



New York State Conference of Mayors and Municipal Officials

Guide to Local Government
Dissolution and Consolidation Under
General Municipal Law Article 17-A

March 2010

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I. OVERVIEW OF THE ACT

The “New N.Y. Government Reorganization and Citizen Empowerment Act” (the Act) was signed into law on June 24, 2009, and became effective on March 21, 2010. In creating entirely new procedures for consolidating and dissolving certain types of local government entities in New York, the Act’s implications are far-reaching. For villages, towns and special districts – and the taxpayers who support and rely upon the essential services provided by such entities – the potential ramifications of the Act cannot be overstated. By virtue of its substantial changes to an already complex area of state law, the Act raises a number of legal questions. Where points of clarification or emphasis need to be made, this publication will highlight them in italicized paragraphs under the heading “Commentary.”

Village officials with questions regarding the correct interpretation of any provisions of the Act may obtain informal opinions from the Offices of the State Attorney General and the New York State Comptroller. Requests for written opinions must be submitted in writing by the municipal lawyer. The mailing addresses for the Office of the Attorney General¹ and the Office of the State Comptroller are:

Office of the Attorney General
Division of Appeals & Opinions
The Capitol
Albany, NY 12224-0341

Office of the New York State Comptroller
Division of Local Government Services
110 State Street
Albany, NY 12236

The Act applies to “local government entities,” which are defined as:

- (a) towns,
- (b) villages,
- (c) districts,
- (d) special improvement districts or other improvement districts,
- (e) library districts, and
- (f) other districts created by law.¹

Specifically excluded from the Act are school districts, cities, counties, and city- and county-created districts.²

The Act provides for two basic types of local government reorganization:

- (a) Consolidation, and
- (b) Dissolution.

This publication will focus on the Act’s procedures for consolidating and dissolving local governments. Particular focus will be placed on the Act’s implications for village governments and, since dissolution is of greatest applicability to villages, will begin with an analysis of the dissolution provisions.

II. DISSOLUTION OF LOCAL GOVERNMENT ENTITIES

A. Overview

Dissolution is defined as the termination of the existence of a local government entity. The Act expressly excludes towns from the dissolution procedures. Moreover, because of practical issues involved in dissolving districts (dissolution of a district generally requires either that (a) the service the district is providing be discontinued or (b) the service be provided on a town-wide basis), the Act’s dissolution procedures will most likely be used primarily to dissolve villages.³ Consequently, while the Act’s

¹ Gen. Mun. Law § 750(13).

² Id.

³ Gen. Mun. Law § 750(5).

dissolution procedures legally apply to both villages and districts, for the purpose of this publication, the procedure will be described in the context of village dissolution.

The Act specifically provides that local government entities may be dissolved and terminated by:

1. a resolution of the governing body of the local government entity to be dissolved endorsing a proposed dissolution plan; or
2. elector initiative.⁴

The procedures for dissolving local government entities are substantially similar to the consolidation procedures, with the exception that the dissolution procedures are relatively streamlined because the process only involves one local government entity.

B. Practical Considerations

It must be stressed that each village dissolution is unique. The consequences of dissolving a village are dependent upon a variety of factors that vary from village to village and town to town. While it can be useful to examine previously conducted dissolutions and dissolution studies, officials should use caution in analyzing whether what occurred or was projected to occur in the dissolution of another village would also occur if their village dissolved. Nonetheless, recent village dissolution studies have demonstrated the following general results.

1. Alternatives to Dissolution

While the former Village Law § 19-1901 specifically required the village dissolution report to address alternatives to dissolution, there is no such requirement in the Act. Nonetheless, village officials should examine alternatives to any proposed dissolution, including intermunicipal agreements or elimination of specific services. Such alternatives may provide cost-savings or efficiencies while allowing residents to retain control of their local government. Local government officials should charge study committees and consultants to, in addition to developing the dissolution plan, examine alternative methods of achieving cost-savings and efficiencies.

COMMENTARY:

Local Government Efficiency Grant Program Requirements *Most of the dissolution studies that are currently being conducted in villages are being undertaken with funds from the State's Local Government Efficiency Grant Program, which is administered by the New York State Department of State. The Department of State generally requires grant recipients that are studying village dissolutions to also examine other methods of achieving efficiencies, in addition to dissolving the village. Consequently, grant recipients may need to study alternatives to dissolution in order to comply with grant requirements. Local government officials must confer with the Department of State for program specifics at 518-473-3355 or via email at LGEProgram@dos.state.ny.us.*

2. Resulting Efficiencies

The dissolution studies that have been conducted to date have shown that efficiencies resulting from village dissolution run in the area of 2% to 5% of the total town and village expenses. The reason the efficiencies are so small is generally found in the fact that both towns and villages run relatively efficient operations. In addition, most villages are frequently already engaged in inter-municipal agreements with either the town or another municipality, which has already achieved cost-savings through efficiencies. Finally, villages generally provide types and levels of services not being provided (or not being provided on a town-wide basis) by the surrounding town. Thus, dissolution studies generally provide for the creation of, on average, more than four special districts and for the town to hire much of the village staff to continue to provide the

⁴ Gen. Mun. Law § 773.

services that the village provides. Consequently, communities may not see significant savings or improvements in service because of improved efficiencies resulting from village dissolution.

3. Change in Taxes

Despite the relatively minimal amount of efficiencies created by village dissolution, village residents are still likely to see a reduction in their taxes as a result of village dissolution. As a general rule, the source of reduction in property taxes comes not from increased efficiencies or elimination of the duplication of services, but ***predominantly*** from village residents no longer subsidizing town operations. That is, village dissolution frequently adjusts for the inequity of village residents paying town taxes for town services not provided within the boundaries of the village. Village officials and residents considering dissolution must weigh these projected cost-savings against the loss of local control over services and policies, as well as the resulting change in representation (or potential lack thereof) on the town board.

Conversely, it is important to note that town residents who live outside of a village located within the town's boundaries are likely to see their taxes *increase* as a result of village dissolution. Any dissolution study should identify the extent to which and why this is occurring, namely that if the village dissolves, the village residents will no longer be subsidizing town operations.

4. State Aid

In an effort to incentivize the consolidation of local governments, New York State has established a program that increases State Aid to local governments that consolidate or dissolve. Under this program called Consolidation Incentive Aid, if a village dissolves, the town(s) in which the village is located is eligible to receive an increase in its annual State Aid equal to 15% of the combined town and village tax levy (not to exceed \$1 million annually). While this enhanced Aid is structured as "permanent," it is subject to annual appropriation in the State Budget.

COMMENTARY:

*Because the state's Consolidation Incentive Aid, or any other State Aid, is **NOT** guaranteed, village officials are strongly advised not to calculate this pledged increase in funding into the fiscal projections should the village dissolve. Rather, communities are encouraged to analyze the merits of dissolving the village based upon the resulting changes in services and costs at the local level.*

5. Establishing Districts and Understanding the Differing Cost-Structures

As previously noted, on average, every village dissolution results in the creation of four town special districts. When planning to form special districts, officials should examine whether it is in the best interest of the village residents to form a special district solely for the village residents (if the village is in fact dissolved) or to join an existing town special district. As a general rule, the marginal cost for providing services in New York's villages are lower than providing the same level of service to the less densely populated areas of the town outside of the village. For example, pursuant to its 2009 Dissolution Plan,⁵ in the Village of Seneca Falls, the cost of the village providing fire service to the village residents is \$0.59/\$1,000 of assessed value. This is compared to the town fire protection district's cost of \$1.18/\$1,000. Pursuant to the proposed dissolution plan, upon the dissolution of the village, the town's fire district would be expanded town-wide to include the footprint of the village. The cost of the resulting fire district would be \$0.97/\$1,000, a 64% increase in the cost residents of the former village would pay for fire service.

In the Village of North Collins, a similar scenario plays out. Pursuant to the 2009 Dissolution Feasibility Study Final Report,⁶ Village of North Collins residents pay \$1.03/\$1,000 for fire protection. Residents in the

⁵ *Village of Seneca Falls Dissolution Plan*, (November 2009), p.15, available online at www.cgr.org/senecafalls/.

⁶ *Village of North Collins Dissolution Feasibility*, (November 2009), pp. 31-32, available online at www.cgr.org/northcollins/.

fire protection district in the town outside of the village pay \$1.34/\$1,000. Under the 2009 dissolution plan, if the village is dissolved, the town's fire protection district would be expanded to include the footprint of the village. The fire protection tax would be \$1.26/\$1,000, a 22% increase in the cost village residents pay for fire service. However, on top of this increase, the village residents -- and only the village residents -- would continue to pay off debt service (\$1.05/\$1,000) for the purchase of fire trucks, even though the fire trucks will be transferred to the town upon the village's dissolution. Thus, the total cost to village residents for fire services should the village dissolve would be \$2.31/\$1,000, a 124% increase in the cost to village residents for fire service.

Another example of this issue can be seen in the Village of North Collins' providing of refuse collection and disposal. Village residents pay \$144 per year for refuse collection. Residents of the town outside of the village currently pay \$192 per year. The dissolution plan proposed the creation of one town special district with a resulting user charge of \$173 per year, a 19% increase for village residents.⁷

Consequently, local government officials must carefully examine how services are to be provided should the dissolution occur, and question whether the village services requiring the creation of a town special district should be provided by expanding an existing town special district or the creation of a new town special district to serve only the footprint of the village.

6. Village Employees and Labor Contracts

Perhaps one of the most confusing and contentious issues surrounding village dissolution is what happens to the village employees, particularly those that are working under a union contract. Under many village dissolution plans, the town agrees to hire most of the village employees to continue to perform the same jobs they were performing prior to the village dissolution. However, the town is under no obligation to hire the village employees. Moreover, even if the town does agree to hire village employees, it is not bound by any of the village's union contracts.

It must be stressed that it is important to address the issue of job continuity for village employees early on in the dissolution process. Frequently, villages considering dissolution employ individuals who will be needed even if the village dissolves. For example, employees who operate a village's water or sewer infrastructure will have the training, certification, and experience needed to operate that infrastructure even if the village dissolves. However, the prospect of the village ceasing to exist will invariably cause employees to question the security of their jobs and potentially seek other employment opportunities.

7. Municipal Electric Utilities

For villages operating municipal electric utilities, the prospect of village dissolution raises the question of whether the successor municipal entity will be entitled to continue receiving power pursuant to the current contract with the power provider. As a general rule, utility providers are not obligated to consent to assignment of the utility contract to the successor municipal entity. Thus, the process of planning a village dissolution must include an analysis of the impact on the municipal utility.

8. SEQR

It is unclear the extent to which local government dissolutions and consolidations are subject to State Environmental Quality Review (SEQR). SEQR applies to discretionary decisions of an agency to approve or directly undertake an action which may affect the environment. Certain actions are expressly mandated by state law and regulation to undergo a review under SEQR (these are referred to as Type I Actions), while other actions are expressly exempted from undergoing a review under SEQR (these are referred to as Type II Actions). Local government consolidations and dissolutions are not listed as either Type I or Type II Actions. In addition, General Municipal Law Article 17-A does not address the applicability of SEQR to

⁷ Id. at 17-18.

local government consolidations or dissolutions. Consequently, local government officials should consult with their municipal attorneys to determine whether a proposed consolidation or dissolution is subject to SEQRA and thus is an “Unlisted Action,” requiring an Environmental Assessment be conducted to determine whether the proposed consolidation or dissolution will have a significant impact on the environment.

