

# NONPROFIT SUSPENSION & CLOSURE

Presented By:



*Part of the Recover, Rebuild, Renew Series*

# WHY HAVE THIS DISCUSSION?

- COVID has forced some nonprofits to reevaluate their long term sustainability, including assessing “exit strategies.”
- Pursuing any exit strategy has major legal consequences and obligations.
- Understanding the basic framework and vocabulary for legal business exit processes makes it easier for experts to help!

# PROGRAM OVERVIEW

- Human Resources Best Practices
- Dissolving a MA Nonprofit
- Intro to 7 & 13 Bankruptcy

# HR BEST PRACTICES: STATUS

1. Clarity of Status
2. Choices to make when funds are running low
3. Change of Employment Status
  - Changing status
  - Terms
  - Consequences
  - Creative Options
  - Goals
4. Termination
  - Wages & Benefits
  - Separation Agreements

# HR BEST PRACTICES: PREPARATION

1. How to get ready to speak with your HR lawyer or advisor
2. Documents and policies to review and have ready
  - Employee Manual
  - Offer Letters
  - Contracts with workers
  - Updated vacation, salary, and accrued time numbers

# WHAT IS DISSOLUTION?

Winding up the business's affairs and ending it (as a legal entity).

*Any* business organization (LLC, partnership, for-profit corporation) can be dissolved. But 501c3 charitable nonprofits require extra effort.

# SHOULD WE DISSOLVE?

Has your nonprofit:

- Fulfilled its mission?
- Become unable to support itself financially?
- Decided to merge with another nonprofit?
- Suffered a fundamental departure of (or breakdown in) leadership?

If you answered “Yes” to any of these questions, dissolution might be in your nonprofit’s best interest

# DISSOLUTION IS A *PROCESS*

Two avenues for dissolution depending on whether the nonprofit *has or does not have assets*, meaning the organization

- never operated nor received any funds;
- currently has no remaining funds\*; or
- will have no remaining funds or property after the payment of its liabilities including costs associated with its wind up and dissolution.

\*Charities cannot render themselves without assets by giving away funds UNLESS that kind of grant making is already a part of its purpose and operations



# TWO AVENUES FOR DISSOLUTION

## With Assets

- Requires consent of the MA Supreme Judicial Court
- “Complaint for Dissolution”

## No Assets

- Administrative dissolution—doesn’t need SJC approval.
- Petition for Administrative Dissolution
- *Can* be done without the assistance of counsel (though typically not recommended)

# NO-ASSET NONPROFIT DISSOLUTION: PROCESS OVERVIEW

## Part I:

- Verify the nonprofit is registered with the Commonwealth of MA.
- Verify the nonprofit has submitted its annual filings (Form PC) for the **last 4 years**.
- Board vote to dissolve.
- Complete officer's certificate affirming the board action.
- Complete and submit Dissolution Package to the Attorney General's Office (AGO).

## Part II:

- After its review, the AGO will send a Final Notice of Dissolution indicating the nonprofit is dissolved.
- Notify the appropriate state and federal agencies of the dissolution.

# DISSOLVING A NONPROFIT WITH ASSETS: PROCESS OVERVIEW

## Part I:

- Choose a “receiving entity” for the leftover assets. The receiving entity **must either**:
  - a. have a similar mission to the dissolving organization, or
  - b. agree only to use the assets in a manner in line with the dissolving nonprofit’s mission.

## Part II:

- Verify the nonprofit is registered with the Commonwealth of MA.
- Verify the nonprofit has submitted its annual filings (Form PC) for the **last 4 years**.
- Board vote to dissolve.
- Complete an officer’s certificate affirming the board action.
- Complete and submit Dissolution Package to the AGO.

# DISSOLVING A NONPROFIT WITH ASSETS: PROCESS OVERVIEW

## Part III:

- After the AGO has approved your documents, they will return your judicial Complaint package.
  - Fill in the dates on the Judicial Dissolution Complaint and the Motion for Entry of an Interlocutory Order.
  - File the entire package with the Massachusetts Supreme Judicial Court (SJC).

## Part IV:

- The SJC will review the pleadings and, if all is in order, will authorize the transfer of assets through the Interlocutory Order.
  - Transfer your assets in the manner directed by the Court.
  - Complete and submit a transfer confirmation package to the AGO.

# **DISSOLVING A NONPROFIT WITH ASSETS: PROCESS OVERVIEW**

## **Part V:**

- After its review, if all is in order, the AGO will sign on the assent line and return the package to you for filing with the SJC.

## **Part VI:**

- After its review, the SJC will issue a Notice of Docket Entry and Judgement indicating the charity is dissolved.
- Notify the appropriate state and federal agencies of the dissolution.

