

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**

NOTICE OF PROPOSED RULEMAKING

Notice published December 20, 2024

The Department of Justice (Department) proposes to adopt sections 332 and 333 of title 11, division 1, chapter 4 of the California Code of Regulations concerning the dissolution, termination, or withdrawal of entities holding charitable assets.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on February 4, 2025 at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 12587, Government Code.

Reference: Sections 6716, 8716, and 9680, Corporations Code. 15404 and 16061.5, 16061.7, 16110, Probate Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

The Supervision of Trustees and Fundraisers for Charitable Purposes Act (Act) provides the Attorney General with enforcement and supervisory powers over all charitable corporations, unincorporated associations, trustees and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, commercial coventurers, and charitable fundraising platforms. (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.)

A California nonprofit corporation that decides to stop operating and wind up operations must take certain steps. The procedures to voluntarily wind up operations are called “dissolution” of the nonprofit corporation. Dissolution can be accomplished by either filing an action with the superior court or by complying with voluntary dissolution procedures.

The first step in the voluntary dissolution process is the approval by the majority of the board of directors or members, or both, to elect to wind up and dissolve the nonprofit corporation. (Corp. Code, §§ 5033, 5034, 6610, 6610.5, 8610, 8610.5, 9680.) After the board of directors and/or membership vote to dissolve, a certificate evidencing the election to wind up and dissolve must be filed with the Secretary of State and also forwarded to the Attorney General’s Registry of Charities and Fundraisers. (Corp. Code, §§ 6611, 8611, 9680.) The submission to the Registry of Charities and Fundraisers of the Certificate of Election to Wind Up and Dissolve initiates the Attorney General’s review of the proposed disposition of the nonprofit corporation’s charitable assets. (Corp. Code, §§ 6716, 8716, 9680.) To finalize dissolution with the Secretary of State, a nonprofit corporation is required to obtain from the Attorney General either a written waiver of objections to the dissolution concerning the distribution of the corporation’s assets or a written confirmation that the corporation has no assets. (Corp. Code, §§ 6716, 8716, 9680; Cal. Code Regs., tit. 11, §§ 328-331.)

The Corporations Code requires that nonprofit public benefit corporations, nonprofit mutual benefit corporations holding assets in charitable trust, and nonprofit religious corporations obtain from the Attorney General a waiver of objections to distribution of assets. (Corp. Code, §§ 6615, 6716, 8716, 9680.) This waiver must be obtained from the Attorney General whether or not the corporation ever operated or obtained a tax-exempt status.

After obtaining the waiver of objections letter from the Attorney General, the nonprofit corporation must submit a copy of the letter with a Certificate of Dissolution to the Secretary of State in order to finalize the dissolution process.

Charitable trusts do not dissolve in the same way as nonprofit corporations. Instead, charitable trusts are subject to the procedures set forth in the Probate Code. (Prob. Code, § 15400 et seq.) On termination of the trust, the trustee will want to terminate its registration with the Registry of Charities and Fundraisers so that it is no longer subject to the Registry's registration and reporting requirements.

Foreign charitable organizations may withdraw their registration with the Registry of Charities and Fundraisers provided that they no longer have charitable assets remaining in California, and that they will no longer solicit charitable donations from California residents, conduct business in California, or provide any services directed at California.

Effect of the Proposed Rulemaking:

The regulations establish the process for entities holding charitable assets to obtain a waiver of objections letter from the Attorney General.

The regulations also establish the process for foreign nonprofit corporations to withdraw their registration with the Registry of Charities and Fundraisers, and for charitable trusts to terminate their registration.

Anticipated Benefits of the Proposed Regulations:

Under California law, the Attorney General oversees charities, charitable trustees, professional fundraisers and other persons or legal entities that hold or solicit charitable donations to safeguard charitable assets for the charitable beneficiaries, to ensure donations are used for their intended purposes, and to protect the public and charities from fraud and deceptive or unfair solicitations.

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 Registry of Charities and Fundraisers, and thereby reduce the potential for litigation as well as prevent the improper distribution of charitable assets.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the dissolution, termination, and withdrawal of entities holding charitable assets.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: The Department has determined that any cost incurred to submit the information required by the proposed regulations would be negligible.

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

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

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

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.

Business report requirement: Corporations Code section 6716, 8716, and 9680 require that nonprofit public benefit corporations, nonprofit mutual benefit corporations holding assets in charitable trust, and nonprofit religious corporations obtain from the Attorney General a waiver of objections to distribution of assets. Proposed section 332 explains what information must be provided to obtain a waiver of objections.

Proposed section 333 explains what information must be provided for foreign nonprofit corporations to withdraw their registration with the Registry of Charities and Fundraisers, and for charitable trusts to terminate their registration with the Registry.

The Department finds it is necessary for the health, safety or welfare of the people of this state that proposed sections 332 and 333, which require a report, apply to businesses.

Small business determination: The Department has determined that this proposed action does not affect small businesses because charitable entities are exempt from the definition of "small business." (Gov. Code, § 11342.610, subd. (b)(6).)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed regulations are the most effective way to provide entities with the necessary information to dissolve, terminate, or withdraw their registration status with the Registry of Charities and Fundraisers, and provide the necessary documentation to finalize dissolution with the California Secretary of State.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Marlon Martinez
Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6437
regulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications, which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/charities/laws>.