



Process Document: Closing a Local History Museum

Even well-run museums can find themselves in a position where operational challenges, financial shortfalls, or other circumstances leave no alternative to closing. When a museum must close its doors permanently, several different types of activities need to be completed:

- Wind down the museum organization and its business activities.
- Determine what will happen with the collection(s) and implement those decisions.
- Determine what will happen with the museum's other assets and implement those decisions.
- Officially dissolve the organization.

This document provides a step-by-step guide to dissolving the organization in a manner which preserves the museum's legacy and protects board members from any personal liabilities. Please note that the sequence in which the steps are completed is critical. For example, the organization should not be dissolved before the bank account is closed; the bank account must stay open until all assets are divested and final payroll is completed; etc. However, the museum will necessarily work on some or all of these activities at the same time.

Both the board of directors and staff (whether paid or volunteer) should be involved in this process.

All guidance contained within this document is based on Federal laws, as well as state statutes in place in Texas, when this document was created. As noted in Section 1, it is your responsibility to review and make sure you understand current Federal and State requirements before beginning this process; please consult with a nonprofit attorney and/or accountant as needed.

1: The Decision-Making Process

Before deciding to dissolve the museum, the board of directors and key staff should have explored alternatives that could keep the museum up and running. Many hire a nonprofit consultant to examine the issues and help strategize. Can the mission be revised, or the organization restructured/downsized? Would the museum benefit from a change in leadership? These discussions of alternatives should be documented in the board's official meeting minutes. It's a good idea to limit these deliberations to the board and key staff – alternatives should be openly explored, but it's counterproductive if the community or potentially affected staff to hear of plans that may never be implemented. If news gets out, it could negatively impact the museum's reputation with community partners and potential donors or result in loss of staff. Openness and transparency are important once a plan is in place, but managing how and when the information is conveyed will be an important part of the process.

Once the decision has been made to dissolve the organization, you will want research the following.

- Check your organization’s bylaws or articles of incorporation for a dissolution clause and review what it says about the process.
- Note the museum’s incorporation and tax status – dissolving a nonprofit organization, particularly one with 501(c)(3) tax status allowing exemption from federal income taxes, differs from dissolving a for-profit company. Nonprofits are incorporated at the state level and many of them do not apply for federal tax-exempt recognition. If unsure, you can call the IRS to determine if your nonprofit has received 501(c)(3) status.
- Visit the [Texas Secretary of State’s website](#) to learn about the requirements for closing a nonprofit or domestic entity. The state’s website will also allow you to look up your organization and find your agent.
- The Office of the Attorney General represents the public interest in charity and acts to protect that interest. You may want to contact the state’s attorney general and determine what statutes and case law apply.

Dissolution has legal implications at both the state and federal levels, and at this point the museum may wish to engage legal counsel to advise on the process. To initiate dissolution, the museum will need to take the following steps:

To-Do List

- The board of directors must reach consensus on dissolution of the museum and take formal action to authorize winding up operations. This vote should be recorded in the official minutes. The organization is not officially dissolved until a Certificate of Termination is filed with the state, but this is the first step starting the process.
- The board should appoint a planning group that includes the board chair, CEO, and key staff. This group will create a “plan for dissolution” that outlines how the organization intends to distribute its remaining assets and address its remaining liabilities. It’s a good idea for the plan for dissolution to document who will be responsible for what and to establish a timeline for those activities to maintain accountability throughout the dissolution process. The plan for dissolution is a formal document that will be presented to the board for approval *prior to implementing the dissolution process*. Section 2 below lays out considerations that will feed into the dissolution plan.

2: Wind Down the Business

Once the decision has been made to close the museum, its board of directors and staff will need to begin the process of winding down the organization. This process takes time and will likely continue for months after public operations have ceased. The board and staff should work together to decide on a target closing date and then create a schedule of tasks to be completed before that date. Both the board and staff, working together, should be involved in establishing the closing date and timeline that includes the amount of time needed to wind down of the museum’s operations as well as relocation of the collections.

Determine if the organization has enough funds to complete this process. They should consider the following questions and make conservative assumptions.