# GENERAL INFO FOR DISSOLVING NONPROFITS

## The AGO

- The AGO tends to send people straight to voicemail.
- To avoid unnecessary delay, the best course of action is to prepare any questions you have for the AGO and contact them as soon as possible.

## Spending Down Assets

- Because the dissolution process for asset-holding nonprofits is longer and more complicated, nonprofits with only a small amount of assets may wish to spend down or zero out those assets before dissolving.
- *But remember that all expenditures must be consistent with the organization's mission!*

## Board Action

- The organization's bylaws typically establish the procedure for voting to dissolve.

# **INTRO TO BANKRUPTCY**

## **CHAPTERS 7 & 11**

# WHAT IS IT?

- A legal proceeding allowing individuals or businesses freedom from their debts.
- Handled in **federal** court.
- Either erases debt or creates a repayment plan



# TYPES

## Six types of bankruptcy:

- Chapter 7: Liquidation
- Chapter 9: Municipal
- Chapter 11: Large Reorganization
- Chapter 12: Family Farmers
- Chapter 13: Repayment Plan
- Chapter 15: Used in Foreign Cases

## EDUCATION INITIATIVES

- Pre-Bankruptcy Counseling → If you plan to file for bankruptcy, you must complete pre-bankruptcy counseling from a government approved organization within 180 days before you file.
- Post Filing Debtor Education → you must complete the pre-discharge education and provide evidence of completion after you file for bankruptcy.

## COUNSELING

- Evaluation of your personal financial situation
- Discussion of alternatives to bankruptcy
- Discussion of personal budget
- Costs \$50
- Free for people who can't afford it
- Once completed you will receive a certificate as proof

**POST-FILING  
DEBTOR  
EDUCATION**

- Information on developing a budget
- Managing money
- Using credit wisely
- Fee is between \$50 - \$100
- Free to people who can't afford it
- Once you have completed the required debtor education course you should receive a certificate as proof

# CHAPTER 7 LIQUIDATION



## WHAT IS CHAPTER 7 BANKRUPTCY?

---

A chapter 7 bankruptcy, also known as liquidation, lets the business owners turn their business over to a trustee for liquidation.

---

The business stops operating, and the court liquidates its assets and pays what it can to business creditors.

---

When the liquidation is complete, the business won't owe any remaining debts.

# ELIGIBILITY

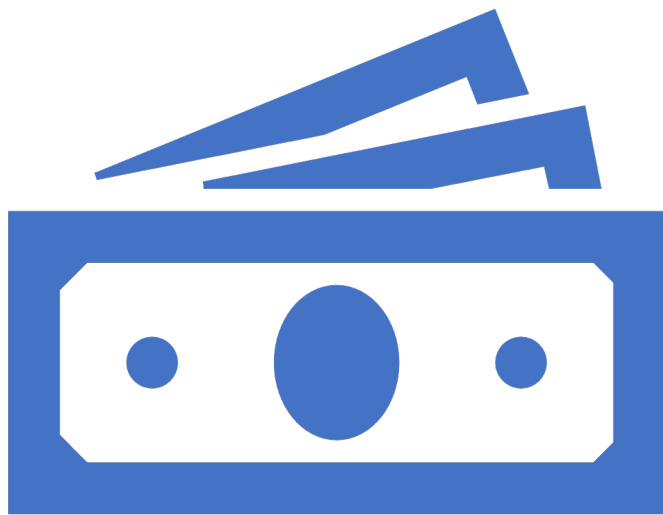
## INDIVIDUAL

Chapter 7 gives the individual debtor a fresh start in the form of discharge of his or her debts.

## BUSINESS

Chapter 7 gives the business debtor relief from its debts through an orderly dissolution process.

\*Business bankruptcy generally does not work for partnerships.



## **COST OF BUSINESS BANKRUPTCY**

Upon filing the petition, the debtor must pay the following to the the bankruptcy court:

