



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Village Dissolution

Village dissolution is the termination of a village: the village ceases to exist and its territory and property are disposed of. Ohio law provides three pathways to a village dissolution – most prevalent lately is a dissolution petitioned by the village’s residents. Ohio law also specifies a process for winding up the affairs of a dissolved village; its territory and property transfer to the township or townships where the village was located. But this process has been subject to criticism, with recent dissolutions shining light on the law’s ambiguities.

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### Three pathways to dissolution

In Ohio, there are three pathways to dissolution: (1) when a village is in fiscal emergency, (2) when a village with a population of 150 or less and less than two square miles meets certain criteria, and (3) when the electors of a village petition for a dissolution.

#### Fiscal emergency

When a village is in fiscal emergency, a financial planning and supervision commission is established to assist the village in creating a plan to recover from fiscal emergency.<sup>1</sup> If the village has been in fiscal emergency for four consecutive years and the plan is not reasonably expected to correct and eliminate all fiscal emergency conditions within five years, the Auditor of State – with the commission’s approval – can petition the Attorney General to file an action to dissolve the village.

<sup>1</sup> R.C. Chapter 118.

The Attorney General must file the legal action – there is no discretion allowed to the Attorney General, assuming the village meets the qualifications. The court has 90 days to hold a hearing. If the court finds the conditions described above are met, the village is dissolved. The law does not specify a precise moment the dissolution is effective, as it does regarding the other two pathways.<sup>2</sup>

### **Population of 150 or less and less than two square miles**

The Auditor of State must ask the Attorney General to file an action to dissolve a village if it has a population of 150 or less,<sup>3</sup> consists of less than two square miles, and an audit report finds the village satisfies any two of the following:

- The village has been in fiscal emergency for at least three consecutive years with little or no improvement on the conditions that caused the fiscal emergency declaration.
- The village has failed to properly follow election laws for at least two consecutive election cycles for any one elected office in the village.
- The village has been declared to be unauditible in at least two consecutive audits.
- The village does not provide at least two services typically provided by municipal government, such as police or fire protection, garbage collection, water or sewer service, emergency medical services, road maintenance, or similar services. Administrative services or legislative actions do not count as “services” for this purpose.
- The village has failed for any fiscal year to adopt the required tax budget.
- A village-elected official has been convicted of theft in office at least two times in a period of ten years (either the same person or different people).

The Attorney General must decide, within 20 days, whether to file the legal action to dissolve the village. If the Attorney General files the legal action, the court has 90 days to hold a hearing. If the court finds the conditions described above are met (population of 150 or less, less than two square miles, and two of the six bulleted items), the village is dissolved. The village ceases to exist at the moment the court’s order is recorded in the county recorder’s office.<sup>4</sup> The village is prohibited from creating new liabilities until the court issues its decision (the prohibition continues if the court decides in favor of a dissolution), but the village is allowed to create liabilities necessary for the continued operation of utilities.<sup>5</sup>

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<sup>2</sup> R.C. 118.31.

<sup>3</sup> Population is determined either by the last federal decennial census or by estimates certified by the Ohio Department of Development between censuses.

<sup>4</sup> R.C. 703.201.

<sup>5</sup> R.C. 703.21(A). Even if the Attorney General decides not to file legal action, the village is prohibited from creating new liabilities for 30 days.

## By petition of the electors

Finally, a village can be dissolved by petition of 30% of the electors.<sup>6</sup> The electors can file the petition with either the legislative authority of the village or the board of elections.<sup>7</sup> If they initially file the petition with the village's legislative authority, but the legislative authority fails to act on it for 30 days, the electors can then file the same petition with the board of elections.<sup>8</sup> Or, the electors can skip filing the petition with the legislative authority and simply file it with the board of elections initially.<sup>9</sup>

If filed with the board of elections, the issue is decided at the next general or special election occurring after 90 days after the petition is filed. If filed with the legislative authority, the issue is decided on at "a special election, which shall be provided for by the legislative authority," (but a timeframe is not specified). If approved by a majority of voters, the village is dissolved.<sup>10</sup> This form of dissolution is referred to as "surrendering corporate power," since the voters are choosing to dissolve.

After a petition is filed, the village is prohibited from creating new liabilities until the election is held (the prohibition continues after the election, if the residents vote in favor of a dissolution), but the village is allowed to create liabilities necessary for the continued operation of utilities.<sup>11</sup>

## Process for dissolution; "winding up the affairs"

Once it has been determined a dissolution will occur, the Revised Code establishes requirements for "winding up the affairs" of the village. In the case of a village that dissolves under fiscal emergency, the court appoints a receiver to assist, while the Auditor of State is required to assist a village that surrenders its corporate powers by petition of the electors.<sup>12</sup> If a village was located in more than one township, the village's territory is returned to the various townships along the boundary lines that previously existed; these situations can create confusion because the village's real and personal property must be divided among the townships also.<sup>13</sup>

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<sup>6</sup> Determined by the number voting at the last regular municipal election.