- Remaining operating funds. How long can the museum reasonably stay open? It is not necessary to close on the last possible date, but one should know what that is.
- Sources of additional operating money. If assets are to be sold in advance of closing, will the museum rely on that income to continue operating? Are the estimates of proceeds and availability of funds realistic or wishful thinking?
- Inventory all debts and liabilities, including any taxes. Determine whether those obligations can be satisfied by existing funds, property, and assets. If your organization cannot satisfy its debts and has insufficient remaining assets to sell, then the property and assets should be applied as far as they will go and working with an attorney to declare bankruptcy might be considered. Final financial statements must reflect no remaining liabilities or assets.
- The museum's existing commitments. Has the museum accepted future bookings for field trips or events? If those are scheduled in the near future, can they be accommodated to preserve goodwill with the community or referred to another organization?
- Are there leases or other contracts that need to be terminated?
- Availability of staff or volunteers. Are staff members already starting to find new jobs? Can volunteers or board members cover any staff responsibilities until the museum closes?
- Phased closing options. Can the museum close in stages?

All of this information should be incorporated into a plan for dissolution.

To-Do List

- Review existing commitments.
- Calculate how long current operating funds will last.
- Estimate how much additional operating money could become available through the divestiture of assets.
- Pay Debts: Make a plan to pay off current debts, or work with your suppliers to settle those debts.
- Update the financial statements of the organization. You need to have a clear record of the outstanding debts and liabilities.
- Create a closing timeline based on funding and available staff/volunteer time.
- Establish a target closing date and incorporate that into a plan for dissolution.
- Notify employees. Let staff know about the imminent closure and thank them for their work. Be prepared to answer questions about the timing of their last day of work and their rights regarding unemployment compensation, retirement funds, health insurance, etc.
- Notify stakeholders. Identify all the groups and individuals who must be informed – donors, volunteers, the community, and those served by the museum's mission. Do this before they find out from the rumor mill or the news. Consider the impact your closing will have on the community and establish key talking points about why and how the museum is winding down. You might want to name a spokesperson to

answer questions and ensure that communication is consistent. Anticipate questions related to how any remaining funds will be used. Will they go to pay debts? Will they go to another nonprofit? Will recent donations be refunded?

3: Divest the Collection(s)

One of the board's most important jobs as the museum faces closure is divesting the collection. Depending on the size of your collection, this process can require a significant number of curatorial hours.

There are two types of assets in most museum collections, and that this may impact how a collection is divested:

- **Unrestricted assets:** When a donor does not specify exactly where or how the nonprofit is to use the given donation, the contribution is considered to be unrestricted.
- **Restricted assets:** Must be used for purposes specified by donors

Museum collections, especially for nonprofits, are held on behalf of the public. A history museum facing closure should take all steps necessary to protect their collections for the benefit of the public and ensure that they remain in the public domain. Be aware that it may take months or years before your museum's collections are processed at the new institution and accessible to the public.

- Inventory all of the items in the museum's collection.
- Make sure that accession files (*i.e.* the list of items added to a collection) are accurate and up-to-date, and that this information is stored in a location that will keep it readily available as the museum winds down. Those records are critical in documenting good title, any donor restrictions, and other concerns that impact the divestment of a collection.
- Return any items in the collection that were loaned to the museum on the condition that they would be given back upon dissolution.
- If there are items in your collection whose provenance is unclear, follow the guidance outlined in Texas Property Code Chapter 80 regarding the Ownership, Conservation, and Disposition of Property Loaned to Museum regarding notice to lenders and abandoned property.
- Identify other museums or institutions with a similar mission that might be interested in receiving items from your museum's collection.
- Both your museum and the institutions receiving items from your collection should proactively address public relations. Establish talking points for staff and board leadership and write press releases describing where these valued items are being transferred.
- Items that cannot be transferred in another museum may have to be deaccessioned.

Transfer of collections to another institution is greatly preferable to their sale and is more consistent with the public trust under which history museums operating. Transferring a collection is also significantly more cost effective and efficient because it does not require the same level of processing as sale. However, if a museum does not have sufficient assets

to pay off the organization's liabilities there may be limited flexibility in determining how the collection will be distributed and items may need to be deaccessioned.

The American Association for State and Local History's ethics position paper *When A History Museum Closes* notes that "Even when facing closure, history museums must recognize that what they do will have impact on the larger professional community of which they are a part. When one institution carelessly handles the dispersal of its collections and other restricted assets, all suffer, for such actions raise alarms among not only donors but also the general public and policy makers, undermining their confidence in us all."

A museum is under no obligation to seek approval from or notify donors when disposing of unrestricted gifts or collections. That said, being open about divestment of the collection and providing reassurance that objects will be cared for by another institution will ease public concern and prevent misunderstandings.

Termination documents filed that must be with the Secretary of State include a statement that your organization has complied with the provisions of the Texas Business Organizations Code (BOC) regarding disposition of property. If items are restricted and held in the public trust, states attorneys general are charged with protecting the public interest in those assets.

