identical to prior law (Section 4691).

§ 6832. Powers of the court

Proposed Section 6832 is virtually identical to Section 1801(c) which, in turn, is virtually identical to prior law (Section 4692).

§ 6833. Service of Process

Proposed Section 6833 is similar to Section 1801(d), except that the provision of Section 1801(d) authorizing service of process on the corporation by written notice to the president or secretary of the corporation at the address indicated in the corporation's last tax return is not carried over into Section 6833. Some nonprofit corporations are excused from filing either a tax return or an information return with the Franchise Tax Board. See Rev. & Tax. Code § 23772; California Nonprofit Corporations § 3.12, at 98 (Cal. Cont. Ed. Bar 1969).

Section 1801(d) is similar to prior law (Section 4693).

§ 6840. Appointment of a receiver

Proposed Section 6840 is virtually identical to Section 1803, which,

in turn, is identical to prior law (Section 4656).

§ 6841. Decrees and orders of the court

Proposed Section 6841 is virtually identical to Section 1804, which, in turn, is virtually identical to prior law (Section 4657).

§ 6842. When proceedings for winding up commence

Proposed Section 6842 is virtually identical to Section 1805(a), which, in turn, is virtually identical to prior law (Section 4660).

§ 6843. Persons who shall conduct the winding up

Proposed Section 6843 is virtually identical to Section 1805(b), which, in turn, is similar to prior law (Section 4802).

§ 6844. Corporate activities during winding up

Proposed Section 6844 is similar to the first sentence of Section 1805(c). Section 1805(c) is similar to prior law (Section 4661), except that Section 1805(c) allows the corporation to continue to carry on its business while winding up "during such period as the board may deem necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, or both, in whole or in part." A similar provision is included in proposed Section 6844.

§ 6845. Notice of winding up

Proposed Section 6845 is virtually identical to the second sentence of Section 1805(c), except that the word "board" has been substituted in Section 6845 (for the word "directors" used in Section 1805(c)). The second sentence of Section 1805(c) is virtually identical to prior law (second sentence of Section 4661), which also used the word "directors."

The second sentence of Section 1903(c) (voluntary dissolution) is similar to the second sentence of Section 1805(c), but Section 1903(c) uses the word "board" instead of "directors." "Board" is defined in Section 155 as "the board of directors of the corporation."

§ 6846. Jurisdiction of the court in proceeding for winding up

Proposed Section 6846 is virtually identical to Section 1806 (General Corporation Law).

The Commission should consider whether use of the term "jurisdiction" is appropriate in connection with the enumeration of the court's powers. The meaning and usage of the term "jurisdiction" was discussed in the case of Abelleira v. District Court of Appeal, 17 Cal.2d 280, 287-288, 109 P.2d 942, _____ (1941):

The term ["jurisdiction"] . . . has so many different meanings that no single statement can be entirely satisfactory as a definition. . . .

Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties. . . .

For the purpose of determining the right to review by certiorari, restraint by prohibition, or dismissal of an action, a much broader meaning is recognized. Here it may be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.

It would seem that the sense in which the term "jurisdiction" is used in Section 1806 is the broad sense meaning "power," although Section 1806 was derived from Sections 4608-4614 and 4616-4619 of prior law, all of which use the term "jurisdiction." Sections 54 and 55 of the Model Nonprofit Corporation Act use the term "power," although Section 54 is captioned "Jurisdiction of Court to Liquidate Assets and Affairs of Corporation."

§ 6847. Time to present claims; notice to creditors and claimants

Section 6847 is virtually identical to subdivisions (a) and (b) of Section 1807. Subdivisions (a) and (b) of Section 1807, in turn, are virtually identical to prior law (second and third paragraphs of Section 4608).

§ 6848. Holders of secured claims

Section 6848 is identical to subdivision (c) of Section 1807, which, in turn, is identical to prior law (fourth paragraph of Section 4608).

§ 6849. Unmatured, contingent, or disputed claims

Section 6849 is virtually identical to subdivision (d) of Section 1807. Subdivision (d) of Section 1807, in turn, is virtually identical to prior law (fifth paragraph of Section 4608), except that under prior law a creditor having an unmatured claim could be paid the present value of his claim only if he consented. The "consent" language was deleted in Section 1807(d), which provides that a creditor having an unmatured claim "shall be entitled to its present value upon distribution."

§ 6850. Time to commence suits on rejected claims

Section 6850 is virtually identical to subdivision (e) of Section 1807, which, in turn, is identical to prior law (sixth paragraph of Section 4608).