<sup>7</sup> The petition also must be filed with the board of township trustees of each township that may be affected by the dissolution.

<sup>8</sup> This is a recent (2017) modification to the law (H.B. 49 – 132<sup>nd</sup> General Assembly) meant to resolve the issue of a legislative authority that indefinitely refuses to act on the petition.

<sup>9</sup> Though this is not abundantly clear by the language in the statute, this issue was decided by a court of appeals in *State ex rel. Pringle v. Clermont Cty. Bd. of Elections*, 2019 Ohio App. LEXIS 4581 (12<sup>th</sup> Dist., 2019).

<sup>10</sup> R.C. 703.20. The village ceases to exist at the moment the certified election result is recorded in the county recorder's office.

<sup>11</sup> R.C. 703.21(A).

<sup>12</sup> R.C. 118.31(C) and 703.20(C). For villages that dissolve under the second pathway (population of 150 or less with less than two square miles), the law only specifies that the court "provide for the" dissolution. R.C. 703.201(C).

<sup>13</sup> R.C. 703.21(C).

## **Audit, cash, liabilities, and taxes**

The village must notify the Auditor of State about the village's dissolution, at which point the Auditor of State starts conducting a final audit or agreed-upon procedure audit. The village has 30 days to provide the notification and the Auditor of State has 30 days to commence the audit.<sup>14</sup> Once the audit is complete, the village's remaining cash is transferred to the township or townships absorbing the village. The village and townships can agree to a distribution of the money or, if no agreement is reached, the law specifies the funds are distributed proportionally to the townships' absorbed territory. For example, if Township A absorbs 60% of a dissolving village while Township B absorbs 40%, then Township A receives 60% of the cash while Township B receives 40%.<sup>15</sup>

A dissolution does not affect vested rights or the village's "power to settle claims, dispose of property, or levy and collect taxes to pay existing obligations." As stated above, the village is prohibited from creating new liabilities, but the law specifies that "accrued liabilities" are not affected by the dissolution. The village may continue collecting due and unpaid taxes.<sup>16</sup>

## **Real and personal property**

The village's real and personal property is transferred to the township or townships where the village is located. If only one township is involved, the real and personal property is transferred to the one township. But when multiple townships are involved, the village and the affected townships have 60 days to agree on the disposition of the real and personal property. If they do not agree within that timeframe, the real and personal property vests, by operation of law, in proportion to the amount of territory that each township has within the village. Continuing the above example where Township A absorbs 60% of a dissolving village while Township B absorbs 40%: Township A will receive 60% of the village's real and personal property while Township B receives 40%. This can be difficult to determine, especially if the majority of a village's real property is located within one township.

Whether the property is transferred via agreement or by operation of law, the county recorder must make notations in the property records to indicate the transfer in ownership.<sup>17</sup>

## **Utilities**

Dissolution does not affect a village's operation of its utilities: the village may continue collecting rates and charges for services, and utilities should continue uninterrupted. The law specifically references electric, water, and sewer utilities. The village must transfer the ownership and operation of each utility to another entity; property and cash balances related to those utilities are transferred as well.<sup>18</sup>

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<sup>14</sup> R.C. 703.21(B), 117.10, and 117.11.

<sup>15</sup> R.C. 703.21(B).

<sup>16</sup> R.C. 703.21(A).

<sup>17</sup> R.C. 703.21(C).

<sup>18</sup> R.C. 703.21(A) and (D). Cash is transferred after the Auditor of State completes the audit.

## **Water and sewer**

When a county or regional water and sewer district takes over the ownership and operation of water and sewer utilities, the county or district can ask a court to revise the current user fees, rates, charges, or assessments. The request must include a systems audit of the utility that addresses a number of items including its financial solvency, revenue streams, cost of necessary upgrades, and other relevant matters impacting the utility's operational viability and financial solvency. In granting a request, the court must "assure that the operational viability and financial solvency of the utility is maintained, and that an unreasonable financial burden is not placed upon the county or district due to the acquisition of the utility property and assets."<sup>19</sup>

## **Electric**

A village must transfer its electric utilities to a successor entity in a "timely manner." The village must hire a third-party engineer knowledgeable about the operation of municipal electric systems to conduct a system audit similar to the water and sewer systems audit. If the village does not have sufficient funds in its electric utility fund to pay for the systems audit, the absorbing entity must pay for it.<sup>20</sup> Neither the sewer and water systems audit nor the electric systems audit should prevent the Auditor of State from conducting the required financial audit.<sup>21</sup>

## **Township resolutions**

Finally, the law specifies that after the dissolution, all resolutions of the township or townships that absorbed the village apply throughout the newly included territory.<sup>22</sup>

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<sup>19</sup> R.C. 703.21(D)(1)(a).

<sup>20</sup> R.C. 703.21(D)(1)(b). The systems audit must commence not later than 60 days after the certificate of dissolution is filed.

<sup>21</sup> R.C. 703.21(D)(2).

<sup>22</sup> R.C. 703.21(E).