To-Do List

- Create or update the inventory of the museum's collections. Classify each item in the collections based on its provenance (known or unknown) and whether it is owned by the museum or on loan to the museum.
- If necessary, have the collections or individual items within the collections appraised to establish value.
- Update the accession files, if necessary. Ensure that the collections inventory and accession files are in a secure location.
- Make a plan for announcing the museum's closing to the public, members, donors, the press, and other institutions. Share talking points with board and staff members; distribute press releases as needed.
- Return any items in the collection that were loaned to the museum, documenting each transfer.
- As needed for items with unclear provenance, give appropriate notice (per state statutes) for lenders and abandoned property.
- For all other items in the collections, seek other nonprofit museums or institutions that might receive them.
- Deaccession any remaining items that cannot be returned to a lender or transferred in another museum or institution.
- Document all transfers and sales, noting assets transferred to other tax-exempt entities.

4: Divest the Organization's Other Assets

It is vital that all assets be distributed in a manner that is consistent with federal and state law, your museum's bylaws or articles of incorporation, and the plan for dissolution.

A nonprofit museum organization that has been determined to be tax-exempt by the IRS must, in its organizing documents, include language that permanently dedicates its assets to an exempt purpose. (This does not mean that a site, building, or collection can never be deaccessioned or sold.) This usually means that charities give their assets to other nonprofit organizations -- individuals can never receive personal benefit from their association with a charitable nonprofit. Other asset distribution requirements may also apply. The Texas BOC proscribes guidelines for distributing assets, and your corporate bylaws might also contain directions for distribution. Members of the organization typically are not permitted to receive assets beyond their normal compensations.

Note: A privately owned museum does not have this restriction; nor do nonprofit organizations in the following states: Arkansas, California, Louisiana, Massachusetts, Minnesota, Missouri (in some cases), Ohio, and Oklahoma. Because this document is written for nonprofit museum organizations in the State of Texas, it assumes that the dedication of assets for exempt purposes will apply.

An organization may own different kinds of assets:

- *Real property* includes land and "improvements" like buildings, structures, property, asphalt parking lots, etc., which are permanently installed on the land.
- *Personal property* includes furniture, appliances, office equipment, supplies, inventory, and other items that can be removed relatively easily.
- Financial assets may include the money in checking or savings accounts, petty cash, endowment or similar accounts, etc.

To-Do List

- Take an inventory of all the museum's assets and their values; some assets may need to be appraised.
- Create a plan of distribution that indicates how the assets, or the proceeds from the transfer of assets, will be distributed after all creditors have been paid.
- Plan which assets will be sold, transferred, or contributed to other organizations.
- Return any assets that have been loaned to the museum.
- Document all transfers and sales, noting assets transferred to other tax-exempt entities.

The state's Certificate of Termination, which must be filed with the museum is dissolved, includes a statement that the dissolving organization has complied with the provisions of the Texas BOC governing its winding up, that its property has been disposed of in accordance with the Texas BOC, and a statement that the distribution of any remaining property has been done in accordance with a duly adopted plan of distribution. So make sure to document the board's actions as you are divesting assets.

5: Divest the Facilities/Property

The museum board will divest the museum of any facilities and properties it owns. History museums that include historic houses or sites as part of their collection will want to ensure that the property does not end up deteriorating or abandoned once the museum closes. The board can either sell or donate the site; either option can be appropriate if there is a suitable buyer or recipient available. The size, zoning, and physical condition of your historic building will affect reuse options (accumulated deferred maintenance will be costly). If your museum owns historic buildings and wants to ensure their on-going preservation, consider placing a historic designation or preservation covenant on the resource; the Texas Historical Commission has chart outlining historic property protects [here](#). Museums that include historic houses or sites should check any restrictions if the property was donated and make sure the status of those properties relative to their collections is clear. Many organizations consider their historic properties to be part of their collection but do not have documentation to back up the claim, leaving the structures in legal limbo. Creditors looking for assets that can be liquidated will eye houses and other real property.

To-Do List

- Inventory all of the museum's facilities and property. Make note of any that are part of the museum's collection, such as a historic building.
- Obtain a current fair market appraisal to assure that the price is fair.
- Take into account the amount of time necessary to wind down the museum's business and dispose of the collection. Make sure you will have time to wrap up those operations before selling the facility that the board and staff are using to complete those activities.

6: Officially Dissolve the Organization

Once the process of winding down the museum's business has been completed and the assets, collections, and property have been divested, the time has come to officially dissolve the organization.

