

# Frequently Asked Questions:

## *Voluntary Dissolution of a Corporation in Ontario*

### **What is dissolution?**

When a corporation is dissolved, the corporation ceases to legally exist. It can no longer own property, carry on business or enter into contracts.

Dissolution is voluntary if the corporation itself applies to be dissolved. Dissolution is involuntary if the corporation is dissolved by the government for failure to maintain its annual filings, failure to comply with other legal requirements, or in accordance with a court order. In this guide, we only deal with voluntary dissolution.

This guide deals with corporations in Ontario, incorporated under the *Canada Business Corporations Act* (CBCA) or the *Ontario Business Corporations Act* (OBCA).

### **What if the corporation seeking dissolution has assets?**

If an OBCA or CBCA corporation that wishes to dissolve has assets, it must first pay its debts. Afterwards, it must transfer its remaining assets to its shareholders or turn its remaining assets into cash and distribute the cash to the shareholders based on the shareholders' entitlements. These things should be done before it applies to dissolve voluntarily.

### **What if the corporation seeking dissolution has debts or is being sued?**

If a corporation has carried on business and issued shares, then it must first pay its debts, and resolve or settle any legal proceedings (lawsuits) or court/tribunal judgments, before it applies for voluntary dissolution. Debts can also include all of its tax obligations.

Corporations should obtain an Ontario tax clearance (proving they do not owe any taxes) before they apply to dissolve voluntarily.

Corporations that are being sued are generally not allowed to dissolve voluntarily. They are required to make a statement indicating that there are no legal proceedings against them in court or at a tribunal. If a corporation is facing a legal proceeding and is then dissolved, the party seeking to sue the corporation can apply to have the corporation revived, and the lawsuit can proceed in the normal manner (and the revived corporation will be responsible for any judgment against it).

It should be noted that special conditions apply if an insolvent or a bankrupt corporation wishes to dissolve. For more information, please speak with your legal and/or bankruptcy advisor.

### **What if the corporation never carried on business and never issued shares?**

OBCA and CBCA corporations that have never carried on business and have never issued shares must still be formally dissolved, or they may continue to exist. However, the process for dissolving these corporations is very simple.

### **Our expertise**

Mergers & Acquisitions  
Business Law Advice  
Commercial Real Estate & Development  
Investing in Canada  
Financing  
Business Succession Planning  
Estate Planning & Administration  
Employment Law

---

*This publication provides an outline of issues for business professionals to consider. The content should not be taken as legal advice. It is not exhaustive and is subject to change. Please consult with an HHS lawyer for information or advice specific to your situation.*

© HHS 2015

## What if the corporation is still continuing business activities?

To prepare for dissolution, a corporation must stop doing business. As noted above, a corporation must have no assets and no debts before it can dissolve voluntarily, so most corporations will need to conclude current business, and then engage in a process to ready themselves for dissolution (e.g. a winding-up or liquidation).

## What is involved in dissolution?

There are some differences between the OBCA and CBCA. As such, this is only an overview.

- Step 1: After bringing the corporate minute books up to date (if necessary), the corporation's lawyer will need to draft resolutions authorizing the dissolution of the corporation, including a special resolution passed by the corporation's shareholders.
- Step 2: The corporation must satisfy all of its debts and obligations. The corporation should discuss the dissolution with its accountant, as it will need to pay all unpaid taxes, file the final tax returns and obtain the tax clearances necessary for the dissolution. If the corporation has any assets (including cash) remaining after its debts and obligations are fully satisfied, then these assets should be distributed to the corporation's shareholders, in accordance with their entitlements. The corporation should also enter into a "general conveyance" (drafted by the corporation's lawyer) with another party, in order to ensure that any overlooked assets or debts which are discovered after dissolution are properly dealt with by that other party.
- Step 3: If the corporation no longer has any assets or debts, then the corporation can proceed to fill out the relevant government form. The completed form (and other mandatory documents, if applicable) should then be filed with the government and any required filing fees should be paid. After confirmation of the dissolution is received (usually by a "Certificate of Dissolution"), the corporation's minute book should be updated to reflect the dissolution.
- Step 4: Someone from the corporation (or the corporation's accountant) should retain the corporate minute book, proof of dissolution and other relevant corporate records for safekeeping for six years (or until all applicable tax re-assessment periods have expired, if longer than six years).

## Are there any obligations after a corporation is dissolved?

Someone on behalf of the dissolved corporation must retain the corporation's records for at least six years after dissolution (or until all applicable tax re-assessment periods have expired, if longer than six years). As noted above, a corporation can be revived if someone seeks to bring a legal proceeding or enforce a debt against the dissolved corporation, so it is advisable to keep all relevant corporate documents (including contracts) until after the expiry of all applicable limitation periods.

## What is revival?

Revival is the restoration of a dissolved corporation's legal existence. After revival, the dissolved corporation will once again become a legal person. If a corporation is successfully revived, then its revival will be applied retroactively so that the corporation will be responsible for all acts done by (and to) the corporation during the time period after the corporation was dissolved and before it was revived.

## What will dissolution cost?

The costs to dissolve a corporation will vary depending on fees and other steps. As of May 2013, there is no government fee to file for voluntary dissolution under the CBCA, but OBCA corporations must pay \$25.00 (these amounts may change in the future).

Legal fees will be higher if:

- 1) Corporate records are not well-maintained or up to date;
- 2) The corporation has significant assets or debts which must be dealt with;
- 3) The corporation is involved in legal proceedings which must be resolved and/or settled;
- 4) A pre-dissolution tax re-organization is required; and/or
- 5) There are other delays or issues which are not caused by us.

## Other considerations:

Corporations should consult with an Ontario accountant before engaging in dissolution, as there may be some tax efficient ways to dispose of the corporation's assets or debts. If the corporation carries on business in jurisdictions other than Ontario, then someone should speak with legal and tax advisors on those jurisdictions as well.

*\* This is an outline of common issues to consider. It is not exhaustive and is subject to change. It is not legal advice. Please speak with us about your particular situation.*

*\*Worksheet on Voluntary Dissolution of a Corporation in Ontario also available on [www.houserhenry.com](http://www.houserhenry.com).*

---

## About HHS

Since 1934, Houser Henry & Syron LLP has provided legal services to private businesses, helping them deal with the complexity that comes with growth and success.

We understand the needs of mid-sized businesses and their owners and managers and we have the breadth of expertise and the depth of experience necessary to meet those needs. [Read what our clients have to say about working with our firm.](#)