§ 6851. Order for winding up and dissolution

Section 6851 is virtually identical to subdivision (a) of Section 1808, which, in turn, is similar to prior law (Section 5204).

§ 6852. Cessation of corporate existence

Section 6852 is virtually identical to subdivision (b) of Section 1808, which, in turn, is virtually identical to prior law (Section 5205).

§ 6853. Filing of copy of decree of dissolution

Section 6853 is virtually identical to Section 1809. The first sentence of Section 1809 is the same as prior law (Section 5206), except that a copy of the decree is required to be filed with the Secretary of State only, and the requirement of prior law that a copy shall also be filed "in the office of the county clerk of the county in which the principal office of the corporation was located, unless the original is already on file therein," is not continued in Section 1809.

The second sentence of Section 1809 (corresponding to subdivision (b) of Section 6853)(no tax certificate need be filed when action commenced by Attorney General) has no counterpart in prior law.

CHAPTER 19. VOLUNTARY DISSOLUTION

§ 6910. Application of chapter

Section 6910 is identical to Section 6810, except that the word "voluntary" is substituted for "involuntary." The discussion under Section 6810 on page 4 of this memorandum is equally pertinent to Section 6910.

§ 6920. Voluntary dissolution by members

Section 6920 is similar to subdivision (a) of Section 1900. The language "members holding 50 percent or more of the voting power" is substituted for "shareholders holding shares representing 50 percent or more of the votes entitled to be cast in the election of directors.) Subdivision (a) of Section 1900 is similar to prior law (Section 4600).

Under Section 204(a)(5), the majority vote provision of Section 1900 may not be increased by the articles of incorporation to require an extraordinary majority for voluntary dissolution. At common law, unanimous consent of the members was required for voluntary dissolution. H. Cleck, Non-Profit Corporations, Organizations, and Associations, § 328, at 853 (3d ed. 1974). A two-thirds vote is required in Delaware, Minnesota, New York, and South Dakota. Id. In Ohio, a majority vote is required unless the articles or bylaws provide a higher voting requirement. Id. § 328, at 855.

No compelling reason appears to depart, in nonprofit corporation law, from the majority vote requirement of California business corporation law (Section 1900).

§ 6921. Voluntary dissolution by board

Section 6921 is similar to subdivision (b) of Section 1900. Paragraph (1) of subdivision (b) of Section 1900 (board may dissolve corporation "which has not begun business and which has issued no shares") is revised to authorize the board to dissolve a nonprofit corporation "which has not begun operation and which has no members other than the directors." Paragraph (4) of subdivision (b) of Section 1900 (board may dissolve corporation "which has issued no shares and is not obligated to issue any shares") is not carried over into Section 6921.

Subdivision (b) of Section 1900 is similar to prior law (Section 4601), except that paragraph (4) of Section 1900(b) has no counterpart in prior law.

§ 6922. Certificate of election to wind up and dissolve

Section 6922 is similar to Section 1901. Where Section 1901 refers to shareholders holding shares representing at least 50 percent of the voting power, Section 6922 substitutes the phrase "members holding at least 50 percent of the voting power."

Section 1901 is similar to prior law (Section 4603), except that Section 1901 does not continue the provision of prior law requiring a copy of the certificate evidencing the election to dissolve to be filed in the office of the county clerk in which the principal office of the corporation is located.

§ 6923. Revocation of election to wind up and dissolve

Section 6923 is similar to Section 1902. The phrase "vote of the members holding 50 percent or more of the voting power" is substituted in subdivision (a) for the phrase "vote of shareholders holding shares representing a majority of the votes entitled to be cast in the election of directors." In paragraph (3) of subdivision (b), the phrase "number of votes cast in favor of the revocation and the total number of votes entitled to be cast by the membership" is substituted for the phrase "number of shares voting for the revocation and the total number of outstanding shares the holders of which were entitled to vote on the revocation."

Section 1902 is similar to prior law (Section 4606).

§ 6930. Commencement of proceedings

Section 6930 is virtually identical to subdivision (a) of Section 1903, which, in turn, is virtually identical to prior law (first sentence of Section 4604). However, the second sentence of Section 4604 (if corporate existence has expired, proceedings commence as of date of expiration) is not continued in Section 1903.

§ 6931. Powers of board during proceedings

Section 6931 is identical to subdivision (b) of Section 1903, which, in turn, is similar to prior law (first sentence of Section 4800). Section 1903(b) adds language to prior law, however, making it clear that the board of directors has full power to wind up the corporation "both before and after the filing of the certificate of dissolution."