9. Binding the Town to the Dissolution Plan

In every dissolution proceeding, village residents question whether the town in which the village is located will be bound by the dissolution plan and any agreement the town makes with the village prior to the dissolution’s effective date (such as agreements to continue providing certain types and/or levels of services or services at a specific level). Because such agreements are governmental in nature and because the common law doctrine that a governing board operating in its governmental or legislative capacity may not bind a successor board, town agreements to continue to provide services are not binding. As New York’s highest court noted in 2003, “Elected officials must be free to exercise legislative and governmental powers in accordance with their own discretion and ordinarily may not do so in a manner that limits the same discretionary right of their successors to exercise those powers.”⁸ Should the village dissolve, residents of the former village will have to rely on the political process to address any issues regarding the providing of services.

10. Study Committees

Like consolidation, the dissolution process is time-consuming. It requires local government officials and community stakeholders to dedicate hundreds of hours working, often times with a consultant, to study government operations, analyze the potential impacts of myriad restructuring options, formulate a plan, and vet the dissolution proposal with the public. The Act only refers to the local government entity’s governing body preparing the dissolution plan. However, most local government entities will find it imperative that they form a study committee to spearhead the task of creating a draft dissolution proposal.

Invariably, the question arises: what should the composition of the study committee be? There is no one correct answer to this question. Every community is unique, and consequently has different needs and issues to be addressed. The following are just some of the individuals that a local governing body may wish to have on the study committee:

- (a) The village mayor;
- (b) An additional member of the board of trustees;
- (c) The supervisor of the town(s) in which the village is located;
- (d) A representative from municipal labor unions, if any; and
- (e) Residents, business owners, and property owners from each of the communities potentially impacted by the consolidation or dissolution.

This is not an exhaustive list, and the exact composition of the study committee, including its size, will and should vary. While there is no requirement that elected officials sit as members of a study committee, there are two major benefits of their inclusion: (a) they have extensive knowledge of the local government’s operations and finances, and (b) they were elected by a majority of the local government entity’s voters. In addition, study committees are frequently broken into sub-committees to handle specific issues involved in the consolidation or dissolution (e.g., public safety, water and sewer, streets and sidewalks, and administration sub-committees). As a result, the study committee should consist of enough members to be able to divide into such sub-committees.

While the study committee should be as inclusive as possible, there is no need to include every stakeholder who is likely to be impacted by the dissolution. However, such individuals and groups should be consulted

⁸ In re Karedes v. Colella, 100 N.Y.2d 45 (2003).

and kept apprised of the proposal's progress so that they may provide input and feedback regarding dissolution proposals. Making the study committee an inclusive process garners buy-in from relevant interest groups whose support may be helpful, if not necessary, to a successful dissolution process. Excluding such interest groups from the process also has the potential of fomenting unnecessary confrontation simply on the basis that those groups may be distrustful of any proposal drafted by the study committee.

11. Consultants

Studying dissolutions requires the dedication of hundreds of hours work. Most villages do not have sufficient staff to perform the work necessary to develop a dissolution proposal while at the same time continuing to perform the village's day-to-day services. Consequently, most village officials will often find they need to hire a consultant to perform the substantial work of analyzing the implications of dissolution and drafting the dissolution proposal. When evaluating the qualifications of consultants, local government officials should contact other local government officials who have used the consultant in performing dissolution services. Moreover, local government officials should take steps to insure that the consultant does not apply a "cookie cutter" approach to developing the dissolution study and that the full spectrum of alternatives to dissolution are considered in developing the plan.

12. Additional Information to Include in Any Dissolution Plan

Although not required by statute to be included in dissolution plans, village officials should require consultants to identify the overall financial implications for not only the village residents and property owners, but also the residents and property owners of the town outside of the village. Too often, proponents of village dissolution focus solely on the savings of village residents without acknowledging the implications for town residents outside of the village. Part of this analysis will require the consultant and village officials to identify whether the financial impact of the proposed dissolution is attributable to: (a) increased efficiencies through economies of scale; (b) increased aid from New York State via Consolidation Incentive Aid; (c) restructured villages services, which the village could accomplish without dissolving (e.g., discontinuing services, contracting out services, inter-municipal cooperation, etc.); and (d) the village residents no longer subsidizing town operations (frequently village residents pay significant town taxes but the town provides little or no services directly to the village residents; this subsidization of town government operations is unfair and it -- rather than increased efficiencies -- may be the largest source of cost-savings for village residents if the village dissolves).

C. Governing Body Initiated Dissolution

1. Developing a Dissolution Plan

The process for a board of trustees initiating a village dissolution will, by necessity, consist of (a) a preliminary non-legal process of studying the proposed dissolution, and (b) the Act's formal legal process.

2. Formal Commencement of Dissolution Proceedings by Local Governing Body

The dissolution process is formally commenced by the board of trustees adopting a resolution endorsing a proposed dissolution plan which must specify:

- (a) the name of the village to be dissolved;
- (b) the village's territorial boundaries;
- (c) the fact that the local government entity is a village;
- (d) a fiscal estimate of the dissolution's cost;
- (e) any plan for transferring or eliminating the village's employees;
- (f) the village's assets, including but not limited to real and personal property, and the fair value thereof;
- (g) the village's liabilities and indebtedness, bonded and otherwise, and the fair value thereof;

- (h) any agreements entered into with the town or towns in which the village is situated in order to carry out the dissolution;
- (i) the manner and means by which municipal services will be furnished to the village residents after the village's dissolution;
- (j) the terms for disposing of the village's assets, liabilities and indebtedness, including the levying and collecting of necessary taxes and assessments therefor;
- (k) findings as to whether any of the village's local laws, ordinances, rules or regulations will remain in effect after the dissolution's effective date and, if so, for how long (pursuant to General Municipal Law § 789, if the plan does not provide otherwise, a village's local laws, including zoning, remain in effect for two years after the village dissolves, although the town may amend or repeal such laws at any time);
- (l) the proposed dissolution's effective date;
- (m) the time and place(s) for the public hearing(s) on the proposed dissolution plan held pursuant to General Municipal Law § 776; and
- (n) any other matter desirable or necessary to carry out the dissolution.⁹

COMMENTARY:

Preemption of Governing Body Proceedings by Electorate Initiated Petition *If the local governing body has begun studying dissolution but not yet completed and adopted a dissolution plan, a petition could be filed forcing the village to follow the dissolution process set forth for electorate initiated dissolution, thereby preempting the efforts of the board of trustees to study dissolution before putting the matter to a vote of the residents.*

3. Publishing the Proposed Dissolution Plan

No later than five business days after the village board of trustees adopts the resolution, it must:

- (a) cause a copy and a descriptive summary of the proposed dissolution plan to be displayed and made readily accessible to the public for inspection in a public place(s) within the village;
- (b) cause a copy and descriptive summary of the proposed dissolution plan and reference to the public place(s) in the village where a copy of the plan may be examined to be displayed on the village's website or if the village does not have a website then on a website maintained by the town and/or county in which the village is located; and
- (c) arrange to be published a summary of the proposed dissolution plan and reference to the public place(s) in the village where a copy of the plan may be examined, at least once each week for four successive weeks in a newspaper having a general circulation within the village.

The village board of trustees must cause the proposed dissolution plan to be mailed by certified or registered mail to the supervisor of the town(s) in which the village is situated.¹⁰

4. Holding a Public Hearing on the Proposed Dissolution Plan

The board of trustees must hold at least one public hearing on the proposed dissolution plan, although it may hold multiple public hearings. The hearing or hearings must be held not less than 35 days but more than 90 days after the village board of trustees approves the dissolution plan.

Notice of the public hearing or hearings must be published in a newspaper(s) of general circulation within the village at least 10 days but not more than 20 days before the public hearing. In addition, notice of the

⁹ Gen. Mun. Law § 774.

¹⁰ Gen. Mun. Law § 775.

public hearing must be displayed on the village's website or, if the village does not have a website, then on a website maintained by town and/or county in which the village is located.

The notice must include a summary of the proposed dissolution plan and the location(s) within the village where a copy of the plan may be examined.

5. Board of Trustees Action After the Public Hearing

(a) Overview

After the hearing(s) is completed, the village board of trustees may take one of three actions:

1. approve the proposed dissolution plan;
2. amend and then approve the proposed dissolution plan; or
3. decline to proceed with the dissolution.

If the board of trustees decides to approve the dissolution plan, it must do so within 180 days of the final hearing.

(b) Amendment of the Original Proposed Dissolution Plan

If the board of trustees decides to proceed with the dissolution proceeding and amend the plan after the public hearing, the amended dissolution plan must comply with the substantive provisions and the procedural notice requirements of General Municipal Law § 774(2) & (4) respectively. Additionally, the board of trustees must approve the final version of the amended dissolution plan.

No later than five business days after finalizing the amended dissolution plan, the board of trustees must:

- (a) cause a copy and a summary of the amended version of the proposed dissolution plan to be displayed and readily accessible to the public for inspection in a public place(s) within the village; and
- (b) cause the amended version of the proposed dissolution plan, a summary of the plan, and a reference to the public place(s) within the village where a copy of the plan and summary may be examined, to be displayed on the village's website or, if the village does not have a website, then on a website maintained by the town and/or county in which the village is located.¹¹

6. Mandatory Referendum on Board-Approved Dissolution Plan

Contemporaneous with the final approval of the dissolution plan pursuant to General Municipal Law § 776(3), the village board of trustees must enact a resolution calling for a referendum on the proposed dissolution by the village's electors. The resolution must:

- (a) provide (i) the village's name and (ii) the date of the referendum;
- (b) state the substance of the question to be submitted to the electors; and
- (c) set forth any other matters necessary to call, provide for and give notice and to provide for the conduct of the referendum.

The final approved version of the dissolution plan must be attached to the resolution calling for the referendum.¹²

7. The Dissolution's Effective Date

A village which is voted to be dissolved continues to be governed as before until the dissolution's effective date. However, a village dissolution plan may not take effect unless approved by a majority of electors of the village at a referendum called through a resolution enacted pursuant to General Municipal Law § 777.¹³

¹¹ Gen. Mun. Law § 776.

¹² Gen. Mun. Law § 777.

D. Elector Initiated Dissolution

1. Overview

Unlike the procedure for a dissolution initiated by a village board of trustees, the Act dramatically changes the process for elector initiated dissolutions from the current process, which 21 villages have used to dissolve in the past 30 years. The Act allows electors to initiate the dissolution process by circulating a dissolution petition that, if signed by at least 10% of the electors in a village, requires the village residents to vote on whether to dissolve the village. For villages with 500 or fewer electors, the petition must be signed by at least 20% of the number of electors in the village. In either case, there is no time limit to the gathering of signatures.

Requiring only 10% of electors to sign a petition to dissolve a village is a substantial change from the current law. Under Village Law Article 19, which was deemed repealed as of March 21, 2010, village residents could initiate the dissolution process by having one-third of a village's electors sign the petition within a 120-day period.

