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## Nonprofit Dissolution It's Complicated - Transcript

[Speaker 1]

Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits. I'm your host, Jess Birken.

Happy New Year, Meghan.

[Speaker 2]

Happy New Year.

[Speaker 1]

This is our first recording of 2021.

[Speaker 2]

Yeah, that's awesome. I am ready.

[Speaker 1]

What are we doing today?

[Speaker 2]

So today we're going to be talking about nonprofit dissolution. So to start off, Jess, would you mind giving us a little 101 about what it actually means when a nonprofit dissolves?

[Speaker 1]

Oh, yeah, sure. So that's a great question. Dissolution is kind of like when people think about a business going bankrupt, right?

Or you need to go out of business. Nonprofits don't generally go bankrupt, they dissolve. And so there are some rules around that.

The IRS requires that the nonprofit find another nonprofit or an agency to take over its programs or take its money. You can't just be like, I'm going out of business, and then I put all the money in my pocket because you don't own it, right? The community owns it.

So dissolution is just a way for a nonprofit to go under. And there's usually like a statutory process that you have to follow. You have to alert the state agency that governs charities and tell the registrar or the secretary of state that you're going out of business and document that you gave your assets to charity and didn't steal them.

[Speaker 2]

That's basically how it works. So in other words, it sounds a little more complicated than just being like, peace out, we're done.

[Speaker 1]

Oh, yeah. Sometimes people think they can just like walk away and be like, and we just closed. It's like, no, no, no.

There's like a whole six month ordeal you have to go through to close down a nonprofit, usually.

[Speaker 2]

Oh, geez. OK, well, that's good to know. And so now that we're all on the same page, let's get to our first listener question.

[Speaker 1]

Yeah, go.

[Speaker 2]

All right, let's do it. OK, so question number one.

This person says, I am a board member for a small theater group. We were already struggling to make ends meet before the pandemic. But now all our programming has stopped since March.

We have no money coming in and none of the board members have the time or energy to figure out how to pivot to online alternatives. We're all very dedicated to the mission, but it just feels hopeless right now. We're considering closing our doors for good.

How do you know when it's time to shut down a nonprofit?

[Speaker 1]

This, I always feel bad for people in these situations because you can always tell the people involved are so exhausted. By the time by the time they get to me, they're like so exhausted. Like I'm thinking of an organization that we've worked with in the past where I mean, by the time they got to me, they were just like, we're done.

Tell us about dissolving. And I was sort of like, hey, but you have this great mission, and the people need you. And, you know, then they got all fired up again, hired an interim executive director.

And then they were just too exhausted. You know, there's some telling stuff in here. The questioner says we were already struggling to make ends meet.

You know, when you're admitting that as a nonprofit, I mean, culture of poverty with nonprofits, like people are like, oh, we're struggling to make ends meet. But when you're coming in and you're saying like, it's been rough already and then the pandemic hit, I'm guessing it's been bad. And now it's gone from bad to worse.

So, you know, the mission is always there, and you do always have people to serve. And that's part of why people allow themselves to get so exhausted by running these small nonprofits,

because there's a never ending stream of people to serve. Whatever it is that you're doing, whether it's homelessness or poverty or education, you're just kind of never done.

And it can be super draining. And so sometimes you do need to end it. And I think the real question here is like, OK, the person who writes in, it's a small theater group.

Obviously, the pandemic feels like it's been going on forever is temporary and theater will be back. You know, money will come in. You will be able to do a show.

You will be able to get through this eventually. So one option would be to just go into hibernation mode. You know, you could absolutely basically put the nonprofit to bed, lay off any staff and just kind of sleep the thing.

You know, it takes three years for the IRS to revoke your tax exemption. So even in the worst case scenario that you forgot to file a 991 time, you can still come back from that. But the real question for me is, is the board willing and able to do the work when the time comes?

And if the answer is we've been struggling, now we've got a kick in the teeth and we just don't have it in us to continue. It's OK to just say it's time to shut it down. And so I think the how do you know when it's time to shut it down is when you're not able to go on with the work.

Because the work will always be there and the need for the work will always be there. But your time being in that role and being called to do that work may end. I mean, and I think where people get stuck is they think like, well, everything will fall apart if I don't do this.

Sometimes that's true, but most of the time there are other people who are being called to do the work. What's the phrase? Every time a door closes, a window opens or whatever.

You're leaving space for someone else to come in and do something new and serve that community. So I just think the answer is whether you guys are willing to do the work required.

[Speaker 2]

Nonprofits are made of people and we're all dealing with this as well.

[Speaker 1]

That's right.

[Speaker 2]

OK, next question.

[Speaker 1]

What you got?

[Speaker 2]

I have an idea for a business that sells workbooks and online courses geared toward teaching people about emotional intelligence.

I assumed it should be a nonprofit since I wanted to help people. So about a year ago, I incorporated. I haven't done anything since with the nonprofit, but I'm finally ready to get everything up and running.

But in that process, I talked to some folks and realized that my idea would probably work better as an LLC. So what do I do now? Can I just convert the nonprofit into a for profit?