Texas law [note which law] provides for voluntary dissolution of nonprofit organizations by 1) a two-thirds vote of the directors in office if the nonprofit does not have members, or 2) for nonprofits that do have voting members, by approval of the board of directors followed by a vote of the members. Make sure to properly record the resolution, the plan of distribution, the directors' votes, and members' votes (if any) –this information will be needed for the dissolution filings with the Secretary of State and the IRS.

To-Do List

- The board must adopt a resolution to terminate the organization.
- File a Certificate of Termination with the Texas Secretary of State office. (Form 651 for for-profit or professional corporations; Form 652 for nonprofits). The forms, mailing addresses, filing fees, and access to the state's online filing system are on the Secretary of State's website as noted at the end of this article. Unless your entity is a nonprofit corporation, you must attach a Certificate of Account Status for Dissolution/Termination issued by the Texas Comptroller.

- Notify the IRS of the dissolution by filing your organization’s final tax return. If your museum is not required to file, submit the necessary termination information such as a Schedule N (Form 990, *Liquidation, Termination, Dissolution, or Significant Disposition of Assets*). The Form 990 is due within 4 months and 15 days after the last day of the organization’s most recently completed fiscal year. It requires a description of the organization’s assets, date of distribution, and fair market value of the assets, so keep this in mind when documenting the transfer of assets. If your organization never applied for tax exempt status but received an “EIN” (employer identification number), send a letter to the IRS requesting “termination of the organization’s EIN account.”
- Notify any company with which you do business, such as your bank, utilities, phone, insurance and copier companies, and internet service provider.

Texas’s laws for nonprofits are contained within its more general Business Organizations Code (the Texas BOC mentioned above) and are unique and complex. You are urged to consult with a lawyer to obtain guidance regarding the winding up and termination of a Texas nonprofit corporation. As noted earlier, it is your responsibility to meet with an attorney or tax professional to ensure you are taking the required steps. This is especially advisable if the museum is in financial or legal trouble. Be aware that terminating your nonprofit will not stop lawsuits started by or against it before termination and, depending on circumstances, it may be possible to start new legal actions up to three years after an organization is terminated

Example:

The **American Textile History Museum (Lowell, Massachusetts)**, founded in 1960 and an affiliate of the Smithsonian Institution, closed in 2016 after a seven-month process during which, working with the Nonprofit Finance Fund and a consultant, its board was unable to identify any viable alternatives. The museum had been operating at “a significant deficit” for two decades and had depleted its reserves fund. The process of closing included a year-long curatorial effort to document, prepare, and transfer the objects in its collection to other institutions. The museum had struggled financially since 1997, when it relocated from North Andover, Massachusetts, to Lowell. Attendance and revenue were much lower than expected at the new location. In 2005, the museum closed its exhibits for restructuring; closed its conservation center permanently; sold part of its facility; and spent four years completing a nearly \$4 million capital campaign. However, like many museums, it never recovered from the economic downturn in 2008. Over a four-month period, the museum engaged in a comprehensive feasibility study to assess the museum’s options. The study found that the museum would likely never be able to raise adequate funds to support its annual operations or even a transformed version of them. In June 2016, the board of trustees voted to seek approval from the Massachusetts Attorney General’s Office and Supreme Judicial Court to dissolve the museum’s 501(c)(3) and permanently close its doors.

The museum board and staff worked closely with the Attorney General’s Office to ensure the responsible use of the museum’s remaining assets, including the protection of their collection. The museum solicited collections request from other organizations interested in acquiring portions of its collections. Museums, historical societies, and nonprofit organizations of good reputation and stable financial status were selected to serve as long-term stewards of its collections, with a goal of ensuring the greatest continuing public access. The collection of historic textile machinery – including looms, carding machines, winders, warping reels, knitting machines, and other machinery unique in the United States – was transferred to the Randolph Heritage Conservancy in North Carolina. The extensive library – with more than 90,000 textile-related books, manuscripts, prints, maps, photographs, cloth labels, trade literature, and serial publications – was transferred to Cornell University Library.

The American Textile History Museum spent a year transferring its collection to other nonprofit institutions, during which time it continued to exist as a 501(c)(3) but was be closed to the public. Transfers were approved by the Museum Collections Committee and Board of Trustees. In October 2017, the museum completed the sale of their museum space at 491 Dutton Street. By that time, the museum had successfully transferred more than 95% of their objects to other organizations. Museum staff continued to occupy office space in the building through the end of 2017 to complete administrative work. Any assets remaining following the responsible closure were transferred to other nonprofit entities.