§ 6932. Corporate activities during winding up

Section 6932 is similar to the first sentence of subdivision (c) of Section 1903. The authorization contained in Section 1903(c) for the corporation to carry on business during winding up to preserve going concern value pending sale is carried over into Section 6932. For similar provisions in Chapter 18 (Involuntary Dissolution), see proposed Section 6844 and Section 1805(c).

The first sentence of Section 1903(c) is identical to prior law (first sentence of Section 4605).

§ 6933. Notice of winding up

Section 6933 is virtually identical to the second sentence of subdivision (c) of Section 1903, which, in turn, is similar to prior law (second sentence of Section 4605), except that the provision dispensing with notice to shareholders who voted in favor of winding up and dissolving the corporation was added in Section 1903.

§ 6934. Supervision by court upon petition

Section 6934 is similar to Section 1904. The language of subdivision (b) is changed so that among the persons authorized to petition the court for supervision are "members holding one-third or more of the voting power," instead of "holders of shares entitled to file an involuntary proceeding under subdivision (a)(2) of Section 1800."

Section 1904 is based upon prior law (Section 4607). The prior provision corresponding to the language quoted above allowed a petition by "holders of 5 percent or more of the number of its outstanding shares." The prior provision allowing petition by "three or more persons who have purchased homes from a construction corporation" was not continued, nor was the entire second paragraph of Section 4607 relating to construction corporations.

§ 6935. Certificate of dissolution

Section 6935 is virtually identical to Section 1905, except that to the language requiring the certificate of the Franchise Tax Board to provide that all taxes have been paid or secured is added, "or that no such taxes have been imposed."

Section 1905 is similar to prior law (Sections 5200, 5201). Paragraph (3) of subdivision (a) of Section 1905 corresponds to subdivision (c) of Section 5200; the former omits the following language of the latter: ". . . or, in the case of a nonprofit corporation, distributed in accordance with its articles or court decree, as the case may be." Under proposed Section 6935, the certificate is required to state that the assets have been "distributed to members" without specifying whether the distribution was "in accordance with its articles or court decree."

§ 6940. Winding up of nonprofit corporation whose term of existence has expired

Section 6940 is virtually identical to Section 1906, which, in turn, is similar to prior law (Section 5201.5).

§ 6941. Petition to court in lieu of filing certificate of dissolution

Section 6941 is virtually identical to Section 1907. Section 1907 is similar to prior law (Sections 5202, 5203), except that publication of the order to show cause is reduced from "once a week for a period of two consecutive months" (Section 5202) to "not less than once a week for three consecutive weeks" (Sections 1907(b), 1807(b)), and language is added to Section 1907 expressly barring claims not presented within the time prescribed. Subdivision (d) of Section 1907 (entering, filing, and effect of order) is new.

Respectfully submitted,

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CHAPTER 18. INVOLUNTARY DISSOLUTION

Article 1. Application of Chapter§ 6810. Application of chapter

6810. Except as otherwise expressly or impliedly required by statute, the provisions of this chapter apply to all involuntary dissolutions of nonprofit corporations.

Comment. Section 6810 is new. For examples of specific provisions applicable to dissolution of certain kinds of nonprofit corporations, see Food & Agri, Code § 4702 (citrus fruit fair associations) and Health & Saf, Code § 35166 (land chest corporations).

Article 2. Proceedings by Directors or Members

§ 6820. Persons who may commence proceedings

6820. (a) A verified complaint for involuntary dissolution of a nonprofit corporation on any one or more of the grounds specified in Section 6821 may be filed in the superior court of the proper county by any of the following persons:

(1) One-half or more of the directors in office.

(2) Members holding one-third or more of the voting power.

(3) Any member if the ground for dissolution is that the period for which the nonprofit corporation was formed has terminated without extension thereof, or that the charter of a subordinate body incorporated pursuant to the General Nonprofit Corporation Law has been surrendered to, taken away, or revoked by the head or national body granting it.

(4) Any other person expressly authorized to do so in the articles.

(b) At any time prior to the trial of the action, any member or creditor may intervene therein.

Comment. Section 6820 is new; for comparable provisions, see subdivisions (a) and (c) of Section 1800 (General Corporation Law). The term "proper county" is defined in Section [177 of new law]. The term "directors" includes persons who act in the capacity of directors regardless of the title given to such persons. See Corp. Code § [9300(e) of old law].

§ 6821. Grounds for proceedings

6821. The grounds for involuntary dissolution in a proceeding commenced by a person authorized to do so in Section 6820 are that:

(a) The nonprofit corporation has abandoned its activities for more than one year.

