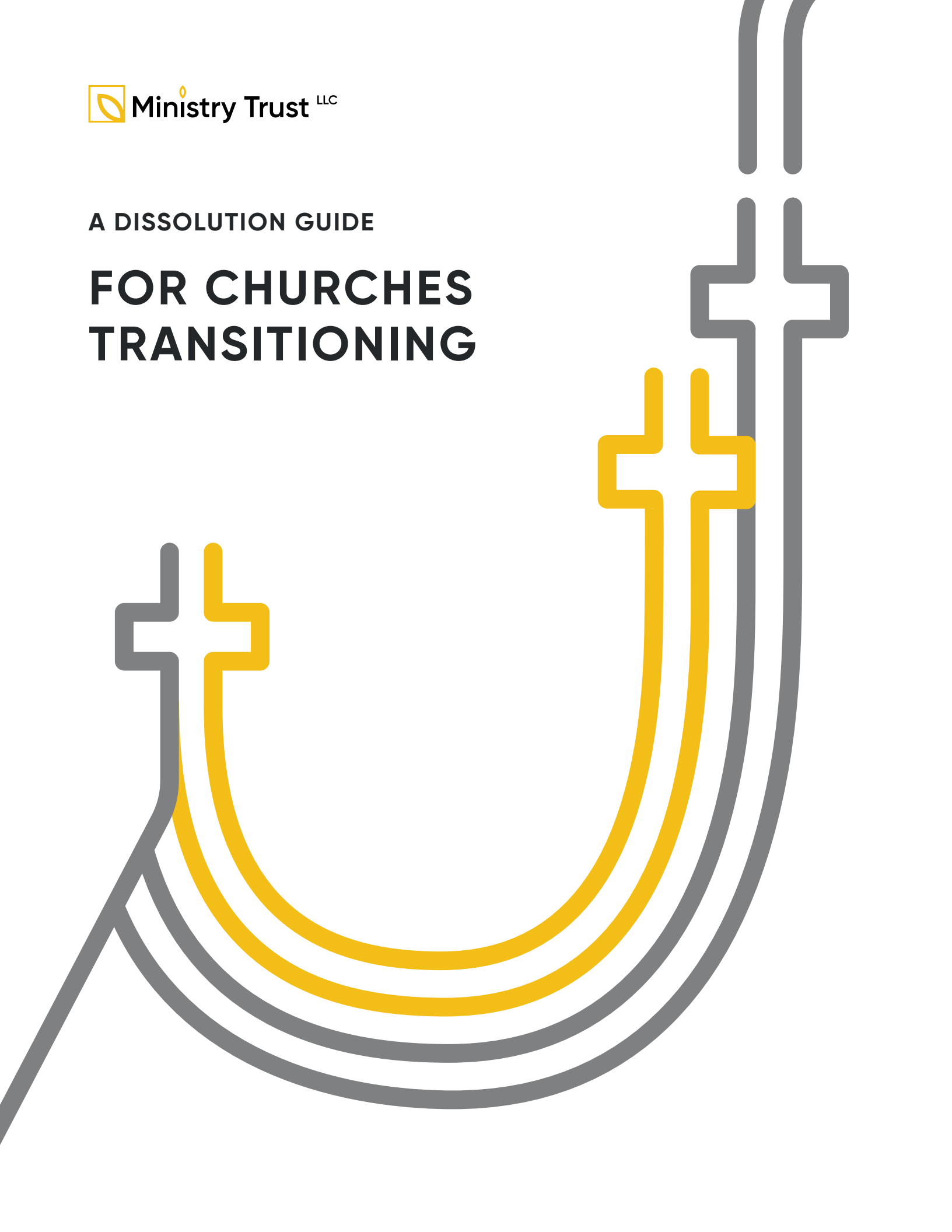


A DISSOLUTION GUIDE

FOR CHURCHES TRANSITIONING





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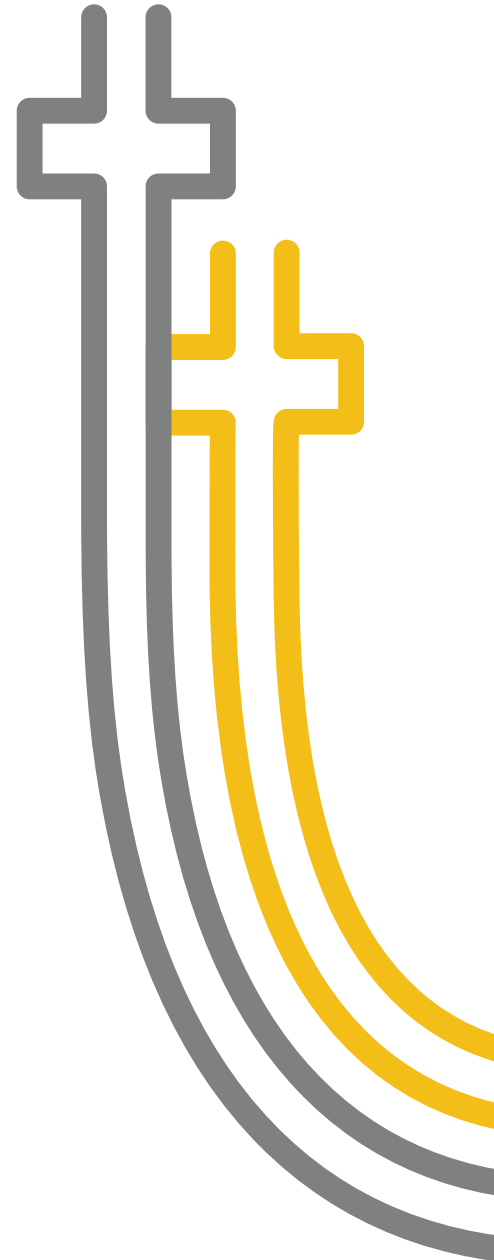
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INTRODUCTION

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This discussion will focus on the general procedures involved in dissolving a nonprofit corporation in Georgia, and assumes that the organization facing a potential dissolution is currently active and has been properly incorporated. Please note that this discussion is in general terms only and may or may not be appropriate for every dissolution scenario, particularly if your organization is located in another state which may have different dissolution procedures. As such, this discussion should only be read to include general dissolution considerations and, as with any major event, an attorney should be consulted so that the specifics of an actual dissolution may be discussed if such an event is imminent.



WHAT IS DISSOLUTION?

Dissolution is a legal process that results in the termination of the legal existence of a nonprofit corporation by following certain procedures specified in your jurisdiction's nonprofit code.

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WHO MAKES THE DECISION TO DISSOLVE THE ORGANIZATION?

There are numerous reasons why a nonprofit would consider dissolving such as an inability to maintain membership or donor base, determination that the nonprofit organization is not effectively fulfilling its purposes, an inability to maintain leadership to sustain and develop the organization or merger with another nonprofit organization. Regardless of the motivation for dissolving the organization, the decision to dissolve the organization is a big decision and the board of directors should involve senior leadership within the organization during the decisionmaking process. Careful consideration should be given to the organization's articles of incorporation and bylaws to determine who has the right to make the ultimate decision to dissolve: this could be the board of directors or it could be the congregation.

