

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 4. REGULATIONS ADOPTED PURSUANT TO THE SUPERVISION OF TRUSTEES AND FUNDRAISERS FOR CHARITABLE PURPOSES ACT

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Pursuant to Corporations Code sections 6615, 6716, 8716, and 9680, a nonprofit corporation that seeks to dissolve voluntarily must obtain from the Attorney General either a written waiver of objections to its proposed disposition of corporate assets or a written confirmation that the corporation has no asserts. After obtaining a waiver of objections from the Attorney General, the nonprofit corporation must submit a copy of the waiver letter with a Certificate of Dissolution to the Secretary of State to finalize the dissolution. The proposed regulations establish the process for nonprofit entities holding charitable assets to obtain a waiver of objections from the Attorney General.

Probate Code sections 15400 to 15414 set forth procedures for the termination of a charitable trust. Upon termination of the charitable trust, the trustee will seek to terminate the charitable trust's registration with the Registry of Charities and Fundraisers so that it is no longer subject to the registration and reporting requirements for charitable trusts. The proposed regulations establish the process for charitable trusts to terminate the trust with the Registry of Charities and Fundraisers.

Similarly, a foreign nonprofit corporation that no longer does business or holds property in California for charitable purposes may seek to withdraw its registration with the Registry of Charities and Fundraisers. (Gov. Code, § 12582.1.) The proposed regulations establish the process for charitable trusts to terminate, and foreign nonprofit corporations to withdraw their registration.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act), Government Code section 12580 et seq., provides the Attorney General with enforcement and supervisory powers over all charitable corporations, unincorporated associations, trustees, and other legal entities that hold or solicit charitable donations. These powers are provided to the Attorney General in order to safeguard charitable assets, ensure that charitable assets are used for their intended purposes and beneficiaries, and protect the public and charities from fraud and deceptive or unfair solicitations. (Gov. Code, § 12580 et seq.) The Act establishes the Registry of Charities and Fundraisers, which is administered by the Department of Justice. (Gov. Code, § 12587.1.) Organizations and persons subject to the Act are required to register and file periodic reports with the Attorney General, among other requirements. (Gov. Code, §§ 12585, subd. (a),

12586, 12599, 12599.1, 12599.2.) The Attorney General is authorized to make rules and regulations regarding the Act. (Gov. Code, §§ 12586, subd. (b), 12587.)

These regulations provide the Attorney General with the opportunity to review and audit entities holding charitable assets before they are dissolved or removed from the supervision of the Attorney General, and thereby prevent the improper distribution of charitable assets and reduce the potential for litigation.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

§ 332. Request for Waiver of Objections to Voluntary Dissolution of a Charitable Organization.

Subdivision (a) requires the charitable organization to state “all material facts,” under penalty of perjury, on its request for a waiver of objections from the Attorney General to the organization’s proposed distribution of charitable assets, and it defines “all material facts” to have the same meaning as set forth in section 328 of this chapter. The need for all material facts is necessary so that the Attorney General can properly evaluate the nonprofit’s request for a waiver of objections to its voluntary dissolution.

Subdivision (b) requires a proposed recipient of the dissolving organization’s charitable assets that is subject to registration with the Registry of Charities and Fundraisers, to be current in its registration and reporting obligations. The recipient nonprofit needs to be current because only charities current with its registration and reporting obligations may operate and solicit donations.

Subdivisions (c)(1)(A) through (c)(1)(E) require a nonprofit public benefit corporation holding charitable assets to provide a letter signed by an authorized director or attorney for the corporation with information about the proposed distribution of the charitable assets including information identifying the dissolving corporation, the proposed recipient(s) of the charitable assets, the amount to be distributed to each recipient, an explanation of how each proposed recipient has the same or similar charitable purposes as the dissolving corporation, whether the assets are restricted in use or purposes, and if the dissolving corporation is not registered with the Registry of Charities and Fundraisers, or not current in its registration, an explanation as to why. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit’s request for a waiver of objections to its voluntary dissolution.