2. Initiative of Electors Seeking Dissolution

For the electors of a village to commence a village dissolution proceeding, they must file a petition with the village clerk. The petition must contain signatures equal in number to not less than 10% of the number of electors in the village to be dissolved or 5,000, whichever is less. However, if the village has 500 or fewer electors, then the petition must be signed by at least 20% of the number of electors.

COMMENTARY:

Signature Requirement for Villages with 500 or Fewer Electors *Some sources are incorrectly reporting that the 20% signature requirement applies only to local government entities with populations of 500 or fewer residents. The 20% signature requirement applies to local government entities with 500 or fewer electors. The Act defines an elector as an individual registered to vote in the local government entity subject to the consolidation or dissolution proceeding.*

Calculating the Number of Electors *The Act fails to make clear the manner for calculating the number of electors. Unlike Village Law § 19-1900, which provides that the number of signatures required to commence dissolution proceedings is calculated based upon the number of electors at the previous village election, the Act does not clarify whether the number of electors is based upon the prior village election, the prior gubernatorial election (this is the method set forth in the Town Law), the number of electors as of January 1 of that year, the number of electors at the time the petition is first signed, the number of electors at the time the petition is filed with the clerk, etc. Thus, because the number of electors is a constantly changing figure, individuals circulating petitions and local government officials charged with determining the sufficiency of petitions are left to speculate as to how many signatures are required for a petition to be deemed valid.*

Time Period for Collecting Signatures *The Act also fails to establish a time period for collecting signatures to initiate the dissolution process. Pursuant to former Village Law § 19-1900, only signatures signed within 120 days of the filing of the petition with the clerk were considered valid. However, the Act provides that a subsequent petition seeking to subject a dissolution plan to a vote of the residents must be filed within 45 days. It is unclear whether there is any time restriction on signing petitions to initiate the dissolution process.*

A cover sheet containing the name, address and telephone number of an individual who signed the petition and who will serve as a contact person must be filed with the petition.

¹³ Gen. Mun. Law § 778.

The petition must substantially comply with, and be circulated in, the following form:

PETITION FOR LOCAL GOVERNMENT DISSOLUTION

We, the undersigned, electors and legal voters of (insert type of local government entity--e.g., town, village or district) of (insert name of local government entity), New York, qualified to vote at the next general or special election, respectfully petition that there be submitted to the electors of (insert type and name of local government entity proposed to be dissolved), for their approval or rejection at a referendum held for that purpose, a proposal to dissolve and terminate (insert type and name of local government entity).

In witness whereof, we have signed our names on the dates indicated next to our signatures.

Date Name--print name under signature Home Address

- 1. _____
- 2. _____
- 3. _____

(On the bottom of each page of the petition, after all of the numbered signatures, insert a signed statement of a witness who is a duly qualified elector of the State of New York. Such a statement shall be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject the person signing it to the same penalties as if he or she has been duly sworn. The form of such statement shall be substantially as follows:

I, (insert name of witness), state that I am a duly qualified voter of the State of New York. Each of the persons that have signed this petition sheet containing (insert number`) signatures have signed their names in my presence on the dates indicated above and identified themselves to be the same person who signed the sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit, and if it contains a materially false statement, shall subject me to the penalties of perjury.

_____ Date

_____ Signature of Witness)

(In lieu of the signed statement of a witness who is a duly qualified voter of the State of New York, the following statement signed by a notary public or a commissioner of deeds shall be accepted:

On the date indicated above before me personally came each of the electors and legal voters whose signatures appear on this petition sheet containing (insert number) signatures, who signed the petition in my presence and who, being by me duly sworn, each for himself or herself, identified himself or herself as the one and same person who signed the petition and that the foregoing information they provided was true.

_____ Date

_____ Notary Public or Commissioner of Deeds)

Information on a petition's signature line may be altered or corrected so long as it is initialed and dated.

COMMENTARY:

Witness Requirement *The Act establishes two separate procedures for witnessing a petition. One procedure allows for any qualified elector of New York State to witness signatures. The second, more restrictive process allows an individual to have their signature witnessed by Notary Public or Commissioner of Deeds. However, in 2000, the 2nd Circuit Court of Appeals in the case Lerman v. Board of Elections in City of New York (232 F.3d 135) held that the resident witness requirement for ballot designating petitions under New York State Election Law § 6-132(2) of the New York Election*

Law violates the First Amendment. Thus, given the Lerman decision, it is unclear whether, despite the Act's requirements, a clerk may reject a petition witnessed by a non-electors.

Misrepresentations *Many previous local government dissolution petition drives have had allegations of fraud and misrepresentation about the contents and effect of the petition. The misrepresentations generally fall into one of two categories: (a) what the impact of dissolution will be (e.g., there will be massive tax-savings, the town will be bound by the dissolution plan, etc.) and (b) what the dissolution process entails (e.g., if the dissolution study finds that there will not be significant cost-savings, then there does not need to be a vote). Neither the former provisions of Village Law Article 19 nor the Act addresses the issue of intentional misrepresentation of the petition process. Local government officials should refer accusations of misrepresentation to the local district attorney.*

Removing Signatures from Petitions *While it is unclear whether misrepresentations about the effect of signing a petition made by individuals circulating petitions are actionable under New York State Law, one problematic consequence of such representations is that individuals who sign the petition frequently change their minds and attempt to have their signatures removed from the petition. Under the Act, state law remains silent on how or even if signers can remove their signatures from a petition.*

Submitting Additional Signatures *Another issue that has often been encountered with past village dissolutions has been individuals submitting supplemental signatures after a petition has already been filed. The Act is also silent as to how supplemental signatures should be processed. For practical reasons, the clerk should accept such petitions so long as they are in substantially the same form as the previously filed petition. The filing of addition signatures will extend the time period the clerk has for determining the petition's sufficiency (see below).*

3. Determining the Petition's Sufficiency

Within 10 days of the filing of a petition seeking dissolution, the village clerk with whom the petition is filed must determine whether the number of signatures on the petition is sufficient and whether the petition is otherwise valid. While the Act is silent as to the extent of the clerk's review of the petition, the clerk should perform the following review of a petition:

- (a) Determine whether the petition is in the form required by General Municipal Law § 779;
- (b) Determine whether each individual signatures is valid by reviewing whether the individuals who signed the petition are currently registered to vote in the village;
- (c) Determine whether the total number of signatures on the petition is equal to or in excess of the number of signatures required to commence the dissolution process.

COMMENTARY:

Clerk's Review of the Petition *The clerk's review of a petition to dissolve the village is different in nature than the clerk's review of a petition filed in the election process. In village elections, the clerk performs only a prima facie review of petitions filed, with the candidates for office responsible for challenging the validity of their opponents' petitions, including the validity of each signature. Under General Municipal Law Article 17-A, however, the village clerk is responsible for determining the validity of every component of the petition, including the validity of each signature.*

The clerk must notify, in writing, the contact person of the determination. The contact person or any individual who signed the petition may commence an Article 78 proceeding seeking a judicial review of the clerk's determination. The clerk should also notify the board of trustees.

If the clerk determines that the petition is sufficient, the village board of trustees must, no later than 30 days after the clerk makes his or her determination, enact a resolution pursuant to General Municipal Law § 777(2) calling for a referendum on the proposed dissolution by the village's electors. The resolution must also set the date for the referendum.¹⁴

4. Conducting the Referendum on Dissolution

(a) Timing

The referendum on dissolution must be put to the village's electors at a special election to be held not less than 60 but not more than 90 days after the village board of trustees enacts the resolution calling for the referendum. If the village's general election falls within the 60 to 90 day period, the question may be considered during that general election.

(b) Notice

The village board of trustees must cause notice of the dissolution referendum to be published in a newspaper having a general circulation within the village at least once a week for four consecutive weeks immediately prior to the referendum. The notice must include the following information, but may include additional information:

- (a) a summary of the resolution's contents and the petition for dissolution;
- (b) a statement as to where a copy of the resolution and petition for dissolution can be examined;
- (c) the name of the village to be dissolved and a description of its territories;
- (d) the time and place(s) at which the referendum will be held; and
- (e) such other necessary matters to call, provide for and give notice of the referendum and to provide for the conducting and canvassing of the referendum.

(c) Form of the Referendum Question

The referendum question placed upon the ballot must be substantially in the following form:

“Shall (insert type and name of local government entity) be dissolved?

YES..

NO....

(d) Cost of Conducting the Referendum

The cost of conducting the referendum is the responsibility of the village which is the subject of the dissolution referendum.¹⁵

(e) The Referendum

Except as otherwise provided herein, the referendum must be conducted in the same manner as other village elections or referenda.

(f) Canvassing the Referendum Vote

The ballots cast must be counted, returns made and canvassed, and the results certified in the same manner as other village elections or referenda. The dissolution does not take effect unless a majority of the voters vote in favor of dissolution.

¹⁴ Gen. Mun. Law § 779.

¹⁵ Gen. Mun. Law § 780.

If the dissolution is approved by a majority of the voters, then a copy of the certificate of dissolution must be filed with the clerk of the village and the clerk of county in which the village is located and with the secretary of state.

If the referendum fails, the dissolution process may not be initiated again in the village for four years from the date of the referendum.¹⁶

COMMENTARY:

Subsequent Village Board Initiated Dissolution *If the dissolution is voted down, the Act expressly prohibits the dissolution process from being initiated again for four years. It is unclear whether this prohibition applies to electorate initiated dissolutions only or board initiated dissolutions as well.*

5. Developing the Dissolution Plan¹⁷

If a majority of the electors voting in a referendum vote in favor of dissolving the village, the village board of trustees must meet within 30 days after the favorable vote is certified. Although not expressly stated in the law, the apparent purpose of this meeting is to commence the process of developing a dissolution plan. Within 180 days of that meeting, the board of trustees must prepare and approve by resolution a proposed dissolution plan.

COMMENTARY:

The 180-Day Time Period *Based on experience, it will be extremely difficult for a village to complete a comprehensive and responsible dissolution plan within the 180-day time period required by the Act. Developing a dissolution plan is extremely complicated, frequently requiring the forming of a committee to develop a draft dissolution plan and the retaining of a consultant. The process of forming and staffing the committee and hiring a consultant may itself take several weeks, if not months. Once the committee and consultant are able to start working on developing the proposed dissolution plan, the process of inventorying the village's assets and services the village provides, analyzing the structure of the village (including financial and labor issues), and formulating the optimal structure for providing services once the village is dissolved frequently takes more than a year to complete. Officials should give first priority to developing a thorough, understandable plan rather than rushing the process merely to comply with the 180-day time period. Nevertheless, communities involved in the process should strive to complete the plan as quickly as possible. As long as village officials work diligently and in a good faith effort to complete the proposed dissolution plan, it is unlikely a judge will intervene in the process, an option which the Act provides for and is discussed below.*

(a) Contents of the Dissolution Plan

The proposed dissolution plan must include:

- (a) the name of the village to be dissolved;
- (b) the village's territorial boundaries;
- (c) the type and/or class of the village;
- (d) a fiscal estimate of the cost of dissolving the village;
- (e) any plan for transferring or eliminating positions of public employees;
- (f) the village's assets, including but not limited to real and personal property, and its fair value;

¹⁶ Gen. Mun. Law § 781.