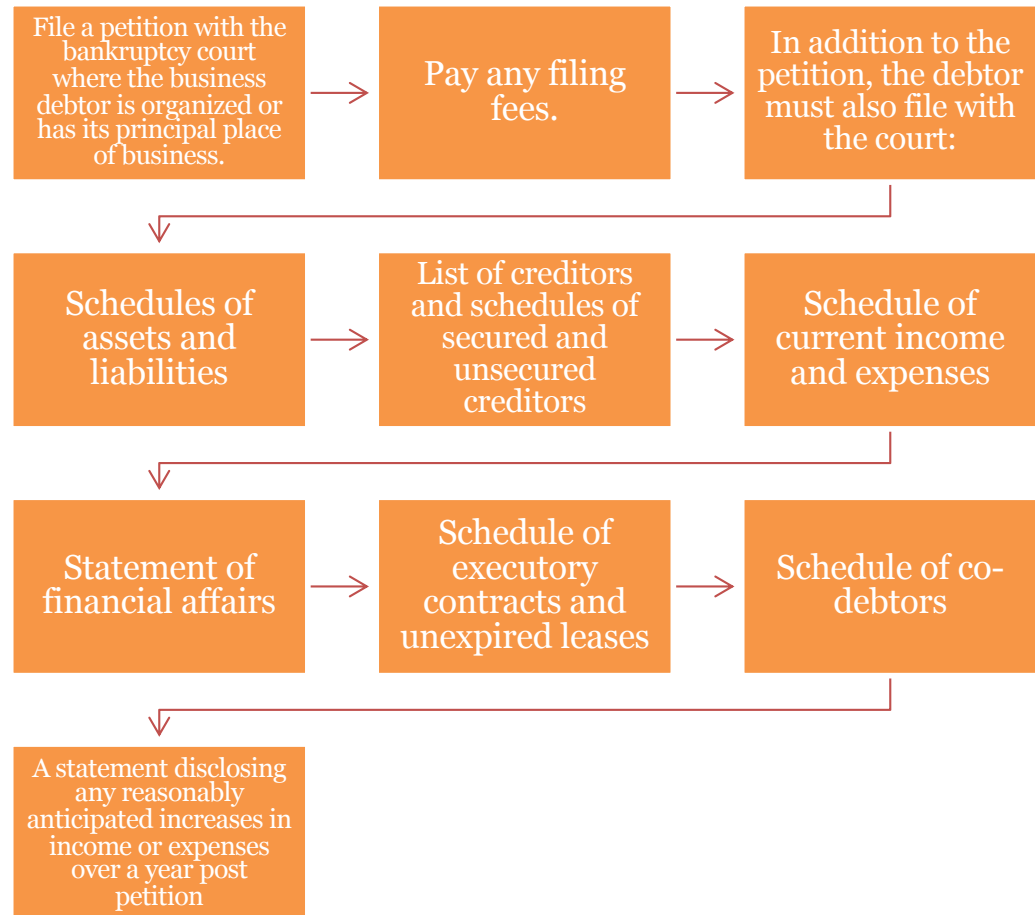
- \$245 case filing fee,
- \$75 miscellaneous administrative fee,
- \$15 trustee fee.

In addition, the debtor must pay,

- The trustee (commission based)
- The attorney



# FILING A CHAPTER 7 BANKRUPTCY



## WHAT HAPPENS AFTER FILING?

1. An impartial trustee is appointed
2. Most collection actions against the debtor are halted.
3. The bankruptcy clerk gives notice of the case to all creditors.
4. Debtor will have a meeting with all creditors.
5. Debtor must turnover all property and funds to the trustee.
6. The trustee will sell all the corporation or LLC assets and the proceeds among creditors according to the priority rules established in bankruptcy law.

## **DISCHARGE**

A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor.

**BUSINESS  
BANKRUPTCY  
DOES NOT  
ERASE  
PERSONAL  
LIABILITIES!**

If you are personally liable for corporate or LLC debts, then you may need to also file a Chapter 7 personal bankruptcy.

Examples:

- Personal Guarantees
- Fraud Claims
- Trust Fund Taxes
- Piercing the Corporate Veil

## ADVANTAGES OF LIQUIDATION

- **Transparency** → Trustee is handling financial affair rather than the corporation or LLC
- **Debt** → Shutdown the company. Once all assets are sold the creditors will not be able to collect anything additional from the company.

# CHAPTER 11

# REORGANIZATION



## WHAT IS CHAPTER 11 BANKRUPTCY?

---

Chapter 13 allows a business debtor to “reorganize” under the supervision of a trustee.

---

The debtor proposes a “reorganization” plan to the Bankruptcy Court, which is voted on by certain (“impaired”) creditors.

---

If the plan is confirmed, the debtor is discharged from pre-confirmation debt and is bound by the reorganization plan. The plan creates new contractual rights, replacing or superseding pre-bankruptcy contracts.

