

The American Legion Department of New Jersey



Policy on Dissolving and Merging a Nonprofit Corporation in New Jersey

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Approved by Department Executive Committee on

This policy is an overview of the main steps a Post within the American Legion Department of New Jersey will need to take to close down and dissolve your New Jersey 501c19 or 501c3 nonprofit corporation.

Authorizing a Post Dissolution

New Jersey's Nonprofit Corporation Act ("NCA") provides for voluntary Post dissolution through:

- Unanimous written consent of Post members in good standing
- Action by the Post Executive Board and a vote by the Post members in good standing; or
- If there are no members of the Post left in the Post except members of the Executive Board then a vote by the Post Executive Board to dissolve the Post.

At least two-thirds of the Post members in good standing and two thirds of the Post Trustees must vote to for dissolution. The Post Trustees will need to sign a certificate of dissolution

The Post Trustees will also in this same form prepare a plan of dissolution which should be in the Post Articles of Incorporation filed with the New Jersey Attorney General's Office.

The Nonprofit Act of New Jersey allows for the Post the possibility that your certificate of incorporation has its own provisions for dissolution. You should review your Articles of Nonprofit Incorporation for any dissolution provisions.

CERTIFICATE OF DISSOLUTION
(Without a Meeting of Shareholders)
(For Use by Domestic Profit and Non-profit Corporations)

Check Appropriate Statute:

- 14A:12-3 New Jersey Business Corporation Act (File in Duplicate)**
- 15A:12-3 New Jersey Nonprofit Corporation Act (File in Triplicate)**

A corporation may be dissolved by the written consent of all its shareholders/members entitled to vote thereon. To effect such a dissolution, all shareholders/members shall sign and file in the Office of the Treasurer, Division of Revenue, the following articles of dissolution. Domestic profit corporations must attach a "Tax Clearance Certificate" obtained from the New Jersey Division of Taxation, PO Box 269, Trenton, N.J. 08625.

1. Name of Corporation:
2. Corporation Number:
3. Registered Agent:
4. Registered Office:
(Street and postal designation)

(City) (State) (Zip)
5. Names and addresses of the Directors/Trustees and Officers. (Note: Address cannot be that of the Nonprofit Corporation)
6. The corporation is dissolved.
7. Nonprofit corporations must also include a Plan of Dissolution, Statement of Liabilities and the date and vote of the dissolution authorization.

The certificate has been signed in person or by proxy by all shareholders/members of the corporation entitled to vote thereon.

Signature:	Date:
Signature:	Date:
Signature:	Date:

If the Post does not have any members, Executive Board or Trustees, it will be up to the American Legion County Committee to vote to dissolve the said Post within its jurisdiction; a two thirds majority vote is required. The County must then prepare a resolution forwarded to The New Jersey Department of The American Legion for approval by the Department Executive Committee at the next regularly scheduled meeting for the purposes of the following:

The Department Executive Committee shall enforce upon approval by a two-thirds majority the following; The Department of New Jersey Constitution and Bylaws, Article IX, Section 5 & 6.

Upon approval of the Department Executive Committee, the County Committee shall prepare a resolution for a plan of dissolution, the payment of all debts and liabilities and distribution of remaining assets according to this policy.

A Post can dissolve through action by the Post Executive Board and the Corporation Trustees and then by the Post membership. The Executive Board must adopt a resolution to dissolve and a plan of dissolution (Plan of dissolution will be in the Post Article of Incorporation) and submit it the Corporation Trustees for approval by two-thirds majority, if passed then the resolution can be submitted the Post membership in good standing for a vote. To pass two-thirds majority of the Post membership is required for approval. The resolution will then be forwarded to The County Committee where said Post resides and shall vote on said resolution to dissolve said Post by a two-thirds majority, the resolution will then be passed on to The New Jersey Department of The American Legion for approval by the Department Executive Committee at the next regularly scheduled meeting for the purposes of the following:

The Department Executive Committee shall enforce upon approval by a two-thirds majority the following; The Department of New Jersey Constitution and Bylaws, Article IX, Section 5 & 6.