(b) The nonprofit corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs so that its activities can no longer be conducted to advantage or so that there is danger that its property and activities will be impaired and the voting members are so divided into factions that they cannot elect a board consisting of an uneven number or the members have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon election of their successors.

(c) There is internal dissension and two or more factions of members of the nonprofit corporation are so deadlocked that its activities can no longer be advantageously conducted.

(d) Those in control of the nonprofit corporation have been guilty of or have knowingly countenanced persistent and pervasive fraud, mismanagement, abuse of authority, or persistent unfairness toward any members, or its property is being misapplied or wasted by its directors or officers.

(e) The period for which the nonprofit corporation was formed has terminated without extension of such period.

(f) The charter of a subordinate body incorporated pursuant to the General Nonprofit Corporation Law has been surrendered to, taken away, or revoked by the head or national body granting it.

Comment. Section 6821 is new; for comparable provisions, see Section 1300(b) (General Corporation Law). Subdivision (g) is derived from former Section 9802.

§ 6822. Appointment of provisional directors

6822. If the ground for the complaint for involuntary dissolution of the nonprofit corporation is a deadlock in the board as set forth in subdivision (b) of Section 6821, the court may appoint a provisional director. The provisions of subdivision (b) of Section [5308] apply to any such provisional director so appointed.

Comment. Section 6822 is new; for comparable provisions, see Section 1802 (General Corporation Law).

Article 3. Proceedings by State§ 6830. Grounds for proceedings

6830. The Attorney General may bring an action against any domestic nonprofit corporation or purported domestic nonprofit corporation in the name of the people of this state, upon the Attorney General's own information or upon complaint of a private party, to procure a judgment dissolving the nonprofit corporation and annulling, vacating, or forfeiting its corporate existence upon any of the following grounds:

(a) The nonprofit corporation has seriously offended against any provision of the statute regulating corporations.

(b) The nonprofit corporation has fraudulently abused or usurped corporate privileges or powers.

(c) The nonprofit corporation has violated any provision of law by any act or default which under the law is a ground for forfeiture of corporate existence.

(d) The nonprofit corporation has failed to pay to the Franchise Tax Board for a period of five years any tax imposed upon it by the Bank and Corporation Tax Law.

(e) The charter of a subordinate body incorporated pursuant to the General Nonprofit Corporation Law has been surrendered to, taken away, or revoked by the head or national body granting it.

Comment. Section 6830 is new; for comparable provisions, see Section 1801(a) (General Corporation Law).

Subdivision (d) will not apply to nonprofit corporations which have timely obtained a tax exemption pursuant to Section 23701 of the Revenue and Taxation Code.

Subdivision (e) is derived from former Section 9802.

§ 6831. Notice to nonprofit corporation

6831. If the ground of the action is a matter or act which the nonprofit corporation has done or omitted to do that can be corrected by amendment of its articles or by other corporate action, such suit shall not be maintained unless (1) the Attorney General, at least 30 days prior to the institution of suit, has given the nonprofit corporation written notice of the matter or act done or omitted to be done and (2) the nonprofit corporation has failed to institute proceedings to correct it within the 30-day period or thereafter fails to prosecute such proceedings.

Comment. Section 6831 is new; for comparable provisions, see Section 1801(b) (General Corporation Law).

§ 6832. Powers of the court

6832. (a) In any action brought pursuant to this article, the court may order dissolution or such other or partial relief as it deems just and expedient.

(b) The court also may appoint a receiver for winding up the affairs of the nonprofit corporation or may order that the nonprofit corporation be wound up by its board subject to the supervision of the court.

Comment. Section 6832 is new; for comparable provisions, see Section 1801(c) (General Corporation Law).

§ 6833. Service of process

6833. (a) Service of process on the nonprofit corporation shall be made pursuant to Chapter 17.

(b) The Attorney General shall also publish one time in a newspaper of general circulation in the proper county a notice to the members of the nonprofit corporation.

Comment. Section 6833 is new; for comparable provisions, see Section 1801(d)(General Corporation Law). Section 6833, however, does not authorize service by written notice to the president or secretary of the corporation at the address indicated in the corporation's last tax return as is authorized by Section 1301(d).