¹⁷ The Act refers to a plan developed as part of an electorate initiated dissolution process as an electorate initiated dissolution plan. For the purposes of this publication, it will be referred to solely as a dissolution plan.

- (g) the village’s liabilities and indebtedness, bonded and otherwise, and its fair value;
- (h) any agreements entered into with the town(s) in which the village is situated in order to carry out the dissolution;
- (i) the manner and means by which municipal services will continue to be provided to the village’s residents following the village’s dissolution;
- (j) terms for disposing of the village’s assets and liabilities and indebtedness, including the levying and collecting of taxes and assessments necessary to pay off any liability or indebtedness;
- (k) findings as to whether any of the village’s local laws, ordinances, rules or regulations will remain in effect after the dissolution’s effective date for a period of time other than as provided by General Municipal Law § 789;
- (l) the dissolution’s effective date;
- (m) the time and place(s) for a public hearing(s) on the proposed dissolution plan pursuant to General Municipal Law § 784; and
- (n) any other matter desirable or necessary to carry out the dissolution.¹⁸

COMMENTARY:

Binding The Town(s) Another issue that invariably arises in the dissolution process is the question of whether the town(s) will be bound by any agreements to provide services formerly provided by the village. Village residents express concerns about being able to hold the town(s) to any agreement to provide services at the level the residents desire. While the Act specifically refers to agreements entered into by the town, several issues arise as to how such agreements work. First, it is unclear who has standing to enforce such agreements. Second, it is unclear how long such agreements can be enforced. Third, it is unclear whether such agreements would be enforceable at all under the principle of binding future boards.

(b) Failing to Approve a Dissolution Plan

(i) Article 78 Proceeding

If the village board of trustees fails to prepare and approve a dissolution plan within the timeframe set forth in law, then any five electors who signed the dissolution petition may commence a proceeding pursuant to Article 78 of the State’s Civil Practice Law and Rules to compel compliance with the law.

(ii) Court Determined Plan

If the petitioners prevail, the court may issue an injunction ordering the village board of trustees to comply with the applicable provisions of the Act and to approve a dissolution plan. If the board of trustees fails to comply with the court order, the court may appoint a hearing officer pursuant to Civil Practice Law and Rules Article 43 to develop a dissolution plan for the village that complies with General Municipal Law § 782(2).

The judicial hearing officer’s final determination constitutes the final approval of the dissolution plan. The plan takes effect 45 days after the determination is filed with the clerk of the court, unless a petition for a permissive referendum is filed pursuant to General Municipal Law § 785.

¹⁸ Gen. Mun. Law § 782.

COMMENTARY:

Public Hearing Requirement on Judicial Hearing Officer Created Plan *The Act does not expressly require the judicial hearing officer to hold a public hearing on any dissolution prepared by such officer. It is unclear whether the judicial hearing officer is required to follow the procedure set forth in General Municipal Law §§ 783 and 784.*

If petitioners substantially prevail in a court proceeding pursuant to General Municipal Law § 786, then the village may be responsible for the costs of the proceeding, including the costs of any appointed judicial hearing officer, at the rate provided for in Judiciary Law Article 22.¹⁹

(c) Publication of Proposed Dissolution Plan

No later than five business days after approving a proposed dissolution plan, the board of trustees must:

- (a) cause a descriptive summary and a copy of the proposed dissolution plan to be displayed and readily accessible to the public for inspection at a public place(s) within the village;
- (b) cause a descriptive summary and a copy of the proposed dissolution plan, and the public place(s) in the village where a physical copy thereof may be examined to be displayed on a website maintained by the village or otherwise on a website maintained by the town and/or county in which the village is located;
- (c) arrange a descriptive summary and the public place(s) in the village where a physical copy of the summary and a copy the plan may be examined to be published at least once each week for four successive weeks in a newspaper having a general circulation within the village; and
- (d) cause a copy of the proposed dissolution plan to be mailed by certified or registered mail to the supervisor(s) of the town(s) in which the village is located.²⁰

(d) Public Hearings on Proposed Dissolution Plan

The village board of trustees must hold at least one hearing, although it may hold additional hearings, on the proposed dissolution plan. The hearing(s) must be held not less than 35 days but not more than 90 days after the board of trustees approves the proposed dissolution plan pursuant to General Municipal Law § 782.

Notice of the public hearing(s) must be published in at least one newspaper having general circulation within the village at least 10 days, but not more than 20 days, before the public hearing is scheduled to be held. In addition, the notice of the public hearing(s) must be displayed on a website maintained by the village or otherwise on a website maintained by the town and/or county in which the village entity is located. The Act appears to imply that the notice must be posted continuously for at least the 10 days prior to the hearing. The notice of the hearing(s) must include a summary of the dissolution plan and a reference to the public place(s) within the entity where a copy of such plan may be examined.

(e) Finalizing the Dissolution Plan

The village board of trustees must approve a final version of the dissolution plan within 60 days of the final hearing. After completing the final hearing, the board of trustees may amend the proposed dissolution plan so long as it complies with the provisions of General Municipal Law § 782(2). If the board of trustees amends the proposed dissolution plan, then no later than five business days after amending the proposed dissolution plan, the board of trustees must:

- (a) cause a copy of the amended version of the proposed dissolution plan and a descriptive summary of the plan to be displayed and readily accessible to the public for inspection in a public place(s) within each entity; and

¹⁹ Gen. Mun. Law § 786.

²⁰ Gen. Mun. Law § 783.

- (b) cause the amended version of the proposed dissolution plan and a descriptive summary of the plan and a reference to the public place(s) within each entity where a copy of the plan may be examined, to be displayed on a website maintained by each entity or otherwise on a website maintained by the village, town and/or county in which the entities are located.²¹

(f) Permissive Referendum on the Finalized Dissolution Plan

The finalized dissolution plan is subject to a permissive referendum. Thus, the dissolution plan as finally approved can be put to a vote of the village’s residents but only if a petition is filed with the village clerk not later than 45 days after final approval of the dissolution plan. The petition must contain signatures of at least 25% or 15,000 of the village’s electors, whichever is less. The petition must have a cover sheet containing the name, address and telephone number of an individual who signed the petition and who is a contact person. The petition must also be filed the village clerk.

Within 10 days of the petition being filed, the clerk must determine whether the number of signatures on the petition is sufficient and then timely notify the contact person in writing of the determination. The contact person or any individual who signed the petition may challenge the clerk’s determination via a proceeding pursuant to Article 78 of the State’s Civil Practice Law and Rules.

If the clerk determines that the petition contains the required number of signatures, the village board of trustees must, within 30 days of the clerk’s determination, enact a resolution calling for a referendum by the village’s electors on the question of whether to approve the dissolution plan. The resolution must set a date for the referendum, which must be held not less than 60 nor more than 90 days after the resolution is adopted.

The village must publish notice of the referendum in a newspaper having a general circulation within the village boundaries at least once a week for four consecutive weeks immediately prior to the referendum. The notice must include the following information, although additional information may also be included:

- (a) a summary of the contents of the resolution and the dissolution plan;
- (b) a statement as to where a copy of the resolution and the dissolution plan may be examined;
- (c) the time and place(s) at which the referendum will be held; and
- (d) such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.

The referendum question must be placed on the ballot in substantially the following form:

“The voters of the (insert type and name of local government entity to be dissolved) having previously voted to dissolve, shall the elector initiated dissolution plan take effect?

YES..

NO....

The dissolution does not take effect unless a majority of the village’s electors voting vote in favor of the plan taking effect. If a majority vote does not result, the referendum fails and the dissolution does not take effect.²²

²¹ Gen. Mun. Law § 784.

²² Gen. Mun. Law § 785.

COMMENTARY:

Re-Commencing Dissolution Proceedings *If a vote to commence the dissolution process is voted down, the Act prohibits another vote to commence dissolution proceedings for four years from the date of the vote. There is no such restriction if a referendum on a dissolution plan is voted down.*

E. Winding Down the Affairs of a Dissolved Local Government Entity

Once the dissolution is approved, the village board of trustees must wind down the village's affairs, dispose of its property as provided by law, provide for the payment of all its indebtedness and for the performance of its contracts and obligations, and, if applicable and appropriate under law, levy taxes and assessments as necessary to accomplish the dissolution.

The board of trustees must provide notice, in the same manner as provided for in General Municipal Law § 775, that all claims against the dissolving village, excluding any of its outstanding securities, must be filed within a time fixed in the notice, but not less than three months nor more than six months, and all claims that are not timely filed will be forever barred. After the six month time period, the village board of trustees must process the claims so filed, and any resident of the village at the time of the effective date of the dissolution may appear and defend against any claim so filed, or the governing body may in its discretion appoint some person for that purpose.²³

F. Effect of Dissolution on Actions and the Disposition of Records

Actions for or against the village do not abate, nor will any claim for or against the village be affected by reason of its dissolution.

Upon the village's dissolution, all its records, books and papers must be deposited with the clerk of the town in which the principal portion of the village is situated and will become a part of the town's records.²⁴

COMMENTARY:

Principal Portion *It is unclear whether the "principal portion" of the village means the greater land area or greater population.*

G. Effect of Dissolution on Justice Courts

Upon the dissolution of a village justice court, all of the court's records must be deposited with a justice court judge designated by the administrative judge of the judicial district within which the dissolving justice court is located. The designated justice court judge is authorized to execute and complete all of the dissolved justice court's unfinished business.²⁵

H. Effect of Dissolution on Existing Laws of Village

Except as otherwise provided in the dissolution plan, all local laws, ordinances, rules and regulations of a village in effect on the date of the village's dissolution, including but not limited to zoning ordinances, remain in effect for two years following the dissolution, as if they had been adopted by the town board and are enforceable by the town within the limits of the dissolved village. The town board may amend or repeal such local laws, ordinances, rules or regulations at any time.

If the village has a zoning board of appeals, a planning board, or both, and the town does not, then upon dissolution the town board will act in place of such board(s) until it appoints such board(s) for the town in accordance with the Town Law or repeals the laws necessitating a zoning board of appeals and/or a planning

²³ Gen. Mun. Law § 787.

²⁴ Gen. Mun. Law § 788.

²⁵ Gen. Mun. Law § 788.

board. The town board may make the appointments prior to the village's dissolution, to become effective upon the dissolution's effective date.²⁶

I. Effect of Dissolution on Debts, Liabilities and Obligations

The dissolved village's outstanding debts, liabilities and obligations are assumed by the town in which the village was located but become a charge upon the taxable property within the limits of the dissolved village, collected in the same manner as town taxes. The town board has all the powers with respect to the debts, liabilities and obligations as the board of trustees of the dissolved village possessed prior to its dissolution, including the power to issue town bonds to redeem bond anticipation notes issued by the dissolved village.²⁷

COMMENTARY:

Post-Employment Health Care Obligations *An issue that frequently arises in village dissolutions is the manner in which post-employment health care obligations are handled. As a general rule, should the village dissolve, these post-employment health care obligations remain the responsibility of only those properties within the former village.*

III. COUNTY INITIATED CONSOLIDATION AND DISSOLUTION

In addition to local governing body and electorate initiated consolidation and dissolution proceedings, the Act also addresses the issue of county government initiated consolidation and dissolution. Municipal Home Rule Law § 33-a was originally enacted in 1970 and provides that a county board of supervisors may, by local law,

- (a) transfer the functions or duties of the county or of any of the cities, towns, villages, districts or other units of government wholly contained in the county to each other, or
- (b) abolish one or more offices, departments or agencies of such units of government when all their functions or duties are so transferred.

