



The Termination Process for Private Foundations

The procedure for terminating a private foundation varies from state to state. The following steps will apply to most Maine foundations terminating in favor of a fund at the Maine Community Foundation. A private foundation considering this transition should review its particular circumstances with its own legal counsel.

1. Determine whether the foundation has current obligations regarding any of the following:
 - The 2% investment income excise tax, unrelated business income taxes, or private foundation penalty taxes. (Note that foundations must make quarterly estimated payments of these taxes.)
 - Outstanding grants that are subject to expenditure responsibility (see IRS Form 990-PF)
 - Fees for accountants, lawyers, investment managers, or other service providers
 - Filing of IRS Form 990-PF and related forms with the IRS and state attorney general.
2. Satisfy all current obligations of the terminating foundation, and create a reserve for anticipated expenditures through the completion of the conversion process.
3. Identify any donor-imposed restrictions that apply to the foundation's assets. These might include purpose restrictions, endowment restrictions, or both. Funds subject to narrow purpose restrictions may not be good candidates for conversion, unless the restrictions can be eliminated with the donor's consent or a court order.
4. Identify the process for dissolving the foundation or transferring its assets under the organization's governing documents (Articles of Incorporation, bylaws, or trust agreement). In some cases special procedures or permissions are required.
5. Work with the Maine Community Foundation to prepare a fund agreement that will spell out the terms of the new fund. This agreement will reflect any purpose or endowment restrictions that will apply to the fund and identify the advisors.
6. Determine whether there are filing requirements with any state Attorney General. Although Maine's charitable conversion law governs most transfers of assets or operations by charitable organizations, a transfer to another Maine charitable organization (such as Maine Community Foundation) is not considered a "conversion transaction." If the foundation was created or managed in another state, it is important to review that state's laws for filing requirements that may be triggered by the proposed transition.
7. Transfer all of the foundation's assets, except for the reserved funds, to the new fund. (This transfer may take the form of a grant.)

8. Wind up the remaining obligations of the foundation, including the preparation of the final Form 990-PF. In a final board meeting of the private foundation, vote to dissolve the corporation, as provided in the foundation's governing documents.
9. Termination of a foundation's corporate or other entity status under state law does not terminate the organization's private foundation status under federal tax law. The question of how or whether to terminate private foundation tax status is beyond the scope of this guide and should be considered in consultation with the foundation's legal counsel.

This checklist is not intended to provide legal advice and should not be construed as such.