[Speaker 1]

Oh, it's too easy to incorporate. You know, that's the thing. I was actually just having this conversation on Twitter this morning.

People were like, why do people do all the things to administer a business and focus on the compliance and the paperwork and not actually, you know, testing the market? And I'm like, because it's the easy part. Click some buttons, pay a fee, and there you go.

You have a nonprofit. Right. Or a business, right?

Either way, it's just it doesn't take a lot of effort to do those things. And you can still live in the fantasy that everything is going to magically work out. And you've taken this concrete action step that feels real.

But if you didn't get good advice in the beginning, you may have made a huge boo-boo blunder, as this person is about to find out. Because, I mean, the problem with the question is they have an idea for a business that sells stuff. And I love that it has a social component, right?

And everybody these days loves a business that does good deeds. That's so popular. There's nothing wrong with that.

Like people want to shop with their dollars and put it where it matters. But they assumed it should be a nonprofit. And assuming is the problem.

They want to help people. And that's admirable. And the thing that always boggles my mind is there's nothing wrong with having a business that makes money that helps people.

I don't know why people get so stuck in that.

[Speaker 2]

But Jess, aren't businesses evil things that are trying to take all the money? And they have no morals because they're all about the money. Right.

[Speaker 1]

But then how are you going to eat? Because most of this is it comes from like, I want to do this thing and like, leave my crappy desk job or whatever. Right.

But you need it to make money so that you can get paid. Most of the time when I talk to people, that is the case. So the problem for this person here is they talk to a bunch of people who may have seemed like they knew what they were talking about.

And they may have even been people in the nonprofit sector. They may have been like other folks that know about nonprofits. But it sounds like this person didn't get any legal advice.



And so the problem is once you've already decided to incorporate the nonprofit, at least in Minnesota, where I live, you cannot just convert it. So can I convert the nonprofit to a for-profit? No, not in my state.

There could be a state where you can do that. But the problem is you have put the world on notice that this is a charity. And the state's attorney general or sometimes it's the secretary of state.

And depending on where you are, they have like sort of the police authority to steward all of the nonprofits in the state and make sure that people don't steal charitable assets because human beings love a good scam. So, you know, the attorney general's job is to protect the consumers in the state. And charities have assets that basically belong to the citizens, not to any individual person.

And so once you've created this thing that the state has some sort of power over, now you have to deal with them when you want to get rid of it. And so at least here in Minnesota, you have to dissolve the nonprofit. You can go ahead and start a taxable for-profit company on the side, but you still have to dissolve the nonprofit there.

You can't just convert it. There are some other things. I mean, you could buy all the assets.

I mean, this person doesn't have anything going on, so there's nothing to buy. At least that's what they say. But there could be money in the bank or, you know, some other revenues have come in.

Those assets are now charitable, and they need to be used for charity. So you can't just take that if this person brought in some money and then they were like, okay, but now I just want to have a business. I'll just take this money and use it for my business.

No, you have to donate that money that came into another nonprofit that has a mission that deals with developing people's emotional intelligence and start over. Dissolving is hard. It's complicated.

There's a bunch of steps. It takes forever. And if you're like this person who's basically got nothing and they're on their own, you know, they're not going to have the resources to hire me for white glove service for something like this, which is why I created the self-help, the DIY dissolution course through Mission Guardian.

Shameless plug. We'll put the link in the show notes, but it's complicated. So I, you know, I just, this always frustrates me because it's just too easy to incorporate.

And so many times I talk with people and I'm like, I'm talking them out of starting the nonprofit and I'm saying, you can start a nonprofit later. Start your business now. Start the business.

And if it comes to pass that there's just stuff that you cannot do or people want to donate money or there's some program that doesn't cashflow and it's not a good business choice, you could start a nonprofit later. So I always just kind of err on the side of like, don't just incorporate a nonprofit. Even if the document filing companies make it super easy.

Don't do it.

[Speaker 2]

Don't do it, people.

[Speaker 1]

Yeah. Yeah.

[Speaker 2]

I mean, it's like immediately more complicated as soon as you introduce the nonprofit into the mix. So it makes total sense. Totes.

So Jess, what's the takeaway here on all this?

[Speaker 1]

You know, I mean, looking at both of these situations, I think the takeaway is don't go it alone. You know, dissolving and shutting down a nonprofit is complicated. It's something, it's a situation where you need to do things right.

There's a lot of lingering liability for the board members, for the founder. It's just something where you really need to take your time and follow the law and whatever your resources are, doing it right is important. So getting some kind of help is key, whether that's hiring somebody like me, using a DIY self-help course, whatever it is, you need to get some kind of guidance through that process just to stay out of hot water, really. I think that's it. Don't go it alone.

Meghan, thanks for being my co-pilot again.

[Speaker 2]

Always happy to be here.

[Speaker 1]

Right on. Well, if you enjoyed this episode, do me a huge favor, share it with a friend, rate, review, subscribe on your podcast app.

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All right, folks, that's our show. Be sure to follow me on Instagram or Twitter at Jess Birken. We want to hear from you.

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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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