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Lets Get Existential - Transcript

[Speaker 1]

Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits. I'm your host, Jess Birken. Hello and welcome to this episode of Charity Therapy.

I've got my co-host Meghan with me here today. How are you, Meghan?

[Speaker 2]

I am so good and happy to be here, Jess. How are you?

[Speaker 1]

I'm good. We are recording at my home studio today and we got to look at the ducklings in my backyard, which was extremely therapeutic, I thought.

[Speaker 2]

Yes, they're so adorable. They just like to nibble on your toes and it's the perfect way to start a podcast recording. All right, so, Jess, at the firm, we work with nonprofits in all different stages of their lives.

We do a ton of startups, but we also help people who are going through the process of closing down their nonprofit. Unfortunately, when people reach out to us about closing things down, they're really disappointed to find out that it's not quite the same or as simple as closing down any sort of for-profit business. So, Jess, before we jump into our questions about closing nonprofits, can you tell us what makes closing down a nonprofit different than a for-profit?

[Speaker 1]

I think the main thing is a lot of small businesses, especially, can kind of go under by people just sort of abandoning the ship and letting it die. Obviously, there is a process for for-profits and the bigger your company is, the more complicated a winding down is going to be with debts and settling creditor things. But for nonprofits, no matter how small it is, there's a statutory process, at least in our home state in Minnesota, that you have to go through.

And it's pretty complicated and it takes like six months, and it doesn't matter if you have \$2,000 in your bank account or \$2 million in your bank account, it's the same process for everybody. And that, I think, is the biggest difference, especially for the little folks out there. They aren't expecting it to be as complicated as it is.

[Speaker 2]

Right. Okay, Jess, are you ready for some listener questions?

[Speaker 1]

Let's do it.

[Speaker 2]

All right. I am a board member for a local chamber of commerce, and I honestly believe the ship has sailed for this nonprofit years ago. We have some longtime members who are still paying

their dues, but it's not enough for us to really do anything for the business community in our area.

We used to provide a lot of networking events and resources, but our leadership has always been really old fashioned, and we just aren't keeping up with the times. We haven't been growing our membership and several of us believe that we're not really carrying out our mission, even though we are still hanging on. Is it time to end it?

[Speaker 1]

Okay, I love this question. Props to this person for even having the conversation because I feel like the decision to dissolve is really challenging for boards, especially if your organization has been around for a long time. It's really hard for a board member to have to say, this nonprofit went out of business on my watch.

[Speaker 2]

Yeah, no one wants to fail.

[Speaker 1]

Yeah, it feels like a failure, right? Just like if you split up with your business partner or you end your marriage, like there is like a whole emotional process of like, I failed, it's going to be very public, everybody's going to know I failed, and that sort of thing creeps into a nonprofit dissolution too. And so just want to recognize at first, like this is a human process.

And I love that this board member is even emotionally like capable of thinking about it and asking the question and really looking at like, do we need to exist? So, props to them. What I know to be true in all my years of experience is that for some reason, member-based associations have not, there are some, you know, that I encounter that are doing a great job and really like keeping up with the times.

But this whole idea that we aren't keeping up with the times, 100%. You're not alone. I see this all the time, where you have an aging population, whether it's a trade association or just some sort of member-based group where they've been around for a long time and they've always done it a certain way.

And frankly, passing out brochures is like what they did in the 80s and that they were able to keep doing that up until pretty recently. And maybe with the pandemic, they just didn't pivot. And now it's like, what are you even doing anymore?

So, it might be time to end it. If you can't get to a place where you can be a modern nonprofit that is serving the community and all you're doing is collecting dues to pay the costs to just keep the doors open and we're not really accomplishing our mission, you know, this is a tough spot. And this board member is probably maybe one of two people that's going to agree on this.

So, it could actually be a pretty tough road to get this going. So, it may be time to end, but it may not be likely that they're going to get the votes to end, if that makes sense. I don't know.

Do you know what I'm talking about, Meghan?

[Speaker 2]

Right. It's not just about like there is a perfect time to close down or a perfect time to keep moving forward. There's no one right path.

And when you're dealing with a group of people that has to decide and has emotional connections to the work that they're doing, it's even harder to know what the right course of action is.