The successful winding down of the museum’s activities a careful and proactive public relations stance. Press releases issued shortly after board voted to close, but after a plan was established for winding down, provided detailed information on why the museum was closing and what would happen with the collections and endowments. The tone of the press release expressed the complexity of the situation – sorrow at the museum’s closing, the importance of its mission, and a positive take on the museum’s legacy living on in other

institutions. New press releases were issued at milestone moments to keep stakeholders up to date. The museum added a “Path to Closure” segment on their website outlining the process. They also included detailed lists of where all the collections were transferred and thank-you letters from receiving institutions.

The museum’s path to closure – including the process they followed, press releases, collections disposition list, etc. – was documented on the American Textile History Museum website at <http://www.athm.org/about-athm/path-to-closure/>. This information can be a useful resource as you move forward.

For more information:

STATE AND FEDERAL AGENCIES

Texas Secretary of State

Termination documents for a Texas entity must be filed with the Secretary of State. You can visit their website at <https://www.sos.state.tx.us/corp/termreinfoqs.shtml> for specific information on what is required and for copies of the Certificate of Termination forms (Form 651 for for-profit or professional corporations; Form 652 for nonprofits).

Specific filing questions or public information requests can be addressed to the legal department at:

Business & Commercial Section
Secretary of State
P.O. Box 13697
Austin, TX 78711
phone: (512) 463-5586
email: corphelp@sos.texas.gov

If you need to find your organization’s registered agent, you can use the [SOSDirect](#) website or the contact information below (fees may apply):

Corporations Section
Secretary of State
P.O. Box 13697
Austin, Texas 78711-3697
phone: 512-463-5555
facsimile: 512-463-5709
email: corpinfo@sos.texas.gov

Texas Comptroller of Public Accounts

If your entity is not a nonprofit corporation, you must attach a Certificate of Account Status for Dissolution/Termination issued by the Texas Comptroller to the Certificate of Termination. To request a Certificate of Account Status, use [Comptroller Form 05-359](#) or contact the Comptroller at:

Tax Assistance Section
Comptroller of Public Accounts
Austin, Texas 78774-0100
phone: (512) 463-4600 or toll-free (800) 252-1381
e-mail: tax.help@cpa.texas.gov

Texas Office of the Attorney General

The Office of the Attorney General represents the public interest in charity and acts to protect that interest. For more information, visit their website at <https://www.texasattorneygeneral.gov/divisions/financial-litigation/charitable-trusts> or using the contact information below:

Office of the Attorney General
Public Information Request
P.O. Box 12548
Austin, TX 78711 2548
phone: (512) 463-2100

Internal Revenue Service

General questions for the IRS can be addressed by calling their help desk at (800) 876-1715. To learn more about IRS requirements related to termination of an exempt organization, visit their website at <https://www.irs.gov/charities-non-profits/termination-of-an-exempt-organization>. Questions may be directed to the IRS Tax Exempt and Government Entities Customer Account Services by phone at (877) 829-5500 (toll-free number) or by writing to the address below:

Internal Revenue Service
Exempt Organizations Determinations
Room 6403
P.O. Box 2508
Cincinnati, OH 45201

The Schedule N referenced in Section 5 (IRS Form 990, *Liquidation, Termination, Dissolution, or Significant Disposition of Assets*) is available online at <https://www.irs.gov/forms-pubs/about-schedule-n-form-990>.

RELEVANT TEXAS GOVERNMENTAL CODE

Texas Property Code Chapter 80 - Ownership, Conservation, and Disposition of Property Loaned to Museum: <https://statutes.capitol.texas.gov/Docs/PR/htm/PR.80.htm>

The Texas Business Organization Code, i.e. the Texas BOC: <https://statutes.capitol.texas.gov/Docs/SDocs/BUSINESSORGANIZATIONSCODE.pdf>

OTHER RESOURCES

If your museum is in need of an attorney, the Texas bar association provides a list of attorneys licensed to practice in Texas through their Online Membership Directory at <https://www.texasbar.com/>. You can also contact the Lawyer Referral & Information Service by phone at (800) 252-9690.

The Texas Community Building with Attorney Resources (CBAR) project has created the following document which includes useful templates including a sample resolution and plan of termination: <http://www.texasbar.org/wp-content/uploads/2017/08/6.7.17-flm-Final-How-to-Terminate-a-Texas-Non-profit.pdf>

The American Association for State and Local History's ethics position paper *When A History Museum Closes*: https://d221a1e908576484595f1f424f9e28cc684c8a6264aa2ad33a9d.ssl.cf2.rackcdn.com/aaslh_56fe800cb911696cd6a3342d83f26a28.pdf

*For more information please contact the Texas Association of Museums
817-332-1177
admin@texasmuseums.org*