The Act amends Municipal Home Rule Law § 33-a to allow a county board of supervisors to also abolish "units of government," including but not limited to offices, departments or agencies thereof, when the level and quality of ongoing services of all their functions or duties are transferred.

A county local law which transfers or abolishes a function or duty of the county or of the cities, towns, villages, districts or other units of government wholly contained in the county, does not become operative unless and until it is approved at a general election or at a special election, held in the county by receiving a majority of the total votes cast thereon: (a) in the area of the county outside of cities and (b) in the area of cities of the county, if any, considered as one unit, and if it provides for the transfer of any function or duty to or from any village or for the abolition of any office, department, agency or unit of government of a village wholly contained in the county, it does not take effect unless it also receives a majority of all the votes cast thereon in all the villages so affected considered as one unit. Such a local law, amendment or repeal thereof, must provide for its submission to the electors of the county at the next general election or at a special election, occurring not less than 60 days after the adoption thereof by the board of supervisors.

COMMENTARY:

Dissolution Approval Vote *Before any county initiated dissolution can take effect, the local law providing for the dissolution must be approved by a majority of the voters of the county **and** a majority of the votes of the villages "so affected considered as one unit." This requirement raises the question of whether the majority vote needs to be a majority of the votes cast in each individual village or a majority of the votes cast in all of the villages counted as a whole.*

²⁶ Gen. Mun. Law § 789.

²⁷ Gen. Mun. Law § 790.

IV. THE ACT'S EFFECT ON PENDING CONSOLIDATIONS AND DISSOLUTIONS

Any consolidation or dissolution commenced prior to the Act's effective date (March 21, 2010) is not affected. Such consolidation or dissolution proceeding is governed by the former provisions of Village Law Article 19.

COMMENTARY:

Was a Dissolution Proceeding Commenced Under Village Law Article 19? *Many village boards were in the process of studying dissolving the village at the time General Municipal Law Article 17-A became effective. If the village did not officially adopt a resolution pursuant to Village Law Article 19, but is nonetheless continuing to study dissolving the village, it is unclear whether a petition may be filed pursuant to General Municipal Law Article 17-A initiating dissolution proceedings there under.*

Applicability of Village Law Article 19 Time Bar to Commencing Dissolution Under GML Article 17-A *There is some confusion and debate as to whether the two-year time bar for recommencing dissolution proceedings under Village Law Article 19 applies to General Municipal Law Article 17-A. For example, if a village voted down dissolution on November 3, 2009 or March 16, 2010 under Village Law Article 19, does Article 19's two-year time bar apply to Article 17-A? Moreover, numerous villages are currently undertaking village dissolutions, the votes on which will not occur until after Article 17-A's March 21, 2010 effective date. If a village conducts a vote on dissolution pursuant to Village Law Article 19 in March 2011, does Article 19's two-year time bar prevent an electorate initiated dissolution from being commenced under General Municipal Law Article 17-A?*

V. CONSOLIDATION OF LOCAL GOVERNMENT ENTITIES

A. Overview

Pursuant to the Act, a consolidation is:

- (a) the combining of two or more local government entities resulting in the termination of each of the entities and the creation of a new entity which assumes jurisdiction over the area previously covered by the terminated entities, OR
- (b) the combining of two or more local government entities resulting in the termination of all but one of the entities whose boundaries are expanded to include the former boundaries of the terminated entities.²⁸

COMMENTARY:

Consolidation of Different Types of Entities *The Act's definition seems to imply that any town, village, or district may consolidate with any combination of other towns, villages, or districts. However, it is unclear whether this may be done without also complying with the requirements of New York's Annexation Law. For example, a village consolidating with a district would invoke annexation issues as would a village consolidating with a town outside of the town in which the village is currently located. Despite this definition of consolidation in the Act, for legal and practical reasons, it is questionable whether a village may consolidate with any other type of local government entity, except the town in which the village is located.*

²⁸ Gen. Mun. Law § 750(2).

Consolidation from One Type of Entity Into Another *In addition to apparently authorizing different types of local government entities to consolidate, the Act also appears to authorize local government entities to convert from one type of entity into another as part of the process. For example, there is no restriction preventing (a) two districts from consolidating into a village or a town, or (b) two villages consolidating into a town. Again, despite this definition of consolidation in the Act, for legal and practical reasons, it is questionable whether a village, or a district may consolidate into a different type of local government entity.*

Local government entities are defined as towns, villages, districts, special improvement districts or other improvement districts, including, but not limited to, special districts created pursuant to Town Law Articles 11, 12, 12-A or 13, library districts, and other districts created by law. However, for the purposes of the Act, a local government entity does not include school districts, city districts or special purpose districts created by counties under county law.²⁹

COMMENTARY:

Business Improvement Districts *The Act's language is very broad in its applicability. However, it is unclear whether its procedures for consolidation and dissolution also apply to business improvement districts which are governed by General Municipal Law, Article 19-A. The Act does not amend or repeal any of the provisions set forth in General Municipal Law, Article 19-A.*

The consolidation process may be commenced in one of two ways:

- (a) a joint resolution by the governing body or bodies of the local government entities to be consolidated endorsing a proposed joint consolidation agreement; or
- (b) elector initiative.³⁰

The local government entities are not required to be in the same county to be consolidated. Moreover, while towns and villages must be contiguous to consolidate, this requirement of contiguity does not apply to other local government entities.³¹

B. Governing Body Initiated Consolidation

1. Preliminary Steps

As previously mentioned, the Act provides for the consolidation process to be initiated by local government entities' local governing bodies or electors. While the Act does not expressly address it, for practical reasons, the governing bodies of the local government entities must agree to a preliminary process of studying and developing the proposed consolidation agreement. Invariably, consolidations involve extremely complicated issues including, but not limited to, operational considerations, labor issues including union contracts, service continuity, democratic representation, and fiscal and tax implications. Development of a consolidation plan takes months and frequently more than a year to develop, and is oftentimes an expensive endeavor.

COMMENTARY:

Consolidation of a Town(s) with a Village(s) *Once again, the Act refers to consolidating towns with villages. It is unclear what is envisioned with this process. If the village(s) is located within the town, then the only possible outcome is for the village to dissolve. If the village(s) is located in another town, then it is unclear whether the Act can be used to effectuate such a consolidation without also complying with the state's annexation laws. However, a village board may wish to use*

²⁹ Gen. Mun. Law § 750(13).

³⁰ Gen. Mun. Law § 751(2).

³¹ Gen. Mun. Law § 751(1).

the consolidation process to dissolve the village in order to address potential opposition from residents of the town outside of the village; since under such a process the residents of the town-outside-village area are included in the townwide referendum on the proposed consolidation.

2. Formal Initiation of the Consolidation Process

Under the Act, two or more local government entities may, by a joint resolution of their local governing bodies, **formally** commence consolidation proceedings. The joint resolution must endorse a proposed joint consolidation agreement, which must specify the following:

- (a) the name of each local government entity to be consolidated;
- (b) the name of the proposed consolidated local government entity (the name of the proposed consolidated local government entity must be sufficiently distinguishable from the name of any other like unit of government in the State of New York, except that the name may be that of any of the entities to be consolidated);
- (c) the rights, duties and obligations of the proposed consolidated local government entity;
- (d) the territorial boundaries of the proposed consolidated local government entity;
- (e) the type and/or class of the proposed consolidated local government entity;
- (f) the organization of the proposed consolidated local government regarding elected and appointed officials, and public employees, along with a transitional plan and schedule for electing and appointing officials;
- (g) a fiscal estimate of the cost of and savings which may be realized from consolidation;
- (h) each entity's assets, including, but not limited to, an inventory of the entity's real and personal property, and its fair value;
- (i) each entity's liabilities and indebtedness, bonded and otherwise, and its fair value;
- (j) the terms for disposing of existing assets, liabilities and indebtedness of each local government entity, either jointly, separately or in certain defined proportions;
- (k) the terms for uniformly administering and enforcing local laws, ordinances, resolutions, orders and the like, within the proposed consolidated local government entity, consistent with General Municipal Law § 769;
- (l) the effective date of the proposed consolidation; and
- (m) the time and place(s) where the public hearing(s) on the proposed joint consolidation agreement will be held pursuant to General Municipal Law § 754.³²

The components that are required to be addressed in the proposed consolidation agreement cover a broad range of matters. Assessing how the consolidation can occur and what its fiscal and service impact will be requires extensive analysis. Consequently, in most instances a preliminary study will have to be done. The preliminary process generally takes months, and frequently takes over a year to complete.

3. Publication of Proposed Joint Consolidation Agreement

No later than five business days after the governing body or bodies adopt the joint resolution endorsing the proposed consolidation plan, they must:

1. cause a copy and summary of the proposed joint consolidation agreement to be displayed and made readily accessible for the public to inspect in a public place(s) within each entity or entities;
2. cause a copy and summary of the proposed joint consolidation agreement, and a reference to the public place(s) in each entity where a copy of the agreement may be examined, to be displayed on each entity's website, or if local government entity does not have its own website, it must post the

³² Gen. Mun. Law § 752.

proposal on a website maintained by the village, town and/or county in which the entity is located; and

3. arrange to be published a descriptive summary of the proposed joint consolidation agreement and a reference to the public place(s) in the entities where a copy thereof may be examined, at least once each week for four successive weeks, in a newspaper having a general circulation within each entity.³³

4. Public Hearings on the Proposed Joint Consolidation Agreement

After the joint resolution is adopted and the proper notices are published and posted, the governing body or bodies must hold at least one public hearing on the proposed joint consolidation agreement. The hearing(s) must be held not less than 35 days but not more than 90 days after the adoption of the joint resolution commencing the consolidation proceeding. The governing body or bodies may hold joint or separate hearings for each entity which is the subject of the consolidation.

Notice of the public hearing must be published in a newspaper having general circulation within each local government entity to be consolidated at least 10 but not more than 20 days before day of the public hearing. In addition, the notice must be displayed on each entity's website or on a website maintained by the village, town and/or county in which the entities are located. The hearing notice must include a descriptive summary of the proposed joint consolidation agreement and a reference to the public place(s) within the entities where a copy of the agreement may be examined.

After the hearings are completed, the governing body or bodies of the local government entities to be consolidated may:

1. approve the proposed joint consolidation agreement as is,
2. amend and then approve the proposed joint consolidation agreement, provided that the amended version complies with General Municipal Law § 752(2) and is publicized pursuant to General Municipal Law § 754(4), or
3. decline to proceed with the consolidation.

Any approval of the final version of the joint consolidation agreement must occur within 180 days of the final hearing.