Article 4. General Provisions Concerning Involuntary Dissolution§ 6840. Appointment of a receiver

6840. If, at the time of the filing of a complaint for involuntary dissolution or at any time thereafter, the court has reasonable grounds to believe that, unless a receiver of the nonprofit corporation is appointed, the interests of the nonprofit corporation and its members will suffer pending the hearing and determination of the complaint upon the application of the plaintiff and after a hearing upon such notice to the nonprofit corporation as the court may direct, and upon the giving of security pursuant to Sections 566 and 567 of the Code of Civil Procedure, the court may appoint a receiver to take over and manage the affairs of the nonprofit corporation and to preserve its property pending the hearing and determination of the complaint for dissolution.

Comment. Section 6840 is new; for comparable provisions, see Section 1303 (General Corporation Law).

§ 6841. Decrees and orders of the court

6841. After hearing, the court may decree a winding up and dissolution of the nonprofit corporation if cause therefor is shown or, with or without winding up and dissolution, may make such orders and decrees and issue such injunctions in the case as justice and equity require.

Comment. Section 6341 is new; for comparable provisions, see Section 1804 (General Corporation Law).

§ 6842. When proceedings for winding up commence

6842. Involuntary proceedings for winding up a nonprofit corporation commence when the order for winding up is entered under Section 6841.

Comment. Section 6842 is new; for comparable provisions, see Section 1805(a) (General Corporation Law).

§ 6843. Persons who shall conduct the winding up

6843. (a) When an involuntary proceeding for winding up has commenced, the board shall conduct the winding up of the affairs of the nonprofit corporation, subject to the supervision of the court, unless other persons are appointed by the court, on good cause shown, to conduct the winding up.

(b) The directors or such other persons may, subject to any restrictions imposed by the court, exercise all their powers through the executive officers without any order of court.

Comment. Section 6843 is new; for comparable provisions, see Section 1805(b) (General Corporation Law).

§ 6844. Corporate activities during winding up

6844. When an involuntary proceeding for winding up has commenced, the nonprofit corporation shall cease to carry on its activities except to the extent necessary for the beneficial winding up thereof and except during such period as the board may deem necessary to preserve the nonprofit corporation's goodwill or going-concern value pending a sale of any business conducted by it, its assets, or both, in whole or in part.

Comment. Section 6844 is new; for comparable provisions, see the first sentence of Section 1805(c)(General Corporation Law).

§ 6845. Notice of winding up

6845. The board shall cause written notice of the commencement of the proceeding for involuntary winding up to be given by mail to all members and to all known creditors and claimants whose addresses appear on the records of the nonprofit corporation, unless the order for winding up has been stayed by appeal therefrom or otherwise, or the proceeding or the execution of the order has been enjoined.

Comment. Section 6845 is new; for comparable provisions, see the second sentence of Section 1805(c)(General Corporation Law).

§ 6846. Jurisdiction of the court in proceeding for winding up

6846. When an involuntary proceeding for winding up has been commenced, the jurisdiction of the court includes:

(a) The requirement of the proof of all claims and demands against the nonprofit corporation, whether due or not yet due, contingent, unliquidated or sounding only in damages, and the barring from participation of creditors and claimants failing to make and present claims and proof as required by any order.

(b) The determination or compromise of all claims of every nature against the nonprofit corporation or any of its property, and the determination of the amount of money or assets required to be retained to pay or provide for the payment of claims.

(c) The determination of the rights of members and of all classes of members in and to the assets of the nonprofit corporation.

(d) The presentation and filing of intermediate and final accounts of the directors or other persons appointed to conduct the winding up and hearing thereon, the allowance, disallowance or settlement thereof and the discharge of the directors or such other persons from their duties and liabilities.

(e) The appointment of a commissioner to hear and determine any or all matters, with such power or authority as the court may deem proper.

(f) The filling of any vacancies on the board which the directors or members are unable to fill.

(g) The removal of any director if it appears that the director has been guilty of dishonesty, misconduct, neglect or abuse of trust in

conducting the winding up or if the director is unable to act. The court may order an election to fill the vacancy so caused, and may enjoin, for such time as it considers proper, the reelection of the director so removed; or the court, in lieu of ordering an election, may appoint a director to fill the vacancy caused by such removal. Any director so appointed by the court shall serve until the next annual meeting of members or until a successor is elected or appointed.

(h) Staying the prosecution of any suit, proceeding, or action against the nonprofit corporation and requiring the parties to present and prove their claims in the manner required of other creditors.

(i) The determination of whether adequate provision has been made for payment or satisfaction of all debts and liabilities not actually paid.

(j) The making of orders for the withdrawal or termination of proceedings to wind up and dissolve, subject to conditions for the protection of members and creditors.

