

**TENNESSEE ATTORNEY GENERAL AND
REPORTER'S
NONPROFIT CORPORATIONS REQUEST
FOR INFORMATION PACKET
FORM FOR CERTAIN
NONPROFIT SALES OF ASSETS**



Office of Tennessee Attorney General and Reporter | Public Interest Division
Attention: Nonprofit Transactions
P. O. Box 20207
Nashville, Tennessee 37202
p.615.741.5573



TENNESSEE ATTORNEY GENERAL AND REPORTER'S REQUEST FOR INFORMATION PACKET FOR CERTAIN NONPROFIT SALES OF ASSETS

INSTRUCTIONS AND DEFINITIONS

1. All responses to the Request for Information Form must be filled in electronically. If you do not have the ability to complete the Request for Information Form electronically, please contact our office to discuss submission procedures. You must use only the official forms. This Request for Information Form only applies to sales of assets.
2. All documents and appendices must be provided in compliance with the following:
 - a. Responses to this Request for Information Form must be in electronic format, with each document in portable document format (PDF), containing a text searchable optical character recognition (OCR) layer; responses may be on compact disc (CD), digital versatile disc (DVD), flash drive, or portable hard drive.
 - b. Documents should be produced in electronic folders identified by the request (or request subpart) to which the documents respond. The folders should be named to indicate the request of the documents contained therein. *For example, documents responsive to Request 4 of this Request for Information Packet should be placed in a folder labeled "Request 4"; documents responsive to Request 19(a) should be placed in a folder labeled "Request 19(a)." Please follow any specific instructions that may be included with respect to a particular request.*
 - c. The file name for each electronic file must identify the document that the file contains. Please use common-sense file names. Please do not merge multiple documents into one electronic file, even if more than one document is responsive to the same Request. *For example, if a request calls for the production of Company X's charter and bylaws, produce two separate files named "Company X Charter" and "Company X Bylaws."*
3. All amendments or late-filed materials must be clearly labeled to indicate the request to which they respond and the date of production. Such materials must be submitted in compliance with all other instructions herein.
4. Unless otherwise indicated, documents to be produced pursuant to this Request for Information Form include each and every document prepared, sent, dated, received, effective, or otherwise in existence during the last three (3) years. This time period should be calculated from the date of your production in response to this Request for Information Form.

5. Responses to each request must be supplemented, corrected, and updated until the close of the Transaction. **The Attorney General and Reporter, at his discretion, may require the production of additional documents.**
6. For each request calling for the production of documents, produce each responsive document in the Nonprofit's and/or Acquirer's care, possession, custody, or control, without regard to the physical location of those documents.
7. If the Nonprofit and/or Acquirer possesses no documents responsive to a request, the Nonprofit and/or Acquirer must state that fact in response to the corresponding request.
8. If the Nonprofit and/or Acquirer must submit documents at a later than the date set forth in these instructions, the Nonprofit and/or Acquirer must state this fact, specify the requests concerned, identify the documents to be produced, and state the expected date of production.
9. **If the Nonprofit and/or Acquirer asserts a privilege in response to a request, the Nonprofit and/or Acquirer must state the privilege, explain the basis of the privilege, and identify the documents to which the privilege attaches. If the privilege attaches to only a portion of a given document, then the Nonprofit and/or Acquirer must produce the full document with the privileged portions redacted.**
10. The Attorney General and Reporter must receive a complete response to this initial Request for Information Form at least **forty-five (45) days prior to the anticipated close of the proposed Transaction. Failure to timely provide the requested documents may result in the Attorney General and Reporter taking action to enjoin or delay the proposed Transaction pursuant to Tenn. Code Ann. § 48-51-701.**
11. All responses to this Request for Information shall be sent by United States Mail, hand-delivery, or a nationally recognized express-delivery service to the following:

Public Interest Division
Office of Tennessee Attorney General and Reporter
P. O. Box 20207 Nashville, TN 37202

In certain circumstances, email submission may be appropriate. Please contact the Public Interest Division at (615)741-5573 to ask whether email submission is appropriate.
12. The Request for Information Form is not complete or valid without the Certification and Verification Affidavits and Affidavits of Officers and Directors executed under oath in the presence of a notary and submitted with the Request for Information Form.
13. Copies may be submitted in lieu of originals as long as the Nonprofit and/or Acquirer indicates that the documents are copies, states the location of the originals, and explains the reason for the substitution of copies. All originals must be retained and all copies must be authentic for the purposes of Tennessee law, as set forth in the Certification and Verification Affidavits.