While the ultimate decision to dissolve will likely be a difficult decision for your organization's leadership, the organization should be aware that regulatory authorities (such as your jurisdiction's Attorney General, Secretary of State, and the Internal Revenue Service) are primarily concerned and focused on ensuring that the organization's assets are distributed in accordance with the organization's dissolution clause and in accordance with state law and that the assets are distributed to other tax-exempt organizations after the organization has resolved all liabilities.

WHAT ARE THE TYPICAL STEPS AND PROCEDURES INVOLVED IN DISSOLVING A NONPROFIT ORGANIZATION?

Short Answer. Consistent with general nonprofit law principles, nonprofit organizations will typically wind up operations, pay off debt, and distribute any remaining assets to another nonprofit organization if the decision to dissolve the entity is made. "Winding up" for a nonprofit organization generally means concluding the organization's business in ways that are required by law, required

by the interpretation of the IRS or state authorities, or expected by common custom and practice. Complying with these laws and practices will allow a smooth closure and will protect the Organization's board members, officers, and employees from any allegations of personal wrongdoing or liability.

The speed of completion for a dissolution depends upon many factors such as the requirements of the jurisdiction where the organization is located (while some jurisdictions have easy procedures, others are very involved and may even involve court filings), the size of the organization, the corporate governance documents of the organization, the level of acceptance and cooperation amongst the organization's leaders and members, and many other factors.

Depending on the jurisdiction where your organization is located, you may be required to seek permission from the Attorney General or local court prior to formally dissolving the corporate entity. This is typically a straight-forward process; however, it adds time and expense to the dissolution process which ultimately cannot be avoided if this is a statutory requirement in the jurisdiction in which you are located.