(k) The making of an order, upon the allowance or settlement of the final accounts of the directors or such other persons, that the nonprofit corporation has been duly wound up and is dissolved. Upon the making of such order, the corporate existence shall cease except for purposes of further winding up if needed.

(l) The making of orders for the bringing in of new parties as the court deems proper for the determination of all questions and matters.

Comment. Section 6846 is new; for comparable provisions, see Section 1806 (General Corporation Law).

§ 6847. Time to present claims; notice to creditors and claimants

6847. (a) All creditors and claimants may be barred from participation in any distribution of the general assets if they fail to make and present claims and proofs within such time as the court may direct, which shall not be less than four nor more than six months after the first publication of notice to creditors unless it appears by affidavit that there are no claims, in which case the time limit may be three months. If it is shown that a claimant did not receive notice because of absence from the state or other cause, the court may allow a claim to be filed or presented at any time before distribution is completed.

(b) Such notice to creditors shall be published not less than once a week for three consecutive weeks in a newspaper of general circulation published in the county in which the proceeding is pending or, if there is no such newspaper published in that county, in such newspaper as may be designated by the court, directing creditors and claimants to make and present claims and proofs to the person, at the place and within the time specified in the notice. A copy of the notice shall be mailed to each person shown as a creditor or claimant on the books of the non-profit corporation, at such person's last known address.

Comment. Section 6847 is new; for comparable provisions, see subdivisions (a) and (b) of Section 1307 (General Corporation Law).

§ 6848. Holders of secured claims

6848. Holders of secured claims may prove for the whole debt in order to realize any deficiency. If such creditors fail to present their claims, they shall be barred only as to any right to claim against the general assets for any deficiency in the amount realized on their security.

Comment. Section 6848 is new; for comparable provisions, see Section 1807(c) (General Corporation Law).

§ 6849. Unmatured, contingent, or disputed claims

6849. Before any distribution is made, the amount of any unmatured, contingent, or disputed claim against the nonprofit corporation which has been presented and has not been disallowed, or such part of any such claim as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into court and there remain to be paid over to the party when the party becomes entitled thereto or, if the party fails to establish a claim, to be paid over or distributed with the other assets of the nonprofit corporation to those entitled thereto; or such other provision for the full payment of such claim, if and when established, shall be made as the court may deem adequate. A creditor whose claim has been allowed but is not yet due shall be entitled to its present value upon distribution.

Comment. Section 6849 is new; for comparable provisions, see Section 1807(d) (General Corporation Law).

§ 6850. Time to commence suits on rejected claims

6850. Suits against the nonprofit corporation on claims which have been rejected shall be commenced within 30 days after written notice of rejection thereof is given to the claimant.

Comment. Section 6850 is new; for comparable provisions, see Section 1807(e) (General Corporation Law).

§ 6851. Order for winding up and dissolution

6851. (a) Upon the final settlement of the accounts of the directors or other persons appointed pursuant to Section 6843 and the determination that the nonprofit corporation's affairs are in condition for it to be dissolved, the court may make an order declaring the nonprofit corporation duly wound up and dissolved.

(b) The order shall declare:

(1) That the nonprofit corporation has been duly wound up, that any tax or penalty due under the Bank and Corporation Tax Law has been paid or secured or that no such tax or penalty is due, and that its other known debts and liabilities have been paid or adequately provided for, or that such taxes, penalties, debts, and liabilities have been paid as far as its assets permitted, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the order shall state what provision has been made, setting forth the name and address of the corporation, person, or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(2) That all known assets have been distributed to members or wholly applied on account of the nonprofit corporation's debts and liabilities.

(3) That the accounts of directors or such other persons have been settled and that they are discharged from their duties and liabilities to creditors and members.

(4) That the nonprofit corporation is dissolved.

(c) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

Comment. Section 6851 is new; for comparable provisions, see Section 1808(a) (General Corporation Law). There should be no tax or penalty due under paragraph (1) of subdivision (b) for nonprofit corporations which have timely obtained a tax exemption pursuant to Section 23701 of the Revenue and Taxation Code.

§ 6852. Cessation of corporate existence

6852. (a) Upon the making of the order declaring the nonprofit corporation dissolved, corporate existence shall cease except for the purposes of further winding up if needed.

(b) The directors or such other persons shall be discharged from their duties and liabilities except in respect to completion of the winding up.

Comment. Section 6852 is new; for comparable provisions, see Section 1808(b) (General Corporation Law).

§ 6853. Filing of copy of decree of dissolution

6853. (a) Whenever a nonprofit corporation is dissolved or its existence forfeited by order, decree, or judgment of a court, a copy of the order, decree, or judgment, certified by the clerk of court, shall forthwith be filed in the office of the Secretary of State.