14. All questions regarding these forms, the scope of any request, any instruction, or any definition shall be directed to the following number: (615) 741-5573.

15. This Request for Information Packet should include all of the following forms:

- a. Instructions and Definitions
- b. Request for Information Form
- c. Certification and Verification Affidavit of the Nonprofit
- d. Affidavit of Officers and Directors
- e. Certification and Verification Affidavit of the Acquirer

If your packet is missing any of these forms, please contact the Office of the Attorney General and Reporter at (615) 741-5573. Your response to the Request for Information Packet is not complete until the Office of the Attorney General and Reporter has received the Request for Information Form and all affidavits, each fully completed.

16. All of the forms in the Request for Information Packet shall be construed in conformity with the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.*

[Rest of page intentionally left blank]

DEFINITIONS

1. “**Acquirer**” means the entity to which the Nonprofit plans to sell assets, along with each Affiliate of such entity. The Acquirer may be another nonprofit.
2. “**Affiliate**” means any parent, subsidiary, or other person controlling, controlled by, or under common control with such person. For purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
3. “**Document**” means all writings or any other record of any kind, including originals and each and every non-identical copy (if different from the original for any reason). “Documents” includes, but is not limited to:
 - a. correspondence, memoranda, notes, diaries, calendars, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, and interoffice and intraoffice communications;
 - b. notations (of any sort) of conversations, telephone calls, meetings, and other communications;
 - c. bulletins, printed matter, computer printouts, computer-generated output, teletypes, telefax, electronic mail, invoices, worksheets, drafts, alterations, modifications, changes, and amendments of any kind;
 - d. photographs, charts, graphs, sketches, microfiche, microfilm, analog or digital audio recordings, videotapes, video recordings, digital video, and motion pictures; and
 - e. any electronic or mechanical records or representations of any kind (including, but not limited to: information stored on tapes, cassettes, diskettes, compact disc, digital versatile disc, and computer hard drives and other electronic storage medium).
4. “**Expert**” means one who is knowledgeable in a specialized field, that knowledge being obtained from either education or personal experience. For example, an economist, accountant, financial advisor, investment banker, broker, valuation specialist, or other person who is consulted, relied upon, retained, or used by the Nonprofit and/or Acquirer.
5. “**Financial Statement**” means any compilation or statement of the Nonprofit’s financial position. Financial Statements include, but are not limited to: tax returns, balance sheets, statements of income and expenses, statements of profit and loss, statements of stockholders equity, and statements of changes in financial position.
6. “**Nonprofit**” means the notifying nonprofit and its Affiliates. The Nonprofit should be the entity filing notice with the Attorney General and Reporter pursuant to the Nonprofit Act.

7. “**Nonprofit Act**” means the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. §§ 48-51-101 *et seq.*
8. “**Organizational Documents**” mean an entity’s charter, bylaws, articles of incorporation, and other governing documents, including any amendments.
9. “**Person**” means any natural person, public or private corporation (whether or not organized for profit), governmental entity, partnership, company, association, cooperative, joint venture, sole proprietorship, or other legal entity. With respect to the Nonprofit and/or Merging Entity, the term “person” includes any natural person acting formally or informally as an employee, officer, director, agent, attorney, or other representative of the Nonprofit and/or Acquirer.
10. “**Transaction**” means the proposed sale of assets between the Nonprofit and the Acquirer that resulted in the submission of notice to the Attorney General and Reporter pursuant to the Nonprofit Act.

[Rest of page intentionally left blank]

**TENNESSEE ATTORNEY GENERAL AND REPORTER'S REQUEST
FOR INFORMATION FORM
FOR CERTAIN NONPROFIT SALES OF ASSETS**

**PLEASE CAREFULLY REVIEW THE INSTRUCTIONS AND DEFINITIONS
PRIOR TO COMPLETING THIS FORM.**

1. **Name of Nonprofit Filing this Notice.** Identify the Nonprofit filing notice pursuant to the Nonprofit Act and provide the Nonprofit's Federal Employer Identification Number:

2. **Contact Person for Nonprofit.** Provide the name, title, address, telephone, and email address for the contact person responsible for completing this Request for Information Form (this individual will receive any requests for additional information):

3. **Directors and Officers.** Identify by name and title each director and officer of the Nonprofit, past and present. If any director or officer has been removed or resigned during the period covered by this Request for Information, please state that fact and provide the reasons for such removal or resignation.

4. **Organizational Documents.** Provide all of the Nonprofit's organizational documents.