Subdivisions (c)(2) through (c)(6) require a nonprofit public benefit corporation with charitable assets to provide corporate records, including financial statements for the past three years, founding documents and any amendments thereto, resolution or meeting minutes showing the approval of the board of directors to voluntarily dissolve the corporation, documents showing restrictions on the charitable assets to be distributed, and the corporation’s final Annual Registration Renewal Fee Report (“Form RRF-1”) and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit’s request for a waiver of objections to its voluntary dissolution.

Subdivisions (d)(1)(A) through (d)(1)(D) require a nonprofit public benefit corporation without charitable assets to provide a letter signed by an authorized director or attorney for the corporation with information about the lack of assets including information identifying the dissolving corporation, statement confirming that the corporation has never held charitable assets, or if the corporation had charitable assets in the past, an explanation of the type of assets received and how they were used, and if the dissolving corporation is not registered with the Registry of Charities and Fundraisers, or not current in its registration, an explanation as to why. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (d)(2) through (d)(5) require a nonprofit public benefit corporation without charitable assets to provide corporate records, including financial statements for the last three years of operation to a zero balance, founding documents and any amendments thereto, resolution or meeting minutes showing the approval of the board of directors to voluntarily dissolve the corporation, and the corporation's final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (e)(1)(A) through (e)(1)(E) require a nonprofit mutual benefit corporation with charitable assets to provide a letter signed by an authorized director or attorney for the corporation with information about the proposed distribution of the charitable assets including information identifying the dissolving corporation, the proposed recipient(s), the amount to be distributed to each recipient, an explanation of how each proposed recipient has the same or similar charitable purposes as the restricted assets held in charitable trust by the dissolving corporation, and if the corporation is not registered with the Registry of Charities and Fundraisers, or not current in its registration, an explanation as to why. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (e)(2) through (e)(6) require a dissolving nonprofit mutual benefit corporation with charitable assets to provide corporate records including financial statements for the past three years as to the charitable assets, founding documents and any amendments thereto, resolution or meeting minutes showing the approval of the board of directors to voluntarily dissolve the corporation, documents showing restrictions on the charitable assets to be distributed, and the corporation's final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (f)(1)(A) through (f)(1)(E) require a nonprofit mutual benefit corporation that had charitable assets but does not have charitable assets at the time of the proposed voluntary dissolution to provide a letter signed by an authorized director or attorney for the corporation with information about the absence of assets including information identifying the dissolving

corporation, statement confirming that the corporation has no charitable assets, or if the corporation had charitable assets in the past, an explanation of the type of assets received and how they were used, the reasons for the proposed voluntary dissolution, and if the dissolving corporation either is not registered with the Registry of Charities and Fundraisers or not current in its registration, an explanation as to why. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (f)(2) through (f)(5) require a dissolving nonprofit mutual benefit corporation without charitable assets at the time of the proposed voluntary dissolution to provide corporate records including financial statements for the last three years of operation to a zero balance as to assets held in charitable trust, founding documents and any amendments thereto, documents showing the assets that the corporation had held subject to a charitable trust, and the corporation's final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (g)(1)(A) through (g)(1)(D) require a nonprofit religious corporation with charitable assets to provide a letter signed by an authorized director or attorney for the corporation with information about the proposed distribution of the charitable assets, including information identifying the dissolving corporation, the proposed charitable recipient(s), the amount to be distributed to each recipient, an explanation of how each proposed recipient has the same or similar charitable purposes as the dissolving corporation, and whether the assets are restricted in use or purposes. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivision (g)(2) requires a nonprofit religious corporation with charitable assets to provide a copy of the founding documents and any amendments to those documents. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (h)(1)(A) through (h)(1)(C) require a nonprofit religious corporation without charitable assets to provide a letter signed by an authorized director or attorney for the corporation with information identifying the dissolving corporation and a statement confirming that the corporation has no charitable assets. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivision (h)(2) requires a nonprofit religious corporation without charitable assets to provide a copy of the founding documents and any amendments to those documents. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a waiver of objections to its voluntary dissolution.

Subdivisions (i)(1)(A) through (i)(1)(E) require an unincorporated organization that has charitable assets to provide a letter signed by an authorized director or attorney for the organization with information about the proposed distribution of the charitable assets including information identifying the dissolving organization, reasons for the proposed dissolution, the proposed recipient(s) of the charitable assets, the amount to be distributed to each recipient, an explanation of how each proposed recipient has the same or similar charitable purposes as the dissolving organization, whether the assets are restricted in use or purposes, and if the dissolving organization is not registered with the Registry of Charities and Fundraisers, or not current in its registration, an explanation as to why. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the unincorporated organization's request for a waiver of objections to its voluntary dissolution.