If the local governing body or bodies amend the proposed joint consolidation agreement, within five business days of adopting the amendments, the governing body or bodies must:

- (a) cause a copy of the amended version of the proposed joint consolidation agreement and a descriptive summary of the agreement to be displayed and readily accessible to the public for inspection in a public place(s) within each entity; and
- (b) cause the amended version of the proposed joint consolidation agreement, a descriptive summary of the agreement, and a reference to the public place(s) within each entity where a copy of the agreement may be examined, to be displayed on a website maintained by each entity.³⁴

5. Resolution Calling for a Referendum on the Consolidation of Towns or Villages

If the proposal is to consolidate:

- (a) two or more towns,
- (b) two or more villages, or
- (c) one or more towns and villages,

³³ Gen. Mun. Law § 753.

³⁴ Gen. Mun. Law § 754. If the local government entity does not have its own website, then the notice must be posted on a website maintained by the village, town and/or county in which the entity is located.

then contemporaneous with the final approval of the joint consolidation agreement pursuant to General Municipal Law § 754(3), the governing bodies of the towns and/or villages to be consolidated must enact a resolution calling for a referendum on the proposed consolidation by the towns' and/or villages' electors.

COMMENTARY:

Consolidation of a Town(s) with a Village(s) *Once again, the Act refers to consolidating towns with villages. It is unclear what is envisioned with this process. If the village(s) is located within the town, then the only possible outcome is for the village to dissolve. If the village(s) is located in another town, then it is unclear whether the Act can be used to effectuate such a consolidation without also complying with the state's annexation laws. However, a village board may wish to use the consolidation process to dissolve the village in order to address potential opposition from residents of the town outside of the village.*

The resolution calling for the referendum must provide:

- (a) the name of each of the towns and/or villages proposed to be consolidated;
- (b) a statement fully describing the territory to be included within the proposed consolidated local government entity; and
- (c) the name of the proposed consolidated local government entity.

The resolution must also set forth:

- (a) the date on which the referendum will be held in accordance with General Municipal Law § 758(1);
- (b) the substance of the question to be submitted to the electors; and
- (c) such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.

The final approved version of the joint consolidation agreement must be attached to the resolution calling for a referendum.³⁵

6. Effective Date of Joint Consolidation Agreement

Local government entities consolidated pursuant to a joint consolidation agreement continue to be governed as before consolidation until the consolidation's effective date as specified in the joint consolidation agreement.³⁶

C. Electorate Initiated Consolidation

1. Commencement of Consolidation Proceedings Via Petition

The consolidation process may also be initiated via the circulating of a petition. The petition must contain the signatures of at least 10% of the number of electors or 5,000 electors, whichever is less, in each local government entity to be consolidated. However, for any of the local government entities to be consolidated that contains 500 or fewer electors, the petition must contain the signatures of at least 20% of the number of such entity's electors.

COMMENTARY:

Signature Requirement for Local Government Entities with 500 or Fewer Electors *Some sources are incorrectly reporting that the 20% signature requirement applies only to local government entities with populations of 500 or fewer residents. However, the 20% signature requirement applies to local government entities with 500 or fewer electors. The Act defines an*

³⁵ Gen. Mun. Law § 755.

³⁶ Gen. Mun. Law § 756.

elector as an individual registered to vote in the local government entity subject to the consolidation or dissolution proceeding.

Calculating the Number of Electors *The Act fails to delineate the method for determining the total number of electors to which the minimum signature requirement is applied. Unlike the repealed Village Law § 19-1900, which provided that the number of signatures required to commence dissolution proceedings was calculated based upon the number of electors at the previous village election, the Act does not clarify whether the number of electors is based upon the prior village election, the prior gubernatorial election (this is the method set forth in the Town Law), the number of electors as of January 1 of that year, the number of electors at the time the petition is first signed, the number of electors at the time the petition is filed with the clerk, etc. Thus, because the number of electors is a constantly changing figure, individuals circulating petitions and local government officials charged with determining the sufficiency of petitions are left to speculate as to how many signatures are required for a petition to be deemed valid.*

Time Period for Collecting Signatures *The Act also fails to establish a time period for collecting signatures to initiate the consolidation process. However, the Act does provide that a petition seeking to subject a consolidation plan to a vote of the residents must be filed within 45 days. It is unclear whether there is any time restriction on signing petitions to initiate the consolidation process.*

The petition must substantially be in the following form:

PETITION FOR LOCAL GOVERNMENT CONSOLIDATION		
<p>We, the undersigned electors and legal voters of (insert type of local government entity--e.g., town, village or district) of (insert name of local government entity), New York, qualified to vote at the next general or special election, respectfully petition that there be submitted to the electors and legal voters of (insert type and name of local government entities proposed to be consolidated), for their approval or rejection at a referendum held for that purpose, a proposal to consolidate (insert type and name of local government entity) with (insert type and name of local government entity or entities).</p>		
<p>In witness whereof, we have signed our names on the dates indicated next to our signatures.</p>		
Date	Name--print name under signature	Home Address
1.		
2.		
3.		
<p>(On the bottom of each page of the petition, after all of the numbered signatures, insert a signed statement of a witness who is a duly qualified elector of the State of New York. Such a statement shall be accepted for all purposes as the equivalent of an affidavit, and if it contains a material false statement, shall subject the person signing it to the same penalties as if he or she has been duly sworn. The form of such statement shall be substantially as follows:</p>		
<p>I, (insert name of witness), state that I am a duly qualified voter of the State of New York. Each of the persons that have signed this petition sheet containing (insert number) signatures have signed their names in my presence on the dates indicated above and identified themselves to be the same person who signed the sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit, and if it contains a materially false statement, shall subject me to the penalties of perjury.</p>		
Date	Date	Signature of Witness)
<p>(In lieu of the signed statement of a witness who is a duly qualified voter of the State of New York, the following statement signed by a notary public or a commissioner of deeds shall be accepted:</p>		
<p>On the date indicated above before me personally came each of the electors and legal voters whose signatures appear on this petition sheet containing (insert number) signatures, who signed the petition in my presence and who, being by me duly sworn, each for himself or herself, identified himself or herself as the one and same person who signed the petition and that the foregoing information they provided was true.</p>		
Date	Notary Public or Commissioner of Deeds)	

Information on a petition's signature line may be altered or corrected so long as it is initialed and dated.

COMMENTARY:

Witness Requirement *The Act establishes two separate procedures for witnessing a petition. One procedure allows for any qualified elector of New York State to witness signatures. The second, more restrictive process allows an individual to have their signature witnessed by Notary Public or Commissioner of Deeds. However, in 2000, the 2nd Circuit Court of Appeals in the case Lerman v. Board of Elections in City of New York (232 F.3d 135) held that the resident witness requirement for ballot designating petitions under New York State Election Law § 6-132(2) of the New York Election Law violates the First Amendment. Thus, given the Lerman decision, it is unclear whether, despite the Act's requirements, a clerk may reject a petition witnessed by a non-elector.*

2. Determining the Petition's Sufficiency

The petition must be filed with the clerk of the town or towns in which the entities or the greater portion of their territory are located. If one or more of the entities to be consolidated is a village, then the original petition of electors from the village must be filed with the clerk of the village. The petitions must have a cover sheet that has the name, address and telephone number of a contact person. The contact person must sign the petition.

COMMENTARY:

Filing of Petition *The language regarding with whom the petition is filed has been the source of some confusion. It is unclear whether (a) one petition is circulated in all of the local government entities proposed to be consolidated, with electors from each entity signing the same petition, and then filed with the town clerk in which the entities or the "greater portion of their territory" is located, or (b) a separate petition is circulated in each of the local government entities and then each of those separate petitions is filed with the town clerk in which the entities or the "greater portion of their territory" is located for each of those clerks to make a determination as to the sufficiency of the petition in their entity, or (c) a separate petition is circulated in each of the local government entities and then each of those separate petitions is filed jointly with the town clerk in which the entities is located or, if the proposal is to consolidate towns, with the clerk of the largest town. Because the Act is to be liberally interpreted to effectuate its purposes, it is likely that both single and separate consolidation petitions would be upheld as valid.*

Time Period for Filing Petitions *If separate petitions are submitted to initiate a consolidation, it is unclear whether the various petitions for consolidation must be filed within a certain time period of each other. For example, if a petition for consolidating local government entities A and B is filed with local government entity A in December 2010 but the same petition is not filed with local government B until December 2012, are they valid? Once a petition is filed, the Act imposes a stringent timeframe for holding a vote. However, the Act does not expressly require the separate petitions be filed within a set timeframe.*

Removing Signatures from Petitions *While it is unclear whether misrepresentations about the effect of signing a petition made by individuals circulating petitions are actionable under New York State Law, one problematic consequence of such representations is that individuals who sign the petition frequently change their minds and attempt to have their signatures removed from the petition. Under the Act, state law remains silent on how or even if signers can remove their signatures from a petition.*

Submitting Additional Signatures *Another issue that has frequently been encountered with past village dissolutions has been individuals submitting supplemental signatures after a petition has already been filed. The Act is also silent as to how supplemental signatures should be processed. For practical reasons, the clerk should accept such petitions so long as they are in substantially the same form as the previously filed petition. The filing of additional signatures will extend the time period the clerk has for determining the petition's sufficiency (see below).*

Within 10 days of the consolidation petition being filed, the clerk with whom the petition is filed must determine whether the number of signatures on the petition is sufficient. The clerk must notify, in writing, the contact person named in the cover sheet accompanying the petition of the determination. Any individual who signed the petition may seek judicial review of the clerk's determination via an Article 78 Proceeding.

COMMENTARY:

Clerk's Review of the Petition *The clerk's review of a petition to consolidate the village is different in nature than the clerk's review of a petition filed in the election process. In village elections, the clerk performs only a prima facie review of petitions filed, with the candidates for office responsible for challenging the validity of their opponents' petitions, including the validity of each signature. Under General Municipal Law Article 17-A, however, the village clerk is responsible for determining the validity of every component of the petition, including the validity of each signature.*

If the clerk or clerks determine that a petition is sufficient, the governing body or bodies of the local government entities to be consolidated must, no later than 30 days after the determination is made, enact a resolution pursuant to General Municipal Law § 755(2) calling for a referendum on the proposed consolidation by the electors in each of the entities and set a date for such referendum.³⁷

3. Conducting the Referendum on Consolidation

(a) Introduction

Except as otherwise provided herein, the referendum must be conducted in the same manner as other municipal elections or referendums for the local government entities to be consolidated.

(b) Timing

The referendum on consolidation must be put to the electors of each of the local government entities to be consolidated at a special election to be held not less than 60 nor more than 90 days after the local body or bodies enact the resolution(s) calling for the referendum. If a town or village general election falls within the 60 to 90 day period, the question may be considered during that town or village general election.

The referenda may be held in each local government entity on the same day, or on different days, but in no instance may the referenda be held more than 20 days apart.