5. **Nonprofit Affiliates.** Provide a list of all of the Nonprofit's Affiliates.

6. **Name of Acquirer.** Identify the proposed Acquirer and provide the Acquirer's Federal Employer Identification Number. Also identify all of the proposed Acquirer's Affiliates.

7. **Contact Person for Acquirer.** Provide the name, title, address, telephone, and email address of the contact person for the Acquirer.

8. **Organizational Documents of Acquirer.** Provide all of the Acquirer's organizational documents.

9. **Value of Nonprofit Assets.** State the aggregate, approximate value of the Nonprofit's assets involved in the Transaction.

10. **Description of Transaction.** Provide a detailed description of the Transaction. Include a detailed explanation of what the Acquirer will obtain, what the Nonprofit will retain, and plans for the resulting funds that the Nonprofit will receive. This description should also include an analysis of the purchase price and should consider the impact of any fund balances and/or liabilities that the Transaction will create. This analysis should include reasonable estimates for any proposed purchase price adjustments called for in the letter of intent or definitive agreement. The objective of this analysis is to enable the Office of the Attorney General and Reporter to understand the pricing of the Transaction and the capitalization of any resulting foundation.

11. **Description of Negotiations of the Transaction.** Provide a detailed description of all discussions and negotiations between the Nonprofit and the Acquirer resulting in the Transaction. This response should consist of a single summary outline in chronological order of all meetings held with the following parties with respect to the Transaction:

- a. The Nonprofit's financial advisors, investment bankers, or other Experts related to the Transaction (including, but not limited to, management, committees of the board of directors, or meetings of the full board);
- b. Prospective purchasers, together with a brief summary of the results of such meetings;
- c. The Acquirer; and
- d. Other parties deemed significant to the Transaction (including, but not limited to, outside Experts or other consultants).

12. **Closing Date.** State the expected closing date of the Transaction. (MM/DD/YYYY)

13. **Governmental Filings.** Provide all filings provided to any federal, state, or local governmental entity regarding the Transaction, including all amendments, appendices, and attachments. Please do not provide any draft documents unless drafts are

- subsequently requested.
14. **Meetings with Governmental Officials.** Provide summaries of all meetings or other conversations with federal, state, or local authorities regarding the Transaction. State the date of each meeting. Summaries should be provided in chronological order in a single document. Provide separately all documents that memorialize or discuss the meetings or other conversations included in the summaries.
 15. **Acquirer's Prior Acquisitions.** Provide a list in chronological order identifying all prior acquisitions by the Acquirer within the last three (3) years. Include the following information for each prior acquisition:
 - a. Date of acquisition;
 - b. Entity from which assets were acquired, and whether such entity was a nonprofit;
 - c. City and state where the acquired assets were located;
 - d. Brief description of the acquisition;
 - e. Purchase price; and
 - f. Form of consideration.
 16. **Letters of Intent.** Provide all letters of intent, confidentiality agreements, or other documents initiating negotiations or contract discussions between the Acquirer and the Nonprofit.
 17. **Contracts or Purchase Agreements.** Provide all purchase agreements and other contracts between the Nonprofit and the Acquirer. Please include the corresponding attachments, amendments, schedules, or appendices.
 18. **Fairness Opinions.** Provide all fairness opinions analyzing the Transaction, along with any supplemental analyses that Nonprofit or its Experts prepared. Include in your response the name of the Experts who prepared the opinion, their business telephone numbers and addresses, the agreement or engagement letters with the Experts, and background information regarding the Experts' qualifications.
 19. **Meeting Minutes and Other Information.** Provide the following documents for each of the Nonprofit's meetings when the Transaction was discussed:
 - a. Announcements and the persons to whom the announcements were sent;
 - b. Agenda;
 - c. Minutes and/or resolutions of the board of directors or board of trustees;
 - d. Each written report or document provided to the board, including each committee report and each Expert's report;

- e. Each proposal or document regarding a possible or actual sale, merger, conversion, acquisition, dissolution, or distribution of assets of the Nonprofit;
- f. Each presentation to the board or any committee to the board; and
- g. Minutes and/or resolutions of the board of directors or board of trustees for the Acquirer.

20. **Valuation Information.** Provide each appraisal, evaluation, and similar document concerning the valuation of the Nonprofit, its assets, its worth as a going concern, its fair market value, or its price for sale. Include any corresponding attachments. The time period covered in this request is the last three (3) fiscal years.