Preliminary Considerations. Before actually filing paperwork to formally dissolve an organization, the following are recommended steps to take:

- Ensure all financial statements of the entity have been updated and reconciled so that the entity has a clear picture of all assets and liabilities.
- The Board of Directors adopts a resolution to dissolve the organization.
 - a. The format and procedure for this resolution will depend on the organization's structure (i.e. whether or not the organization is run by the board of directors or whether or not organization membership would need to be involved).
- Once the resolution has been adopted and approved, notice of the proposed dissolution must be sent to the organization's creditors.
- All outstanding organization obligations should then be paid upon receipt of final statements from creditors.
 - a. Depending on the organization's financial condition, there may or may not be sufficient funds to pay off all creditors. In the event there are not sufficient funds, the remaining assets should be used to pay as many creditors as possible.

➤ In Georgia, the Board of Directors must adopt a plan of dissolution providing for the distributions of assets in accordance with GA Code Section 14-3-1403(b).

a. Corporations that are organized and operated exclusively for religious, charitable, or educational purposes, must comply with the following additional requirements:

- It shall provide Attorney General with written notice of intent to dissolve at or before the time it delivers articles of dissolution to the Secretary of State;
- After providing written notice to the Attorney General, it must wait at least 30 days to transfer or convey any assets as part of the dissolution process; and
- Once all or substantially all of the corporation's assets have been transferred or conveyed, the corporation shall provide the Attorney General with a list of whom the assets were transferred or conveyed to (other than creditors). The corporation must provide an address for each person (other than creditors) that received assets and indicate which assets were received by each.

Notice of Intent to Dissolve. The dissolution process begins when the organization files its notice of intent to dissolve with the Office of the Secretary of State.

➤ The notice of intent to dissolve shall include:

- a. Name of the corporation;
- b. Date dissolution was authorized; and
- c. If member approval was required, a statement that dissolution was approved in compliance with GA Code Section 14-3-1402(a).

➤ When filing its notice of intent to dissolve with the Secretary of State, the corporation should also submit a certificate signed by an officer or director verifying that the corporation has submitted its request for publication along with payment as required by GA Code Section 14-3-1404.1(b)

➤ Once the notice of intent to dissolve has been filed, the corporation continues to exist but may not carry on any business other than that necessary to wind up and liquidate its business and affairs.

Actual Dissolution. The actual organization dissolution occurs when the articles of dissolution of the nonprofit corporation are filed with the Office of the Secretary of State.

➤ The articles of dissolution must contain:

- a. Name of the corporation;

- b. Date on which a notice of intent to dissolve was filed and a statement that it has not been revoked;
 - c. Statement that all known debts, liabilities, and obligations of the corporation have been discharged or that adequate provisions have been made for the same;
 - d. Statement that all remaining property and assets of the nonprofit have been distributed in accordance with the plan of dissolution, or that such property and assets have been deposited with the Office of the State Treasurer as provided in GA Code Section 14-3-1440;
 - e. Statement that no lawsuit is currently pending against the corporation in any court, or that adequate protection has been made to cover any judgments that might be entered; and
 - f. Statement that, if required, it notified the Attorney General of its intent to dissolve.
- An officer of the corporation must sign the articles of dissolution.
 - a. The person executing the document must state his or her name and the capacity in which he or she is signing beneath or opposite the signature.
 - Filing fee for the articles of dissolution must be paid (amounts vary between jurisdictions).
 - The original articles of dissolution must be delivered to the Secretary of State and must be accompanied by one copy. The original will be filed, and a stamped or otherwise endorsed copy will be returned to the organization.
 - Await receipt of the articles of dissolution from the Secretary of State for filing
 - in the organization's corporate book.

Winding Up /Final Matters. After the articles of dissolution have been filed, there will still be remaining matters to attend to. Directors and organization officers should be encouraged to remain in their positions to wind up organization affairs but should formally resign once the bulk of these tasks have been completed. Major final acts to be completed are:

- Final collection and disposing of all remaining organization assets.
- Discharging or making provisions for the final payment of all outstanding debts and liabilities.
- Filing a final IRS Form 990 with required attachments confirming dissolution of the organization.
- Compiling a list of all licenses and permits and determining which will lapse

- automatically and which will require notification to the appropriate regulating authority that the organization has dissolved.
- Terminate all contracts eligible for termination, including employee contracts, leases, and bank accounts. A determination should also be made as to the organization's liability for any obligations it may have to employees following the dissolution.
 - Inform donors and sponsors of the organization's plans to dissolve, provide any donors with gift acknowledgements prior to closure, and communicate with beneficiaries of the nonprofit's services so that they can make alternative arrangements following the dissolution of the organization.
 - Retain any necessary documents and consolidate them into one accessible and secure location.

