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Karen A. Simmons
Chester County Community Foundation
28 West Market Street
West Chester, PA 19382

RE: What happens if a Pennsylvania charitable nonprofit has to close its doors?

Dear Karen,

While I sincerely hope that all of our local nonprofit organizations will successfully weather the year 2020, I imagine there may be a few nonprofits and their Boards who are wondering what may come next if they are not able to continue to operate. To that end, I have put together a brief, general outline of the options available to a nonprofit faced with closing its doors.

1. How does a Pennsylvania charity or charitable nonprofit close, or cease to exist?

If and when a charitable nonprofit board determines they are no longer able to continue operations, there are a few options under Pennsylvania law.

A charitable nonprofit can either 1) **merge** with another charitable nonprofit; 2) **dissolve** their operations and donate any assets to a similar charitable nonprofit; or 3) **be involuntarily dissolved**, if absolutely necessary. The third option is very rare as it is only possible under unlikely circumstances, such as the goals of the nonprofit are impracticable, the board is acting illegally or fraudulently, the assets are being misapplied or wasted, or the board is deadlocked and the nonprofit itself is suffering irreparable injury. More than likely, none of those scenarios are applicable, which leaves the Board considering either a merger or dissolution.

2. What would it look like to **merge** with another nonprofit?

To merge with another Pennsylvania nonprofit, both the Board of the closing or merging nonprofit and the Board of the receiving nonprofit will need to meet and approve the merger. A Statement of Merger will need to be filed with the PA Department of State, as well as a Docketing Statement – Changes, noting the change in entities. Other forms may be needed depending on the particulars of the merger, but both of these forms will be required at a minimum. Depending on the details of the merger, and the type of nonprofits merging, approval may be required by the Pennsylvania Attorney General's Office and the local Orphan's Court.

Assuming there are no issues or concerns with the Pennsylvania charitable purpose doctrine (see Question 4), any liabilities, assets, or property of the merged nonprofit become the property or liabilities of the surviving nonprofit.

3. How does a nonprofit **dissolve**?

Voluntary dissolution of a Pennsylvania nonprofit can be accomplished following a decision by the Board, directors or members of the nonprofit. Once that decision has been made and adopted, the nonprofit may need the approval of the Pennsylvania Attorney General's Office and the local Orphan's Court. A qualified member may then file Articles of Dissolution (which is available online) with the Pennsylvania Department of State. Tax clearances must also be obtained from the Department of Revenue and from Department of Labor and Industry showing that all taxes and fees to the state have been paid and satisfied. Once received, those clearances will be filed with the Articles of Dissolution. The nonprofit would have to collect any amounts owed to it, and pay off all outstanding bills and liabilities before it can be considered dissolved. That process can begin either before or after a filing for dissolution. Assets remaining after those liabilities have been satisfied must be transferred in accordance with the Pennsylvania policy on non-diversion of charitable assets (see Question 4 below).

4. How does a charitable nonprofit dispose of its assets and gifts?

When a Pennsylvania charity is no longer doing business, either by merger, voluntary dissolution or involuntary dissolution, any assets, gifts, or property belonging to the charitable nonprofit that is closing *must* be given to another charitable nonprofit with as similar of a charitable purpose as possible. The question of whether the charitable purpose is similar enough to the original charity's is a very fact specific analysis, and one that Pennsylvania courts and statutes have addressed from various angles. In short, both organizations should have similar charitable purposes and serve similar communities or localities—the closer the relationship or similar nature of charitable purpose, the better.

5. What is the Board's role in these transitions?

As always, Board members of a charitable nonprofit have to uphold a duty of care, which requires that they perform all duties related to the nonprofit in good faith, in the best interests of the nonprofit and with care, skill and diligence of a reasonable person under similar circumstances. Board members must also observe a duty of loyalty, which asks that they promote the interest of the nonprofit and not their own interests above that of the nonprofit.



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It is important to note that the above only constitutes a general overview, is not legal advice, and is not exhaustive. The specific issues facing an organization may call for a different approach than what is outlined here. Please do not hesitate to pass on our contact information here at Larmore Scarlett if we can be of any assistance.

Thank you so much for all of the support that you and the Chester County Community Foundation offer to our community, Karen.

Warmly,

A handwritten signature in cursive script that reads "Emily".

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