# ELIGIBILITY

## **INDIVIDUAL**

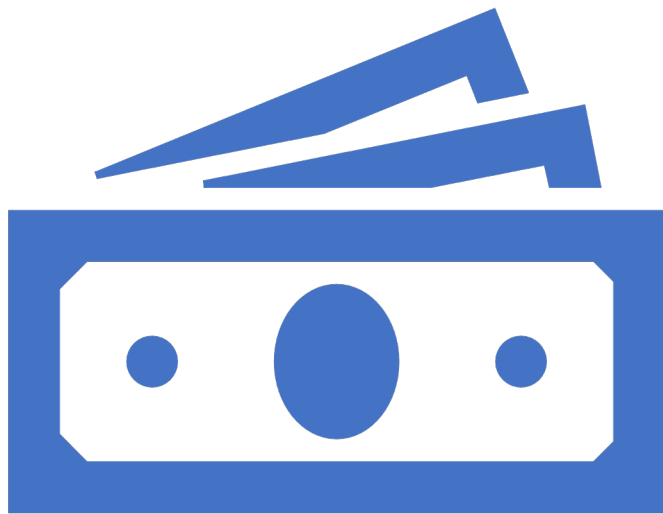
Individuals may file if within 180 days before filing, they have received credit counseling from an approved credit counseling agency.

Exceptions apply if the individual has had a prior bankruptcy petition dismissed within the prior 180 days.

## **BUSINESS**

Corporations, LLCs, sole proprietorships, and partnerships.





## **COST OF BUSINESS BANKRUPTCY**

Upon filing the petition, the debtor must pay the following to the the bankruptcy court:

- \$1167 case filing fee,
- \$550 miscellaneous administrative fee.

In addition, the debtor must pay,

- The trustee (commission based)
- The attorney

# FILING A CHAPTER 11 BANKRUPTCY

File a petition with the bankruptcy court serving the area where the debtor has a domicile or residence



Debtor must also file:

Schedules of assets and liabilities

A schedule of current income and expenditures

A schedule of executory contracts and unexpired leases

A statement of financial affairs

Certificate of credit counseling

A copy of debt repayment plan developed through counseling

# WHAT HAPPENS AFTER FILING?

1. Debtor becomes “Debtor in Possession” (a fiduciary role with responsibilities like that of a trustee), retaining control of the business during restructuring.
2. Impartial trustee is appointed.
3. All collection actions against debtor or the debtor’s property are halted.
4. Bankruptcy clerk gives notice of the case to all creditors.
5. Debtor must attend meetings with creditors and answer questions regarding proposed plan.
6. Debtor files reorganization plan with the court (creditors may file if debtor fails to within 120 days after filing petition)
7. Creditors vote on the plan, and the court must confirm it.
8. If confirmed, debtor is discharged from pre-confirmation debt and required to comply with the plan, including making plan payments.

## ADVANTAGES OF RESTRUCTURING

- Business continues as an ongoing concern.
- Debtor *retains control of the business*.
- Restructuring plan forces debtor to prepare business plan.
- Requires (to an extent) collaboration with creditors.



## TYPES OF DEBTS

- Priority = must be repaid. Those include accounting fees, legal fees, and taxes owed to the government.
- Secured = creditor has right to take back certain property if debtor does not pay back underlying debt.
- Unsecured = creditor has no special right to take back debt.

# **BUSINESS DEBT IS PERSONAL DEBT**

- If you are a sole proprietor, your business debts aren't distinguished from your personal debts.
- When filing financial affairs include:
  - A list of creditors and the amounts and nature of their claims;
  - The source, amount, and frequency of the debtor's income;
  - A list of all the debtor's property; and
  - A detailed list of debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.



**Consult a lawyer if  
you're considering  
bankruptcy!**

# GETTING LEGAL HELP

You can now apply for legal services directly through our website!

1. Visit <https://artsandbusinesscouncil.org/apply-for-services> and select “Apply Now”
2. Complete the application. Please include: your contact information, a brief explanation of your legal issue, and the names of any other related or involved parties.
3. For *pro bono* legal services, please also complete the financial information, **including proof of organizational income** (990, profit & loss statement, balance sheet, etc.)
4. Submit!

We’re continuing to waive VLA service fees for organizations and individuals financially impacted by COVID-19!



# Contact Us!

## **LUKE BLACKADAR**

Director of Legal Services

[luke@artsandbusinesscouncil.org](mailto:luke@artsandbusinesscouncil.org)

## **ARTS & BUSINESS COUNCIL OF GREATER BOSTON**

## **VOLUNTEER LAWYERS FOR THE ARTS OF MASSACHUSETTS**

(617) 350-7600 x7016

[www.artsandbusinesscouncil.org](http://www.artsandbusinesscouncil.org)

# ABOUT THE VLA

The **Arts & Business Council of Greater Boston** provides legal, business, and educational programs to the creative community of MA through, among other programs, business training for artists, legal services, non-profit board training/placement, fiscal agency, estate planning, HR support, insurance programs, and corporate art lending.

<https://artsandbusinesscouncil.org>

The **Volunteer Lawyers for the Arts** provides legal services, advice, and education programming to artists and cultural organizations in Massachusetts.

<https://artsandbusinesscouncil.org/vla>