(b) Notwithstanding Section 23334 of the Revenue and Taxation Code, when the order is based on an action for involuntary dissolution brought by the Attorney General pursuant to Section 6830, there need not be filed in the office of the Secretary of State the certificate of satisfaction of the Franchise Tax Board that all taxes have been paid or secured.

Comment. Section 6853 is new; for comparable provisions, see Section 1809 (General Corporation Law).

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CHAPTER 19. VOLUNTARY DISSOLUTION

Article 1. Application of Chapter§ 6910. Application of chapter

6910. Except as otherwise expressly or impliedly required by statute, the provisions of this chapter apply to all voluntary dissolutions of nonprofit corporations.

Comment. Section 6910 is new. For examples of specific provisions applicable to dissolution of certain kinds of nonprofit corporations, see Food & Agri. Code § 4702 (citrus fruit fair associations) and Health & Saf. Code § 35166 (land chest corporations).

Article 2. Election to Dissolve; Revocation

§ 6920. Voluntary dissolution by members

6920. Any nonprofit corporation may elect voluntarily to wind up and dissolve by the vote of members holding 50 percent or more of the voting power.

Comment. Section 6920 is new; for comparable provisions, see Section 1900(a)(General Corporation Law).

§ 6921. Voluntary dissolution by board

6921. Any nonprofit corporation which comes within one of the following descriptions may elect by approval by the board to wind up and dissolve:

(a) A nonprofit corporation which has not begun operation and which has no members other than the directors.

(b) A nonprofit corporation which has been adjudicated a bankrupt.

(c) A nonprofit corporation which has disposed of all of its assets and has not conducted any activities for a period of five years immediately preceding the adoption of the resolution electing to dissolve the nonprofit corporation.

Comment. Section 6921 is new; for comparable provisions, see Section 1900(b) (General Corporation Law).

§ 6922. Certificate of election to wind up and dissolve

6922. (a) Whenever a nonprofit corporation has elected to wind up and dissolve, a certificate evidencing such election shall forthwith be filed.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by members holding 50 percent or more of the voting power and shall set forth:

(1) That the nonprofit corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members, the number of members voting for the election and that the election was made by members holding at least 50 percent of the voting power.

(3) If the certificate is executed by a member or members, that the subscribing member or members were authorized to execute the certificate by members holding at least 50 percent of the voting power.

(4) If the election was made by the board pursuant to Section 6921, the certificate shall also set forth the circumstances showing the nonprofit corporation to be within one of the categories described in said section.

Comment. Section 6922 is new; for comparable provisions, see Section 1901 (General Corporation Law). The requirement of subdivision (a) that the certificate be "filed" means filed in the office of the Secretary of State. Corp. Code § [169 of new General Corporation Law].

§ 6923. Revocation of election to wind up and dissolve

6923. (a) A voluntary election to wind up and dissolve may be revoked prior to distribution of any assets by the vote of the members holding 50 percent or more of the voting power, or by approval by the board if the election was by the board pursuant to Section 6921. Thereupon a certificate evidencing the revocation shall be signed, verified and filed in the manner prescribed by Section 6922.

(b) The certificate shall set forth:

(1) That the nonprofit corporation has revoked its election to wind up and dissolve.

(2) That no assets have been distributed pursuant to the election.

(3) If the revocation was made by the vote of members, the number of votes cast in favor of the revocation and the total number of votes entitled to be cast by the membership.

(4) If the election and revocation were by the board, that shall be stated.

Comment. Section 6923 is new; for comparable provisions, see Section 1902 (General Corporation Law).

Article 3. Commencement and Conduct of Proceedings

§ 6930. Commencement of proceedings

6930. Voluntary proceedings for winding up the nonprofit corporation commence upon the adoption of the resolution of members or directors of the nonprofit corporation electing to wind up and dissolve, or upon the filing with the nonprofit corporation of a written consent of members thereto.

Comment. Section 6930 is new; for comparable provisions, see Section 1903(a)(General Corporation Law).

§ 6931. Powers of board during proceedings

6931. When a voluntary proceeding for winding up has commenced, the board shall continue to act as a board and shall have full powers to wind up and settle its affairs, both before and after the filing of the certificate of dissolution.

Comment. Section 6931 is new; for comparable provisions, see Section 1903(b)(General Corporation Law).

