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ATTORNEY GENERAL



CONSUMER PROTECTION
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TO: Charitable and Religious Corporations

RE: Notice of Merger or Transfer of Assets

We have learned that your corporation may be planning to merge or may intend to sell, transfer, or dispose of a majority of its assets. As you may know, the North Carolina Nonprofit Corporation Act (N.C.G.S. §§ 55A-11-02 through 55A-17-05) provides the Attorney General's office with an opportunity to review such transactions.

These statutes require, among other things, that any charitable or religious corporation must provide the Attorney General notice, including the proposed plan of merger, at least 30 days before consummating any merger of a charitable or religious corporation (N.C.G.S. § 55A-11-02(a)(4)). Similarly, pursuant to N.C. Gen. Stat. § 55A-12-02(g), a charitable or religious corporation must give the Attorney General written notice 30 days before it sells, leases, exchanges, or otherwise disposes of all, or a majority of, its property if the transaction is not in the usual and regular course of its activities.

The notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The enclosed form requests much of the information the Attorney General's Office will need for the review, but it is possible we may request additional information. To assist you in preparing the notice, we have also included a checklist.

The statutes provide our office with an initial period of 30 days to review the transaction. This 30-day period does not begin until we receive all of the information that we determine is required for a complete review. These statutes also allow our office to take an additional 30 days (for a total of 60 days) to review the transaction upon written notice to the charitable entity. The statutes further provide that the transaction may not be finalized until this review period expires.

While we attempt to conduct these reviews as expeditiously as possible, our office, due to resource issues, often needs to take the full 60 days allowed by statute in order to conduct a proper review. Therefore, you should take this into account as you plan the closing of the proposed transaction. If you schedule the closing of the transaction so that it takes place before the 60 day time period expires, you do so at your own risk; you should not assume that our office will be able to expedite our review in order to meet a closing date that has been scheduled on a date before our review period expires.

In situations where a charitable entity is selling or transferring a majority of its assets to a for-profit entity, we often want to know, as part of our review, whether independent third parties evaluated the fair market value of the assets for both the charitable entity and for-profit entity; likewise, we often want to examine both of these third-party evaluations. Also, we frequently want to obtain information or documents showing whether there are any employees or board members of the charitable entity that are also employees or board members of the for-profit entity. Accordingly, you should submit all of the information and documents described in this paragraph with the enclosed form as well.

You may submit the completed form, along with all the relevant documents, by mail or e-mail to the addresses listed below. Should you need additional space, please note on the form that your responses are supplemented on additional attached pages. If necessary, please clearly label any documents considered to be of a proprietary nature and provide reasons supporting such an assertion.

Mailing Address:

Nonprofit Asset Transfer
Consumer Protection Division
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

E-mail: nonprofitnotice@ncdoj.gov

Enclosure

Checklist of Items for Inclusion in Notice Given Under
N.C. Gen. Stat. §§ 55a-12-02(g) or 55A-11-02(c)

- A description of the transaction and the reason for it.
- An explanation of the transferor organization's plan for operations (or dissolution) following the transaction, including a copy of the plan of dissolution, if the transferring entity intends to dissolve following the transaction.
- Contact information for transferor and transferee entities.
- Final versions of all transaction documents (e.g., contracts, bills of sale, deeds, promissory notes, employment agreements, etc.).
- Documents demonstrating that the transaction has followed corporate formalities and is legally-binding (i.e., articles of incorporation, bylaws, corporate consents or resolutions, records of membership votes if applicable).
- Information about the transferor entity's debts, if any, including the lenders and amounts, and how the organization will resolve them.
- A statement that the transaction does not violate the terms of any grants or restricted gifts.
- All relevant minutes of the board discussing the events surrounding the transaction and the transaction itself.
- If the transferee entity is taking on any responsibilities, appropriate documentation that it accepts those responsibilities.
- Appropriate evidence of the value of the assets being transferred.
- Names of all members of the transferor board and, if applicable, the transferee board.
- Identification of any actual or potential conflicts of interest and how those have been resolved.

NOTICE OF MERGER OR TRANSFER OF ASSETS
BY A CHARITABLE OR RELIGIOUS CORPORATION

Pursuant to N.C. Gen. Stat. §§ 55A-11-02 and 55A-12-02, the charitable or religious corporation listed below hereby gives notice to the North Carolina Attorney General of its intent to merge or transfer a majority of its assets.

1. Name of the charitable or religious corporation (transferor):

Name: _____

Address: _____

Telephone: _____

Contact Person: _____

Title: _____

2. Briefly describe the charitable or religious purpose of the transferor entity and provide the relevant documents which reflect that purpose.

3. Entity to be merged with or acquiring transferred assets (transferee):

Name: _____

Address: _____

Telephone: _____

Contact Person: _____

Title: _____

4. Briefly describe the charitable or religious purpose of the transferee entity and provide the relevant documents which reflect that purpose.

5. Type of transaction (sale, lease, exchange, joint venture, option, or merger).

6. Please describe the reason for the transaction.

13. Following this transaction, will the charitable or religious corporation be able to pay its debts? If the organization is planning to dissolve after this transfer, list any and all current debts. Include the name of the debtor and the amount owed to each. Explain how those debts will be resolved.

14. Does this transaction violate the terms of any grant or restricted gift the charitable or religious corporation received?

15. Provide any other information or documents that will enable the Attorney General to conduct a complete review of the proposed transaction.

16. Production of documentary materials. Provide copies of all pertinent materials that document the transaction and related transactions. These include, but are not limited to, copies of the following, as appropriate: contracts of sale, asset purchase agreements, affiliation agreements, memoranda of understanding, covenants, collateral agreements; documents evidencing plans and structure of reorganization, including collateral, subsidiary, or related entities, mission of restructured entities including collateral, subsidiary, or related entities; corporate governance documents, including articles of incorporation, and bylaws; any requests for proposals, minutes of meetings, reports of experts, alternatives considered, records of public hearings, or other evidence of due diligence; any valuations, fairness opinions, commitments such as Certificate of Need assurances, Medicare/Medicaid reimbursement agreements, charitable trust provisions; documents evidencing disclosure of any conflicts of interests, contingencies, perquisites to existing board members or negotiators, promised compensation or employment contracts to existing board members or executive staff of the charitable or religious corporation, other documentation of arms' length or unrelated-party transactions; documents that describe or concern the service area(s) of the entity disposing of assets, including, but not limited to, any documents that depict the various geographic areas served by the charitable or religious corporation merging or transferring assets and documents depicting the areas to be served after the merger or transfer of assets; and such other materials and documents as requested.

17. Certification. The undersigned representative of the charitable or religious corporation providing notice to the Attorney General hereby certifies that the answers provided herein are true and complete to the best of his/her knowledge.

Signature: _____

Printed Name: _____

Title: _____

Company: _____

Address: _____

Telephone: _____

Date: _____