This Request includes, but is not limited to, any appraisals of the common stock of the Nonprofit's for-profit subsidiaries, any appraisals of the value of the Nonprofit's for-profit subsidiaries, and any real estate appraisals involving property held by the Nonprofit.

21. **Information Regarding Other Offers.** Identify and provide sufficient documentation describing any negotiation or proposal that the Nonprofit either initiated or received regarding a sale of all or substantially all of its assets or a merger. Provide the corresponding dollar value of each such transaction.

22. **Mission Statement.** Provide the Nonprofit's and the Acquirer's current mission statements.

23. **Press Releases and Related Information.** Provide all press releases that the Nonprofit and/or Acquirer have issued regarding the Transaction.

24. **Financial Records.** Provide all of the following documents for the last three (3) fiscal years for both the Nonprofit and the Acquirer, unless otherwise indicated:

- a. Audited financial statements, or unaudited financial statements if audited financial statements are unavailable. Provide the most detailed audit form that is available;
- b. If separate audited financial statements are prepared for any Affiliates, please provide those financial statements, together with comparative year-to-date financial statements for each such Affiliate. Please send unaudited financial statements if audited financial statements are unavailable;
- c. Balance sheets, income statements, profit and loss statements, and statements of change in financial position;
- d. Balance sheets, income statements, profit and loss statements, and statements of change in financial position for Affiliates and any entity or company that the Nonprofit or Acquirer operates or manages.
- e. A detailed schedule of operating expenses, unless already provided with the audits;

- f. An aging analysis of accounts receivables. Accounts receivable should be separated by major category of receivables and indicate the amounts ultimately considered collectable;
 - g. [For the Nonprofit only] debts, liens, security interests, mortgages, or other interests of any kind in the Nonprofit's assets, including amounts outstanding, the Person to whom the underlying obligation is owed, and whether such Person has participated in decision-making with respect to the Transaction;
 - h. [For the Nonprofit only] management compensation (salary, bonus, other benefits) for the five officers of the Nonprofit receiving the greatest amount of compensation;
 - i. Identify any material assets or liabilities not reflected on the most recent financial statements, and provide documentation concerning such assets or liabilities. Examples of such items would include a significant under- or over-funding in the pension plan or a current litigation judgment;
 - j. Identify all accounting firms involved in the accounting and auditing for the Nonprofit and Acquirer. Include the name, address, and telephone number of the accountant(s) primarily responsible for each entity; and
 - k. Form 990s or other tax returns.
25. **Restricted Assets.** Provide sufficient documents reflecting any existing foundations, trusts, or other restricted donations that are designated or intended to benefit the Nonprofit. Include a detailed statement describing your intentions with regard to such restricted donations.
26. **Conflicts of Interest, Self-Interest, and Self-Dealing Issues.**
- a. Provide an affidavit for each officer and director of the Nonprofit using the affidavit form provided with the Request for Information Packet.
 - b. Provide sufficient documents to identify any possible conflict of interest, self-interest, or self-dealing of any board member, officer, or director in connection with the Transaction. Include documents regarding financial or employment incentives or inducements offered to any board member, officer, or director. This request applies to board members, officers, and directors of the Nonprofit and the Merging Entity. Include evidence of any disclosures or other curative measures taken by the Nonprofit's or Merging Entity's boards.
27. **Persons Involved in Decision Making or Planning.** Provide the name, title, telephone number, and email address of each individual who had substantial input at any phase of the decision-making or planning phases of the Transaction.

28. **Registered Agents for Service of Process.** Name the registered agents for service of process for the Nonprofit and for the Acquirer. Include the registered agents' complete addresses.

For Nonprofit:

For Acquirer:

29. **Litigation and Proceedings.**

Provide a summary of each litigation matter to which the Nonprofit and/or Acquirer was or is a party, separated by type of litigation (e.g., malpractice, worker's compensation, etc.). The summary should include the case style, date of claim, status of claim, expected loss reserves, and ultimate disposition of the litigation (including damages or awards), as applicable.

[Rest of page intentionally left blank]

**CERTIFICATION AND VERIFICATION AFFIDAVIT OF THE
NONPROFIT**

To be completed by President or Chief Officer

This Request for Information Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with the instructions and definitions issued by the Attorney General and Reporter. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete. If copies were submitted in lieu of originals, the documents submitted are true and exact copies that are authentic for the purposes of Tennessee law. If copies were submitted, I agree to retain the originals under my care, custody, and control; I will not destroy or alter the originals without the express, written consent of the Attorney General and Reporter or his appointed designee.