Subdivisions (i)(2) through (i)(3) require an unincorporated organization with charitable assets to provide corporate records including financial statements for the last three years of operation, and a copy of the organization's final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the unincorporated organization's request for a waiver of objections to its voluntary dissolution.

Subdivisions (j)(1)(A) through (j)(1)(F) require an unincorporated organization that had assets subject to a charitable trust but does not have charitable assets at the time of the proposed voluntary dissolution to provide a letter signed by an authorized director or attorney for the organization with information identifying the dissolving organization, reasons for the proposed dissolution, statement confirming the absence of assets, explanation of the charitable assets it had in the past, type of assets, and how they were used, and if the organization is not registered with the Registry of Charities and Fundraisers, or not current in its registration, an explanation as to why. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the unincorporated organization's request for a waiver of objections to its voluntary dissolution.

Subdivisions (j)(2) through (j)(3) require an unincorporated organization without assets subject to a charitable trust at the time of the proposed voluntary dissolution to provide corporate records including financial statements for the last 3 years of operation to a zero balance, and the organization's final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the unincorporated organization's request for a waiver of objections to its voluntary dissolution.

Subdivision (k) specifies that the Attorney General's waiver of objections is valid for one year, with a possible 90-day extension for good cause. The necessity of this subdivision is to provide the requesting entity sufficient time to complete the process of dissolution with the California Secretary of State.

Subdivision (l) requires the charitable organization to provide additional information if necessary for the Attorney General to review and evaluate the request for waiver of objections. The

necessity of this subdivision is to allow the Attorney General to obtain, review, and evaluate additional information if the need arises.

Subdivision (m) allows the Attorney General to waive the requirements described in these regulations where the Attorney General determines that they will not assist in the review and evaluation of a request for waiver of objections, and the proposed disposition of assets does not pose risk or harm to the public interest. The necessity of this subdivision is to allow the Attorney General to accommodate circumstances unforeseen by these regulations.

§ 333. Termination of Charitable Trusts and Withdrawal of Foreign Charitable Organizations.

Subdivisions (a)(1)(A) to (a)(1)(E) require a foreign nonprofit corporation requesting to withdraw its registration with the Registry of Charities and Fundraisers to submit a letter signed by an authorized director or attorney for the corporation with information identifying the corporation, a statement that the corporation will not solicit charitable donations from California residents, conduct business in California, or provide services directed at California, the date the corporation fully ceased operations in California, and a statement regarding whether it has charitable assets in California, and if so, a plan for transferring those assets to another California charity or charities with an explanation of how each proposed recipient has the same or similar charitable purposes as the foreign corporation, whether the assets are restricted in use or purpose, and the amount to be distributed to each recipient. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a withdrawal of its registration with the Registry of Charities and Fundraisers.

Subdivision (a)(2) requires a foreign nonprofit corporation qualified to do business in California, to provide a copy of the endorsed Certificate of Surrender of Right to Transact Intrastate Business, or an explanation of why a certificate is not required. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a withdrawal of its registration with the Registry of Charities and Fundraisers.

Subdivision (a)(3) requires the foreign nonprofit corporation to provide its final Annual Registration Renewal Fee Report ("Form RRF-1") and Internal Revenue Service Form 990. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the nonprofit's request for a withdrawal of its registration with the Registry of Charities and Fundraisers.

Subdivisions (b)(1)(A) to (b)(1)(C) require a charitable trust requesting to terminate its registration with the Registry of Charities and Fundraisers to submit a letter signed by a trustee or attorney for the trust with identifying information and the trust's termination date. The necessity of the information requested by these subdivisions is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(2) requires a charitable trust without assets to provide information regarding the distribution of the assets, including the date of distribution and documents in support, and the name of the recipient(s). The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(3) requires a charitable trust with assets to provide the date(s) the assets will be distributed, and the name of the recipient organization or organizations. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(4) requires a charitable trust terminated by the written consent of the settlor and all beneficiaries without court approval, to provide a copy of the written consent. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(5) requires an irrevocable charitable trust that was terminated with the consent of all trust beneficiaries and court approval, to provide a copy of the court order approving termination of the trust. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(6) requires that the charitable trust provide a copy of the trust agreement and all amendments. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (b)(7) requires that the charitable trust provide the final Form RRF-1 and Internal Revenue Service Form 990. The necessity of the information requested by this subdivision is to provide the Attorney General with sufficient information to properly evaluate the charitable trust's request to terminate its registration with the Registry of Charities and Fundraisers.