COMMENTARY:

Disapproval of the First Referendum *The referenda are not required to be held on the same day. Consequently, if the first referendum to be held on the proposed consolidation is voted down, the vote on the referendum by the other local government entity will have no effect. The Act is silent as to whether that vote must still take place.*

(c) Notice

The local governing bodies must cause notice of the consolidation referendum to be published in a newspaper having a general circulation within the boundaries of each entity at least once a week for four

³⁷ Gen. Mun. Law § 757.

consecutive weeks immediately prior to the referendum. The notice must include the following information, but may include additional information:

- (a) a summary of the contents of the resolution and joint consolidation agreement or petition for consolidation, as the case may be;
- (b) a statement as to where a copy of the resolution and joint consolidation agreement or petition for consolidation, as the case may be can be examined;
- (c) the names of the local government entities to be consolidated and a description of their territories;
- (d) the name of the proposed consolidated local government entity;
- (e) the time and place(s) at which the referendum will be held; and
- (f) such other necessary matters to call, provide for and give notice of the referendum and to provide for the conducting and canvassing of the referendum.

(d) Form of the Referendum Question

The referendum question placed upon the ballot must be substantially in the following form:

“Shall (insert type and name of local government entity) be consolidated with (insert type and name of local government entity or entities)?

YES ..

NO ”

(e) Cost of Conducting the Referendum

The cost of conducting the referendum is the responsibility of the each local government entity which is the subject of the consolidation referendum. Each local government entity is responsible only for the costs of holding the referendum for the residents within its boundaries.³⁸

(f) Canvassing the Referendum Vote

The ballots cast must be counted, the returns made and canvassed, and the results certified in the same manner as other municipal elections or referendums for the local government entities to be consolidated. The consolidation does not take effect unless a majority of the electors voting in **each local government entity to be consolidated** votes in favor of consolidation. If in any one of the entities to be consolidated a majority does not vote in favor of consolidating, then the referendum fails and the consolidation does not take effect.

If consolidation is approved by a majority of the electors voting in each local government entity to be consolidated, then a certificate of the consolidation must immediately be filed with the Secretary of State, the clerks of the entities to be consolidated, and the county in which any part of the entities is situated. The Act does not specifically identify who is responsible for filing the certificate of consolidation.

If the referendum fails, the consolidation process may not be initiated again within four years of the date of the referendum. This subdivision, however, does not apply to a permissive referendum conducted pursuant to General Municipal Law § 763.³⁹

COMMENTARY:

Subsequent Governing Body Initiated Consolidation *If the consolidation is voted down, the Act expressly prohibits the consolidation process from being initiated again for four years. It is*

³⁸ Gen. Mun. Law § 758.

³⁹ Gen. Mun. Law § 759.

unclear whether this prohibition applies to electorate initiated consolidations only or governing body initiated consolidations as well.

4. Developing the Consolidation Plan

If a majority of the electors voting in a referendum vote in favor of consolidation, the entities' governing body or bodies must meet within 30 days after the favorable vote is certified. Within 180 days of this meeting, the governing bodies must prepare and approve by resolution a proposed consolidation plan.

(a) Contents of the Consolidation Plan

The proposed consolidation plan must include:

- (a) the name of each local government entity to be consolidated;
- (b) the name of what will be the consolidated local government entity (the name must be distinguishable from any other like unit of government in the State of New York, except the name may be one of the entities to be consolidated);
- (c) the rights, duties and obligations of the consolidated local government entity;
- (d) the territorial boundaries of the consolidated local government entity;
- (e) the type and/or class of the consolidated local government entity;
- (f) the governmental organization of the consolidated local government entity insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials;
- (g) a fiscal estimate of the cost of and savings which may be realized from consolidation;
- (h) each entity's assets, including, but not limited to, real and personal property, and the fair value;
- (i) each entity's liabilities and indebtedness, bonded and otherwise, and the fair value thereof;
- (j) terms for disposing each local government entity's existing assets, liabilities and indebtedness, either jointly, separately or in certain defined proportions;
- (k) terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, orders and the like, within the consolidated local government entity, consistent General Municipal Law § 769;
- (l) the effective date of the consolidation; and
- (m) the time and place(s) for the public hearing or hearings on the proposed consolidation plan.⁴⁰

COMMENTARY:

The 180-Day Time Requirement *It may be very difficult for local government entities to develop the consolidation plan within the 180-day time period required by the Act. Developing a consolidation plan is extremely complicated, frequently requiring the local government entity (a) to form a committee for the purpose of develop a draft consolidation plan, and (b) to retain a consultant. The process of forming and staffing the committee and hiring a consultant may itself take several weeks if not months. Once the committee and consultant are able to start working on developing the proposed consolidation plan, the process of inventorying assets and services the local government entities provide, analyzing the structure of the local government entities (including financial and labor issues), and formulating the optimal structure of the resulting consolidated structure will frequently take at least a year, if not longer. Officials should give first priority to developing a thorough, understandable plan rather than rushing the process merely to comply with the 180-day time period. Nevertheless, communities involved in the process should strive to complete the plan as quickly as possible. As long as the communities work diligently and in a good faith effort*

⁴⁰ Gen. Mun. Law § 760.

to complete the proposed consolidation plan, it is unlikely a judge will intervene in the process, an option which the Act provides for and is discussed below.

(b) Failing to Draft a Plan

If the governing body or bodies of local government entities fail to prepare and approve a consolidation plan within the timeframe set forth in law, then any five electors who signed the consolidation petition may commence an Article 78 proceeding to compel compliance with the law.

(i) Mediation

If the court finds that the governing body or bodies attempted in good faith to prepare and approve a consolidation plan but were nevertheless unsuccessful, then the court may refer the preparation of a consolidation plan to mediation, with costs of the mediation being borne by the entities.

If, as a result of the mediation, the governing body or bodies prepare and approve a proposed consolidation plan, then the governing body or bodies must continue with the consolidation process set forth in General Municipal Law §§ 761, 762, and 763.

(ii) Court Determined Plan

If the mediation is unsuccessful, then the court may order the governing bodies of the local government entities to approve a consolidation plan. If the governing body or bodies fail to comply with the court order, then the court may appoint a judicial hearing officer pursuant to Civil Practice Law and Rules Article 43 to develop a consolidation plan for the entities. The judicial hearing officer's final determination constitutes the final approval of the consolidation plan. The plan takes effect 45 days after the filing of the determination with the clerk of the court, unless a petition for a permissive referendum is filed pursuant to General Municipal Law § 763.

(iii) The Costs of Judicial Intervention

If petitioners substantially prevail in a court proceeding pursuant to General Municipal Law § 764, then the local government entities may be responsible for the costs of the proceeding, including the costs of any appointed judicial hearing officer, at the rate provided for in Judiciary Law Article 22. The costs are applied proportionally between the government entities based on appropriate factors, including, but not limited to, population and the court's findings regarding the good faith efforts of the respective entities.⁴¹

(c) Publication of Proposed Consolidation Plan

No later than five business days after approving a proposed consolidation plan, the governing body or bodies of the local government entities to be consolidated must:

1. cause a copy and a descriptive summary of the proposed consolidation plan to be displayed and made readily accessible to the public for inspection at a public place(s) within each entity;
2. cause a copy and a descriptive summary of the proposed consolidation plan, along with the location in each entity where a copy of the proposed consolidation plan may be examined, to be displayed on a website maintained by each entity,⁴² and
3. arrange for a descriptive summary of the proposed consolidation plan and the location in each entity where a copy of the proposed consolidation plan may be examined to be published at least once each week for four successive weeks, in a newspaper having a general circulation within each entity.⁴³

⁴¹ Gen. Mun. Law § 764.

⁴² If the local government entity does not have its own website, then the information must be posted on a website maintained by the village, town and/or county in which the entity is located.

⁴³ Gen. Mun. Law § 761.

(d) Public Hearings on the Proposed Consolidation Plan

The governing body or bodies of the local government entities to be consolidated must set a time and place for one or more public hearings on the proposed consolidation plan. The hearing(s) must be held not less than 35 days but not more than 90 days after the governing bodies approve the proposed consolidation plan. The hearing(s) may be held jointly or separately by the governing body or bodies of the entities.

Notice of the public hearing(s) must be published, at least 10 days but not more than 20 days before the public hearing, in a newspaper(s) having general circulation within each local government entity to be consolidated. In addition, notice of the public hearing(s) must be displayed on a website maintained by each entity or otherwise on a website maintained by the village, town and/or county in which the entities are located. It is unclear from the Act when the notice must be posted on the website. It is recommended that the notice be placed upon the website for at least the 10 days prior to the public hearing(s). The notice of the hearing(s) must include a descriptive summary of the proposed consolidation plan and a reference to the public place(s) within the entities where a copy of such agreement may be examined.

(e) Finalizing the Consolidation Plan

The entities' governing body or bodies must approve a final version of the consolidation plan within 60 days of the final public hearing. After completing the final hearing, the governing body or bodies of the local government entities to be consolidated may amend the proposed consolidation plan so long as it complies with the provisions of General Municipal Law § 760(2). If the governing body or bodies amend the proposed consolidation plan, then no later than five business days after amending the proposed consolidation plan, the governing body or bodies of the local government entities to be consolidated must:

- (a) cause a copy and descriptive summary of the amended version of the proposed consolidation plan to be displayed and readily accessible to the public for inspection in a public place(s) within each entity; and
- (b) cause a copy and descriptive summary of the amended version of the proposed consolidation plan and the location(s) in each entity where a copy of the plan may be examined to be displayed on a website maintained by each entity or otherwise on a website maintained by the village, town and/or county in which the entities are located.⁴⁴

(f) Permissive Referendum on the Finalized Consolidation Plan

The finalized consolidation plan is subject to a permissive referendum. Thus, the consolidation plan as finally approved may be put to a vote of all of the residents, but only if a petition is filed with the clerk not later than 45 days after final approval of the consolidation plan. The petition must contain signatures of at least 25% or 15,000 of the electors, whichever is less, in the local government entity to be consolidated. The petition must have a cover sheet containing the name, address and telephone number of an individual who signed the petition and who is a contact person.

COMMENTARY:

Village Board of Trustees Submittal of Plan to Referendum Village Law § 9-908 provides that the board of trustees may, upon its own motion, cause to be submitted for the approval of the qualified electors of the village, an act or resolution of the board which is the subject of a petition process. It is unclear whether the village board may, pursuant to Village Law § 9-908, adopt a resolution putting a consolidation plan to a vote of the village's residents without a petition having to be filed.

⁴⁴ Gen. Mun. Law § 762.

The petition must be filed with the clerk of the town in which the entity or the greater portion of its territory is located. If the entity to be consolidated is a village, the original petition of electors from the village must be filed with the village clerk.

Within 10 days of the petition being filed, the clerk with whom the petition was filed must determine whether the number of signatures on the petition is sufficient. The clerk must timely notify the contact person in writing of the determination. The contact person or any individual who signed the petition may challenge the clerk's determination pursuant to Article 78 of the State's Civil Practice Law and Rules.

If the clerk determines that the petition contains the required number of signatures, the governing body of the local government entity to which the petition applies must within 30 days of the clerk's determination enact a resolution calling for a referendum by the electors of the entity on the question of whether to approve the consolidation plan. The resolution must set a date for the referendum, which must be held not less than 60 nor more than 90 days after the resolution is adopted.