Plan of Dissolution

You should refer to your Posts Articles of Nonprofit Incorporation which would have been filed with the New Jersey Attorney General's Office, in the Post certificate of incorporation should be a provision for Post dissolution and a plan for how the Post will discharge its liabilities (debts) and distribute any remaining assets in compliance with New Jersey's tax exempt status. The Post must include in the dissolution plan as part of the certificate of dissolution that the Post must file with the New Jersey Treasury Department's Division of Revenue (DOR). The form located above.

Certificate of Dissolution

After the Posts Executive Board, the Trustees and the members in good standing have approved the dissolution, the Post must file a certificate of dissolution with the New Jersey Department of Revenue (DOR), form located above. The certificate must contain:

- The Posts registered nonprofit name
- The name of the posts nonprofits registered agent or (Power of Attorney) and the address of the registered agent.
- The name and address of each of the Posts nonprofit officers and trustees.

- A statement that the Post has voluntarily elected to dissolve
- The manner in which dissolution was authorized
- A statement regarding how the Posts nonprofit liabilities (debts) have been discharged.
- A statement regarding the specific approval including votes, date and place of meeting to dissolve the Post.
- A statement that the plan that was in the Articles of nonprofit incorporation and another approved plan to dissolve the remaining assets of the Post has been approved by the Post members in good standing, the County Committee and the Department Executive Committee.

The Post must file the certificate of dissolution that has been approved by the Post members in good standing, along with the approval of the County Committee and the Department Executive Committee, including the approved dissolution plan in triplicate with the New Jersey Department of Revenue (DOR). The filing fee is \$75. The DOR will forward a copy of the Posts certificate of dissolution to the New Jersey Attorney General's Office.

“Winding Up”

After the Posts has formally authorized dissolution, it continues to exist only for the purpose of taking care of certain matters that, collectively, are known as “winding up” the Post. Winding up is largely about paying off debts and then distributing any remaining assets.

Distributing The Assets

After the Post has paid off all it liabilities and debts the Post is required by law to transfer all remaining assets to another tax-exempt organization or to the government. **The law also states that dissolving the remaining assets or property of the Post can not be given away to any of the Posts members, volunteers or employees.**

A Post with no property, limited assets and finances at or under the IRS 501c19 nonprofit guidelines allowing \$50,000 can under Department guidelines can pay up for life those members of their Post and remaining assets distributed to local tax exempt 501c3 or 501c19 organizations, **no assets can be turned over to the County Committee since they are not a recognized Post or Veteran Service organization.**

The Post that has a Post home and property with many assets the Department guidelines is 25% for Post asset distribution to make all Post members paid up for life and to distribute remaining assets to local 501c3 charities of choice, the remaining 75% of the assets are to be turned over to the parent 501c19 The American Legion Department of New Jersey. (example, said Post has a Post home, property and financial assets totaling \$650,000, \$170,000 would go to Post to pay up for life members of Post and to distribute remaining assets to local 501c3 or other 501c19 charities, the remaining \$480,000 will be turned over to the parent 501c19 The American Legion Department of New Jersey.) **Under no circumstances are any assets to be given to Post members, volunteers or employees of the Post to be dissolved, also no assets will be turned over to the County Committee where the dissolved Post resides as the County Committee is not a recognized Post or Veteran Service Organization.**

Federal Tax Note

For federal tax purposes, the dissolving Post will need to file IRS form 990 or IRS form 990-EZ. The dissolving Post must include a completed Schedule N (Liquidation, Termination, Dissolution and Disposition of assets). As well as copies of the Post articles of dissolution, resolution to dissolve, and plan dissolution. When completing Form 990 or Form 990-EZ, the dissolving Post will need to check the “Terminated” box in the header area on Page 1 of the return. It’s best to consult a tax professional or if the Post already has an accountant that will help prepare the required Federal Tax Forms for the Post dissolution.