Subdivision (c) requires the charitable trust or foreign charitable organization to provide all "material facts" in its request for termination or withdrawal from the Registry of Charities and Fundraisers and defines "material facts" as having the same meaning as section 328 in this chapter. The need for all material facts is necessary so that the Attorney General can properly evaluate the request being made by the charitable trust or foreign charitable organization.

Subdivision (d) requires any proposed recipient of charitable assets that is required to register and report to the Registry of Charities and Fundraisers, to be current in its registration and reporting. The recipient nonprofit needs to be current because only charities current with its registration and reporting obligations may operate and solicit donations in California.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

(1) It is unlikely that the proposal would create or eliminate jobs within the state because the proposed regulations prescribe the information that a nonprofit corporation seeking to dissolve must provide to the Attorney General to obtain a waiver of objection to the proposed disposition of the corporation's charitable assets, and the information that a charitable trust or foreign charitable organization must provide to the Attorney General in order to terminate or withdraw its registration with the Registry of Charities and Fundraisers. The regulations provide clear guidance to nonprofit organizations, charitable trusts, and foreign charitable organizations on what procedures to follow and what information to provide with their requests.

(2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the proposed regulations prescribe the information that a nonprofit corporation seeking to dissolve must provide to the Attorney General to obtain a waiver of objection to the proposed disposition of the corporation's charitable assets, and the information that a charitable trust or foreign charitable organization must provide to the Attorney General in order to terminate or withdraw its registration with the Registry of Charities and Fundraisers. The regulations provide clear guidance to nonprofit organizations, charitable trusts, and foreign charitable organizations on what procedures to follow and what information to provide with their requests.

(3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the proposed regulations prescribe the information that a nonprofit corporation seeking to dissolve must provide to the Attorney General to obtain a waiver of objection to the proposed disposition of the corporation's charitable assets, and the information that a charitable trust or foreign charitable organization must provide to the Attorney General in order to terminate or withdraw its registration with the Registry of Charities and Fundraisers. The regulations provide clear guidance to nonprofit organizations, charitable trusts, and foreign charitable organizations on what procedures to follow and what information to provide with their requests.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by enhancing Attorney General oversight of trusts and charitable corporations and by providing clarity in communications with members of the public.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports, or similar documents in proposing these regulations.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations prescribe the procedure for a nonprofit corporation that is seeking to dissolve to request the Attorney General’s waiver of objection to the proposed disposition of the corporation’s charitable assets. The proposed regulations list the information and documents that the corporation is required to provide with its request for the Attorney General’s review and evaluation.

The proposed regulations also prescribe the procedure for a charitable trust or foreign charitable organization to request termination or withdrawal of its registration with the Registry of Charities and Fundraisers. The proposed regulations list the information and documents that the charitable trust or foreign charitable organization must provide with its request for the Attorney General’s review and evaluation.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department determines that these proposed regulations do not affect small businesses. Charitable entities are exempt from the definition of “small business.” (Gov. Code, § 11342.610, subd. (b)(6).)

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of these proposed regulations or would be as effective and less burdensome to affected private persons than these proposed regulations.

Performance Standard as Alternative:

The proposed regulations do not mandate the use of specific technologies or equipment. The proposed regulations provide charitable entities with the information necessary to dissolve, terminate, or withdraw its registration status with the Registry of Charities and Fundraisers, and provide the necessary documentation to finalize dissolution with the California Secretary of State. By creating a procedure for the Attorney General to obtain information needed to

review and evaluate entities holding charitable assets before they are dissolved or removed from the supervision of the Registry of Charities and Fundraisers, the proposed regulations prevent improper distribution of charitable assets.