[Speaker 1]

Yeah. And I think there's, you know, the questioner says, we haven't been growing in our membership. And that to me is the canary in the coal mine.

And that I think is where a lot of these member groups get stuck. They start having attrition problems, right? They can see their member numbers are going down and they desperately need to change in order to attract younger and new members.

But they're also so worried about member retention that they're at the same time, super afraid to rock the boat because they're going to make their constituents of like 65-year-old white dudes that love getting brochures and meeting for coffee at 10 a.m. on a Tuesday or whatever it is. They're scared to alienate even more people. And so, then they just get trapped into this place of stagnation and doing nothing.

And I don't know that this person is going to be successful in their campaign to dissolve, but it probably is. They might need to do some strategic planning to figure out what the best way forward is. It's adapted or die, basically.

[Speaker 2]

And it takes a lot of time and energy to adapt, especially if we have been super old fashioned and now, you're not just, you know, the Chamber of Commerce is not the only place to find business advice. You know, like you're competing with the entire Internet. Have you heard of YouTube?

Yeah, exactly. And it's just as much as you may want to adapt, or some people may want to adapt. If there is not the know-how or the willingness to change, it's just not going to happen.

[Speaker 1]

Yeah. What do you what's your justification for existence? What do you provide that I can't get by just like watching a video on YouTube?

That's really what they need to ask themselves. And then they need to make the case that what they're doing is valuable to the community. And if people don't value it, you know, might be time to wind it up anyway.

I could talk about that all day.

[Speaker 2]

You got to get a little existential. Yeah. Yeah.

All right. Are you ready for the second one? Yep.

All right. My family had a small 501c3 charity that is no longer active. It has about \$1,500 left in the bank account.

We all agreed that the \$1,500 will be given to another nonprofit, which I think is a requirement for a C3 upon a dissolution. We want to be sure to give every cent to the other nonprofit. However, I'm concerned that the check might bounce due to a monthly bank fee, a forgotten other check or something like that.

So, I'd rather have the cash given to me personally, and then I'd write my own check and pay every cent over to the other nonprofit. The family is OK with this, and they'd see the records to ensure that I do pay all of the \$1,500 to the other charity. However, when dissolving a 501c3,

when giving its assets to another nonprofit, is it OK to run the assets through an individual's bank account as part of the chain of payments?

[Speaker 1]

Hell no. No, no, no, no, no, no, no, no, no, no, no, no.

Just no.

[Speaker 2]

Gotta love when it's a simple answer.

[Speaker 1]

Just don't do that. Don't do that. Let's give this person the benefit of the doubt that they're not being scammy and not just trying to defraud the organization or the public of the \$1,500.

So many red flags just with like, my family had a charity. I'm already like, OK. This is probably a mess because if it was a family foundation or something, they would have an accountant that was helping them.

So, this sounds like it probably already had some problems, but that aside, OK, let's just go back to the part where they're like, I want to make sure every cent goes to the other nonprofit. Great. Why don't you just cut a check and donate \$1,500 to a nonprofit then?

You are going to have winding up costs related to putting this nonprofit out of business. You can't be sure that every single cent goes to the other nonprofit because you have to pay the

bank fee and you have to pay any outstanding debts and you have to find out if your creditors think you owe them money before you can give money to another nonprofit. That's the rule.

That's just the rule. So, if you would like a nonprofit with the same or similar mission to get a \$1,500 donation, you can personally make that happen with your own money. But the nonprofit needs to settle up its accounts and its bills because that's legally what it has to do before it can pass what remains after the winding down directly to another nonprofit, not to your personal bank account.

In reality, is anybody going to know if you do that? Probably not. But I know and I am judging you.

And I mean, obviously, I don't actually know who these people are, but don't do it, man. It's not cool. No, just pay.

You need to do an appropriate wind down, pay the outstanding bills. And if it's \$750 that's left at the end of the day, that's fine. You know, that's OK.

If you want to add to that with your personal funds to make sure this other nonprofit gets more money, then you can do that. But you have to pay the debts that the nonprofit has incurred before you distribute any of the remainder to the successor in interest. And bear in mind that the successor in interest, that's the nonprofit that's going to get the money that's left, has to be a similar organization.