I understand that my obligation to provide information pursuant to this Request shall be continuing in nature, and I shall notify the Attorney General and Reporter in writing if any responses should be updated, corrected, or modified.

I certify, upon personal knowledge and **under penalty of perjury**, that the attached Request for Information Form has been completed with true and accurate information.

FURTHER AFFIANT SAITH NOT

Affiant's
Signature: _____ Date: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Email: _____

STATE OF _____

COUNTY OF _____

Sworn and subscribed before me this _____ day of _____, 20__.

Notary Public
My Commission Expires: _____

AFFIDAVIT OF OFFICERS AND DIRECTORS

STATE OF _____

COUNTY OF _____

I, _____, after first being duly sworn, do hereby depose and, upon personal knowledge, state as follows:

1. I am a/an _____ of _____
(Officer/Director) (Name of Nonprofit)
2. I have been a/an _____ since _____ (MM/DD/YYYY).
(Officer/Director)
3. I have served on the following Nonprofit committee(s) (indicate dates of service and titles you have held on each committee):

4. My home contact information is (provide address and telephone number):

5. My business contact information is (provide address, telephone number, and email address):

6. I _____ own stock or options, and/or warrants to purchase stock in _____
(do/do not)

(Name of Acquirer)
or any of Acquirer's parent, subsidiary, or affiliated companies.
7. _____ (insert "No one in my immediate family" or the names of family members) own(s) stock or options and/or warrants to purchase stock in _____
(Name of Acquirer)
or any of its parent, subsidiary, or affiliated companies.
8. I _____ employed by _____
(am/am not) (Name of Acquirer)
or any of its parent, subsidiary, or affiliated companies.

9. _____ (insert "no one in my immediate family" or the names of family members) is/are employed by _____

(Name of Acquirer)

or any of its parent, subsidiary, or affiliated companies.

10. I _____ receive any financial benefit from the Transaction.
(will/will not)

11. _____ (insert "No one in my immediate family" or the names of family members) will receive any financial benefit from the Transaction.

12. I _____ been contacted or otherwise requested or been offered a position
(have/have not)
on the _____
(Name of Acquirer)

board or the board of any of its parent, subsidiary, or affiliated companies, or otherwise been offered employment of any sort with _____

(Name of Acquirer)

or any of its parent, subsidiary, or affiliated companies.

13. I _____ compensated for my service as a/an _____ of _____
(am/am not) (Officer/Director)

(Name of Nonprofit)

My annual compensation is: \$ _____

14. I voted to approve the Transaction because (briefly explain your reasons for voting to approve):

15. Prior to approving the Transaction, I had the following information regarding the valuation of _____
(Name of Nonprofit)

and other options available to _____ :
(Name of Nonprofit)

16. I _____
(do/do not) plan to become a board member, director, or officer of the foundation or other entity to be created from the assets resulting from the Transaction. I _____
(will/will not) receive compensation for my service in such position.

My annual compensation is: \$_____.

17. I _____
(do/do not) have any conflict of interest, self-interest, financial interest, or other self-dealing with respect to the Transaction. (If you do have such interest, please explain your interest below.)

I certify, upon personal knowledge and **under penalty of perjury**, that the information in this affidavit is true, accurate, and complete

FURTHER AFFIANT SAITH NOT.

Affiant's
Signature: _____

Date: _____

Sworn and subscribed before me this _____ day of _____, 20____.

Notary Public
My Commission expires: _____

**CERTIFICATION AND VERIFICATION
AFFIDAVIT OF THE ACQUIRER**

To be completed by President or Chief Officer

This Request for Information Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with the instructions and definitions issued by the Attorney General and Reporter. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete. If copies were submitted in lieu of originals, the documents submitted are true and exact copies that are authentic for the purposes of Tennessee law. If copies were submitted, I agree to retain the originals under my care, custody, and control; I will not destroy or alter the originals without the express, written consent of the Attorney General and Reporter or his appointed designee.

I understand that my obligation to provide information pursuant to this Request shall be continuing in nature, and I shall notify the Attorney General and Reporter in writing if any responses should be updated, corrected, or modified.

I certify, upon personal knowledge and **under penalty of perjury**, that the attached Request for Information Form has been completed with true and accurate information.

FURTHER AFFIANT SAITH NOT

Affiant's
Signature: _____ Date: _____

Name: _____ Title: _____

Address: _____

Phone: _____ Email: _____

STATE OF _____

COUNTY OF _____

Sworn and subscribed before me this _____ day of _____, 20__.

Notary Public
My Commission Expires: _____