Merging Non-Profit American Legion Posts

Merger Agreement – A formal merger agreement is used for every non-profit organization merger. This addresses the rights and obligations of the merging Posts, and what has to happen before the merger can close. The agreement usually has a Varsity of attachments which will become part of “the deal”, such as bylaws, organizational charts, Legion program descriptions, Post officers, Executive Board members, Trustee members, Post assets and finances.

There are steps that must be followed for the approval process to proceed, The Executive Board must adopt a resolution to merge with another Post within their County along with a resolution from the other Post with a plan to merge and submit it to the dissolving Posts Corporation Trustees for approval by two-thirds majority, if passed then the resolutions of both Posts and plan can be submitted to both Posts membership in good standing for a vote. To pass two-thirds majority of both Posts membership is required for approval. The resolutions will then be forwarded to The County Committee where both Posts resides and shall vote on said resolutions to merge with another Post within the dissolving Posts County by a two-thirds majority, the resolutions will then be passed on to The New Jersey Department of The American Legion for approval by the Department Executive Committee at the next regularly scheduled meeting for the purposes of the following:

The Department Executive Committee shall enforce upon approval by a two-thirds majority the following; The Department of New Jersey Constitution and Bylaws, Article IX, Section 5 & 6.

Filing a Certificate of Non-Profit Merger

Once the merger has been approved by the both Posts must file a certificate of merger form (only one form required) located on next page, a \$75 filing fee is required.

New Jersey Division of Revenue Certificate of Merger/Consolidation (Non-Profit Corporations)

This form may be used to record the merger or consolidation of a corporation with or into another business entity or entities, pursuant to NJSA 15A. Applicants must insure strict compliance with the requirements of State law and insure that all filing requirements are met. This form is intended to simplify filing with the State Treasurer. Applicants are advised to seek out private legal advice before submitting filings to the Treasurer's office.

1. Type of Filing (check one): Merger Consolidation

2. Name of Surviving Corporation:

3. Name(s)/Jurisdiction(s) of All Participating Corporations:

Name	Jurisdiction	Identification # Assigned By Treasurer (if applicable)
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4. Date Merger/Consolidation approved:

5. Voting: (all corporations involved; attach additional sheets if necessary)

Corp. Name (check one) Has Does not Have Members Eligible to Vote.

If the corporation has any class of members entitled to vote as a class, specify the class and the number of votes for each class:

Members Voting For _____ Members Voting Against _____ Total number of Trustees at the meeting _____; OR
Plan of merger/consolidation was adopted by the unanimous written consent of the members without a meeting (check)

If there are no voting members:

Trustees Voting For _____ Trustees Voting Against _____ Total number of Trustees at the meeting _____; OR
Plan of merger/consolidation was adopted by the unanimous written consent of the Trustees without a meeting (check)

Corp. Name (check one) Has Does not Have Members Eligible to Vote.

If the corporation has any class of members entitled to vote as a class, specify the class and the number of votes for each class:

Members Voting For _____ Members Voting Against _____ Total number of Trustees at the meeting _____; OR
Plan of merger/consolidation was adopted by the unanimous written consent of the members without a meeting (check)

If there are no voting members:

Trustees Voting For _____ Trustees Voting Against _____ Total number of Trustees at the meeting _____; OR
Plan of merger/consolidation was adopted by the unanimous written consent of the Trustees without a meeting (check)

6. Service of Process Address (For use if the surviving business entity is not authorized or registered by the State Treasurer):

The surviving business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of a merging or consolidating domestic or foreign business entity. The Treasurer is hereby appointed as agent to accept service of process in any such action, suit, or proceeding which shall be forwarded to the surviving business entity at the Service of Process address stated above.

7. Effective Date (see inst.):

Signature	Name	Title	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**Remember to attach the plan of merger or consolidation.