So, it can't be like your family had a charity that like saves the snails. And now you you're a dentist and you would like to fund some like dental hygienist related trade association. No, it has to be related to saving animals, snails, whatever.

I'll get off my soapbox now.

[Speaker 2]

All right. I got one last question for you, Jess. Normally, when I hear of a nonprofit shutting down, it's because something is failing.

But I'm the president of a small organization whose mission is to revitalize our Main Street. And I think we uplISHED our mission, question mark, question mark. For the last five years, we've cleaned up the historic buildings, helped local folks open up businesses there and generally made Main Street a great place for people to be.

We're getting buzz and a lot more tourism from people passing through town. And it seems like the town is set up really well for the years to come. Is it silly to dissolve something that went so well?

I don't know what else we should be doing.

[Speaker 1]

This is a good one. So, first of all, congratulations on feeling like you have accomplished what you set out to do. Think about that for a minute.

I mean, you've worked for five years, and you've accomplished the goal, which is amazing. So big ups to y'all. Now, what they don't say is what kind of organization it is.

Like, is it a tourism bureau or is it like a C6 or is it a 501C3? I don't know if if they should dissolve or not. Right, and I think this person can't make that decision alone. This is a great topic

to bring to the board and speak. Here's what our mission says and here's what we've accomplished.

What happens for us next? Do we want to go through strategic planning and figure out how we keep Main Street a great place for people? Or do we want to say, you know what, we accomplished our mission and let's celebrate that and wind down and throw a big party celebrating that we achieved our vision?

I think both are good outcomes here. What I wouldn't want to see happen is that this organization just sort of starts to like to erode and become like our first question, where they're just sort of like going through the motions and it's like sort of the same old, same old and we don't really do anything and we're not really adding value to the community, but we're here. So we just keep having board meetings and we keep the thing alive.

I think you need to look and say, right, that was our mission. What's our vision? Is there more that we can accomplish with this vehicle?

If so, we maybe we need to revise our exam purpose. Maybe we need to amend our articles. Maybe we need to go through strategic planning and figure out what that looks like.

Or are we going to go out with a bang and say, our mission was this. It took us five years and we did it. And we are going to have a celebration of mission accomplished.

No, now I'm dating myself. But like, you remember the George Bush Iraq War, like mission accomplished?

[Speaker 2]

Yes.

[Speaker 1]

Banner. That's all I can ever think of when I hear mission accomplished. That phrase is forever ruined for me.

Different connotation now. So, you know, I think this person needs to bring that back to the board and really have a conversation about what now. You might not know what else we could be doing, but your board might have other ideas.

And I think that's a really important conversation to have. And then you can decide which way you're going to go.

[Speaker 2]

Absolutely. Well, listening to you have a couple of takeaways. But I think first, we just need to acknowledge that dissolution is not just a legal process for a nonprofit.

It's an emotional and a human process. And I also want to say just because it's emotional doesn't mean it's always sad. Like that last question, sometimes it can be a happy thing.

But either way, you got to get everybody on the same page and be ready to close and make sure that's the right choice for everybody involved and the nonprofit's constituents. So, it's not a quick, easy decision. Second, there are real costs to winding down.

And just because you're closing doesn't mean that you can just like cut a check and be done. Like if you have debts, if you have outstanding responsibilities, those are things that need to be taken care of before you can let the dust settle on a nonprofit that's closing. And the last big takeaway that I pulled out is that just existing isn't enough.

Like when we're a nonprofit that is mission based, we can't just be content with bringing in just enough money or just enough effort to keep the nonprofit living, but not really doing anything. If you're at a place where you are just existing with no plan to ever change that, you are probably at a place where dissolution should be on the table, at least.

[Speaker 1]

Yeah. What is there's a movie quote in there. Get busy living or get busy dying.

[Speaker 2]

I don't even know what that is.

[Speaker 1]

It's from something. It's a good one. Something.

Well, Meghan, thank you for being here with me today. I always enjoy our sessions. As do I.

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About the Author



Hi, I'm Jess Birken.

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

Let's connect!

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