NECESSARY DOCUMENTATION

Necessary Documentation. It is important that the organization compile certain information for use during the dissolution process. The following is a list of typical documents that will be useful during dissolution, although other documents may be required depending on the circumstances. Specific documents that should be made available during dissolution are as follows:

- An itemized list of the organization's assets;
- A description of any outstanding debts;
- A copy of any leases such as for copiers, office equipment, vehicles, etc.;
- A copy of any mortgage or loan documents;
- A copy of deeds or other instruments showing ownership or leasing of real property;
- All Articles of Incorporation and Bylaws or other corporate governance documents of the organization (both present and any prior versions going back to the creation of the organization);
- All minutes of meetings of the Board of Directors or Trustees, Committees, or general or special meetings of the members of the organization;
- Employment Agreements, Independent Contractor Agreements, and Service Agreements;
- Any other document describing any present debt or obligation of the organization;

- Balance Sheets;
- Audited and Unaudited Financial Statements;
- Titles to any vehicles or trailers or other property subject to having registered title;
- Commitments or Affiliation Agreements for support of or control by other organizations, associations, denominations;
- Joint Venture Agreements;
- For-Profit Operations or subsidiaries;
- Listing of all bank accounts including title of accounts, recent balance, and authorized signatories;
- List of current Board members and contact information;
- List of current Trustees, Deacons, Elders and contact information;
- Description of pending or threatened claims, administrative hearings, or litigation and any associated paperwork;
- Title Insurance Policies;
- List of all employees;
- Current membership list; and
- Any other documents or information you believe may be useful or necessary.


Your organization may or may not have everything on this list. If any documentation is missing, be sure to consult with your attorney to discuss whatever information may be needed to complete the dissolution process.

WHAT IS THE BOARD'S ROLE DURING DISSOLUTION?

The board of directors of your organization owes fiduciary duties to the organization until the organization is officially dissolved and it has completed the winding up process that is explained above. Accordingly, it is the responsibility of the board of directors to ensure that the organization follows all the legally required steps for dissolution. Although it may be tempting for the board to simply “close shop” by shutting the organization down without undertaking the formal dissolution process, this is not a wise decision. Board members open themselves up to personal liability for leaving a “shell” entity in place and may lose the protection of directors and officers insurance (“D&O insurance”). Therefore, the board should make sure that it maintains the minimum number of directors that are required by state law (or by the organization’s bylaws if different) until the organization is fully dissolved.

CONFIDENTIALITY AND COMMUNICATION

Confidentiality is an important feature for the board of directors and the organization’s senior leadership during the decision making process. The decision to



dissolve the organization will impact a number of people within the organization and community who have devoted time, effort and resources to support the organization. By maintaining confidentiality during the initial decision-making process, the organization can avoid the dissemination of rumors or inaccurate information. Once the board of directors and leadership have given considerable thought and discussion to dissolving the entity and concluded that dissolution is the appropriate step, then the board and leadership can effectively communicate the recommendation of dissolving the organization to its staff and congregation.

One of the most difficult parts of the dissolution process is communicating the idea or ultimate decision to your organization staff. Depending on your motivation for dissolution, the staff may or may not be surprised by the news. If the organization has suffered and experienced dwindling numbers and financial support for some time, then the dissolution may not be a surprise. Even so, leadership should be aware of the obvious fact that the dissolution will result in your employees' losing their jobs which is a hard fact no matter the conditions. Therefore, it is recommended that the executive leadership (e.g., senior pastor and the board of directors) communicate the news to staff. Staff should hear of the news for the first time from the senior leadership—another reason to require confidentiality of the decision making process. During this discussion you should be prepared to answer questions about projected end date, health insurance concerns and privately communicate any potential severance payments. Be prepared to offer encouragement and patience as staff members process the decision.

CONCLUSION

The above information again provides a summary of typical matters that must be addressed when dissolving an organization or non-profit corporation. The main legal component of this procedure is the drafting and filing of a certificate of termination with the Secretary of State after proper approval for dissolution has been received from the organization board. As you can see, there are also many peripheral matters that need to be addressed, depending on the organizational structure and status of the organization at the time of dissolution. As with any major change in organization structure or organization, it is advisable that an attorney be consulted to ensure that the organization remains in compliance with any applicable state and federal laws.

Anthony Kennedy P.L.L.C.'s Church Law Group focuses its practice on all aspects of organization governance and stands ready to assist your organization in the event dissolution may be imminent.