§ 6932. Corporate activities during winding up

6932. When a voluntary proceeding for winding up has commenced, the nonprofit corporation shall cease to carry on its activities except to the extent necessary for the beneficial winding up thereof and except during such period as the board may deem necessary to preserve the nonprofit corporation's goodwill or going concern value pending a sale of any business conducted by it, its assets, or both, in whole or in part.

Comment. Section 6932 is new; for comparable provisions, see the first sentence of Section 1903(c)(General Corporation Law).

§ 6933. Notice of winding up

6933. The board shall cause written notice of the commencement of the proceeding for voluntary winding up to be given by mail to all members (except no notice need be given to the members who voted in favor of winding up and dissolving the corporation) and to all known creditors and claimants whose addresses appear on the records of the nonprofit corporation.

Comment. Section 6933 is new; for comparable provisions, see the last sentence of Section 1903(c)(General Corporation Law).

§ 6934. Supervision by court upon petition

6934. (a) If a nonprofit corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (1) the nonprofit corporation or (2) members holding one-third or more of the voting power, or (3) three or more creditors, and upon such notice to the nonprofit corporation and to other persons interested in the nonprofit corporation as members and creditors as the court may order, may take jurisdiction over such voluntary winding up proceeding if that appears necessary for the protection of any parties in interest.

(b) The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the nonprofit corporation and for the protection of its members and creditors as justice and equity may require.

(c) The provisions of Chapter 18 (except Sections 6820 and 6821) shall apply to such court proceedings.

Comment. Section 6934 is new; for comparable provisions, see Section 1904 (General Corporation Law). The term "proper county" is defined in Section [177 of new General Corporation Law].

§ 6935. Certificate of dissolution

6935. (a) When a nonprofit corporation has been completely wound up without court proceedings therefor, a majority of the directors then in office shall sign and verify a certificate of dissolution stating:

(1) That the nonprofit corporation has been completely wound up.

(2) That its known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted, or that it has incurred no known debts or liabilities, as the case may be. If there are known debts or liabilities for payment of which adequate provision has been made, the certificate shall state what provision has been made, setting forth the name and address of the corporation, person or governmental agency that has assumed or guaranteed the payment, or the name and address of the depository with which deposit has been made or such other information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability.

(3) That its known assets have been distributed to members or wholly applied or deposited on account of its debts and liabilities or that it acquired no known assets, as the case may be.

(4) That the nonprofit corporation is dissolved.

(b) The certificate of dissolution shall be filed and thereupon the corporate existence shall cease, except for the purpose of further winding up if needed. However, before any nonprofit corporation taxed under the Bank and Corporation Tax Law may file a certificate of dissolution it shall file or cause to be filed the certificate of satisfaction of the Franchise Tax Board that all taxes imposed under the Bank and Corporation Tax Law have been paid or secured or that no such taxes have been imposed.

Comment. Section 6935 is new; for comparable provisions, see Section 1905 (General Corporation Law). The board may, in lieu of filing the certificate of dissolution required by this section, petition the superior court of the proper county for an order declaring the corporation duly wound up and dissolved. Corp. Code § 6941(a).

Article 4. General Provisions Concerning
Voluntary Dissolution

§ 6940. Winding up of nonprofit corporation
whose term of existence has expired

6940. (a) Except as otherwise provided by law, if the term of existence for which any nonprofit corporation was organized expires without renewal or extension thereof, the board shall terminate its activities and wind up its affairs.

(b) When the activities and affairs of the nonprofit corporation have been wound up, a majority of the directors shall execute and file a certificate conforming to the requirements of Section 6935.

Comment. Section 6940 is new; for comparable provisions, see Section 1906 (General Corporation Law).

§ 6941. Petition to court in lieu of filing certificate
of dissolution

6941. (a) The board, in lieu of filing the certificate of dissolution, may petition the superior court of the proper county for an order declaring the nonprofit corporation duly wound up and dissolved. Such petition shall be filed in the name of the nonprofit corporation.

(b) Upon the filing of the petition, the court shall make an order requiring all persons interested to show cause why an order should not be made declaring the nonprofit corporation duly wound up and dissolved and shall direct that the order be served by notice to all creditors, claimants, and members in the same manner as the notice given under subdivision (b) of Section 6847.

(c) Any person claiming to be interested as member, creditor or otherwise may appear in the proceeding at any time before the expiration of 30 days from the completion of publication of the order to show cause and contest the petition, and upon failure to appear such person's claims shall be barred.

(d) Thereafter an order shall be entered and filed and have the effect as prescribed in Sections 6852 and 6853.

Comment. Section 6941 is new; for comparable provisions, see Section 1907 (General Corporation Law).