The town or village must publish notice of the referendum in a newspaper having a general circulation within the boundaries of the entity at least once a week for four consecutive weeks immediately prior to the referendum. The notice must include the following information, although additional information may also be included:

- (a) a summary of the contents of the resolution and consolidation plan;
- (b) a statement as to where a copy of the resolution and the consolidation plan may be examined;
- (c) the time and place(s) at which the referendum will be held; and
- (d) such other matters as may be necessary to call, provide for and give notice of the referendum and to provide for the conduct thereof and the canvass of the returns thereupon.

The referendum question must be placed on the ballot in substantially the following form:

“The voters of the (insert type and name of each local government entity to which the consolidation plan applies) having previously voted to consolidate, shall the elector initiated consolidation plan take effect?

YES ..

NO ”

The consolidation does not take effect unless a majority of the electors voting in the local government entity to which the petition applies vote in favor of the plan taking effect.⁴⁵

D. General Effects of Consolidation

All rights, privileges and franchises of each component local government entity and all assets, real and personal property, books, records, papers, seals and equipment, as well as other things in action, belonging to each component local government entity are deemed transferred to and vested in the consolidated local government entity without further act or deed.

All property, rights-of-way and other interests become the property of the consolidated local government entity to the same extent as they were of the component local government entities prior to their consolidation. The title to real estate, either by deed or otherwise, under the laws of the State of New York vested in any of the component local government entities may not be deemed to revert or be in any way impaired by the consolidation.

⁴⁵ Gen. Mun. Law § 763.

The consolidated local government entity is subject to all the obligations and liabilities imposed and possesses all the rights, powers, and privileges vested by law in other similar entities.

Upon the consolidation's effective date, the joint consolidation agreement or the consolidation plan, as the case may be, is subordinate in all respects to the contract rights of all holders of any securities or obligations of the local government entities outstanding at the effective date of the consolidation.⁴⁶

E. Effect of Consolidation on Justice Courts

If a consolidation results in the dissolution of a local justice court, all of the dissolved court's records must be deposited with a justice court judge designated by the administrative judge of the judicial district within which the dissolving justice court is located. Furthermore, the designated justice court judge is authorized to execute and complete all of the dissolved justice court's unfinished business.⁴⁷

F. Effect of Consolidation on Elected and Appointed Officials

Elected officials of the consolidated local government entity take office on the first Monday of January following the election designated in the joint consolidation agreement or consolidation plan, as the case may be. At the election, the officials of the consolidated local government entity will be elected in accordance with the terms of the general law affecting the local government entity (e.g., the Town Law or the Village Law). Except as otherwise specified in the joint consolidation agreement or consolidation plan, all appointive officials of the consolidated local government entity are appointed by the individual or entity upon whom the power to appoint the officials is conferred by the terms of the general law affecting the consolidated local government entity. Succeeding officials are to be elected or appointed at the time, in the manner and for the terms provided by the general law affecting entities of the kind or class of the consolidated local government entity.⁴⁸

G. Effect of Consolidation on Employees

Except as otherwise provided by law and except for those officials and employees protected by tenure of office, civil service provisions or collective bargaining agreements, upon the effective date of consolidation, all appointive offices and positions then existing in all component local government entities involved in the consolidation are subject to the terms of the joint consolidation agreement or consolidation plan, as the case may be. The agreement or plan may provide for instances in which there is duplication of positions and for other matters such as varying length of employee contracts, different civil service regulations in the constituent entities and differing ranks and position classifications for similar positions.⁴⁹

H. Effect of Consolidation on Debts, Liabilities and Obligations

Each of the component local government entity's debts and liabilities, which but for consolidation would be valid and lawful debts or liabilities, become a debt against or liability of the consolidated local government entity. The consolidated local government entity is responsible for the debts and liabilities to the same extent as the component local government entities would have been bound if no consolidation had taken place.⁵⁰

A consolidation does not affect or impair the rights of creditors or any liens upon the property of any of the component local government entities. All debts, liabilities and duties of any of the component entities attach

⁴⁶ Gen. Mun. Law § 765(5).

⁴⁷ Gen. Mun. Law § 765(6).

⁴⁸ Gen. Mun. Law § 766.

⁴⁹ Gen. Mun. Law § 767.

⁵⁰ Gen. Mun. Law § 768(1).

to and may be enforced against the consolidated local government entity to the same extent as if such debts, liabilities and duties had been incurred or contracted by the consolidated local government entity.⁵¹

All bonds, contracts and obligations of the component entities are deemed to be obligations of the consolidated local government entity. Any obligations that are authorized or required to be issued or entered into must be issued or entered into by and in the name of the consolidated local government entity.⁵²

I. Effect of Consolidation on Existing Laws

Subject to the joint consolidation agreement or consolidation plan, all local laws, ordinances, rules or regulations of the component local government entities in effect on the consolidation's effective date remain in full force and effect within the respective areas of the component local government entities that existed prior to consolidation, insofar as the local laws, ordinances, rules or regulations are not repugnant to law, until repealed or amended. Not later than two years after the effective date of consolidation, the governing body of the consolidated local government entity must adopt new local laws, ordinances, rules and regulations to redress conflicts and ambiguities arising among the then-existing laws, ordinances, rules or regulations for the common administration and uniform governance of the consolidated local government entity.⁵³

J. Effect of Consolidation on Actions and Proceedings

Lawsuits may be commenced against a consolidated local government entity in any of the courts of the state in the same manner as against any other local government entity.

If a component local government entity is a party to an action or proceeding pending on the effective date of consolidation, then the consolidated local government entity may be substituted in its place and the action or proceeding may be prosecuted to judgment as if consolidation had not taken place.⁵⁴

K. Effect of Consolidation on Voter Registration

Residents of the consolidated local government entity do not need to re-register to vote with the board of elections. Rather, the elector registrations of the component local government entities must be transferred to the registration books of the consolidated local government entity.⁵⁵

L. Determination of Rights

If any right, title, interest or claim arising out of a consolidation is not addressed by the Act, the joint consolidation agreement, the consolidation plan, or any other laws of the state, then the consolidated local government entity's local governing body may provide for such right, title, interest or claim in a manner consistent with the laws of State of New York.⁵⁶

⁵¹ Gen. Mun. Law § 768(2).

⁵² Gen. Mun. Law § 768(3).

⁵³ Gen. Mun. Law § 769.

⁵⁴ Gen. Mun. Law § 770.

⁵⁵ Gen. Mun. Law § 771.

⁵⁶ Gen. Mun. Law § 772.

VI. PROVISIONS APPLICABLE TO ALL CONSOLIDATIONS AND DISSOLUTIONS

A. Liability of Officials and Employees

In the absence of fraud, gross negligence or willful misfeasance, no officer or employee of a local government entity will be held personally liable for any claim arising from a local government's consolidation or dissolution pursuant to the Act.⁵⁷

B. Supersession

The Act supersedes and replaces all other state and local laws relating to the procedures and requirements for consolidating and dissolving local governments to the extent that such laws are inconsistent with the Act, provided, however, that the provisions of any other state or local law now in effect or hereafter enacted that are less restrictive or burdensome than those provided by the Act govern during the period in which such provisions are in effect. A state or local law that imposes procedures and requirements for consolidation and dissolution not addressed by the Act are deemed inconsistent.⁵⁸

C. Separability

If any provisions of the Act are invalidated by a court, such judgment will not invalidate the remainder of the Act.⁵⁹

VII. REPEALED PROVISIONS OF LAW

To fully effectuate its provisions and eliminate any contrary, confusing, or conflicting provisions of law, the Act repeals and amends numerous provisions of existing law effective March 21, 2010. Numerous sections of New York's Town Law are repealed, including Town Law § 57(2);⁶⁰ Town Law § 81(1)(e);⁶¹ Town Law § 174(1) & (2); and Town Law § 208-b.⁶² However, more relevant for village officials are the following repeals and amendments of New York Law.

A. Village Law Article 19

Village Law Article 19 governed the procedures for dissolving villages. Village Law Article 19 is deemed repealed as of March 21, 2010. In addition, Village Law § 9-912 (2)(c) and (3) are repealed and the section is renumbered.⁶³

⁵⁷ Gen. Mun. Law § 791.

⁵⁸ Gen. Mun. Law § 792.

⁵⁹ Gen. Mun. Law § 793.

⁶⁰ See New N.Y. Government Reorganization and Citizen Empowerment Act § 4 which provides that Town Law § 57 subdivisions 3, 4, 5, 6, 7 and 8 are renumbered subdivisions 2, 3, 4, 5, 6 and 7 respectively.

⁶¹ See New N.Y. Government Reorganization and Citizen Empowerment Act § 5 which provides that paragraphs (f) and (g) of Town Law § 81(1) relettered paragraphs (e) and (f) respectively.

⁶² See New N.Y. Government Reorganization and Citizen Empowerment Act § 11 which provides that subdivision 2 of section 208-b of the town law is REPEALED, and subdivisions 3, 4, 5, 6, 7 and 8 are renumbered subdivisions 2, 3, 4, 5, 6 and 7.

⁶³ See New N.Y. Government Reorganization and Citizen Empowerment Act § 13.

B. Village Law Article 18

The following sections of Village Law Article 18, which governed the procedures for consolidating villages, are deemed repealed as of March 21, 2010:

- Village Law § 18-1806,
- Village Law § 18-1808,
- Village Law § 18-1810,
- Village Law § 18-1812,
- Village Law § 18-1814,
- Village Law § 18-1816, and
- Village Law § 18-1818.

VIII. UNDERLYING ISSUES RELATED TO LOCAL GOVERNMENT RESTRUCTURING AND EFFICIENCY

The issue of local government dissolution is complicated. Most people do not fully understand what local governments do, how they are structured in New York, or how New York's State laws actually foster the large number of special districts and, therefore, "local governments" in New York. It is imperative that local government officials -- who understand these issues best -- educate the public, the media, and other state and local officials. Central to that education process is understanding that the village form of government is actually a means to enhance local government efficiency.

A. Why These Boundaries?

One of the reasons for the large number of "local government entities" in New York is the difficulty that cities and villages face when attempting to grow their boundaries to reflect increased population, commercial development, and demand for services. The local government consolidation and dissolution debate frequently focuses solely on the issues of local control and the services local governments provide. But these topics are inextricably tied to the geographic area which a local government serves. As one local government expert notes:

Frequently, local government boundaries were drawn to separate town and countryside. Whatever the justification for the separation, it has rarely proved to be stable: urban growth has insured that questions of annexation have been enduring while the debate as to whether urban should be separate from rural has been ongoing.⁶⁴

Unfortunately, New York's local government laws do not readily allow local government boundaries to be changed to reflect natural population growth and development. As the Office of the New York State Comptroller noted in its 2006 publication, *Outdated Municipal Structures*:

The vast majority of our cities, towns and villages were established prior to 1920. Overwhelming changes have occurred in the built environment, demographics and economy since that time, but there has been no corresponding adjustment in the underlying municipal structure or boundaries.⁶⁵

⁶⁴ Paddison, R. 2004. "Redrawing Local Boundaries: Deriving the Principles for Politically Just Procedures," (citing Hart, T. 2001, "Transport and the City." In R. Paddison, ed., *Handbook of Urban Studies*, 102-33. London: Sage). Maligrana, J. ed., *Redrawing Local Government Boundaries*, p. 20. UBC Press.

⁶⁵ p.1, the publication is available online at www.osc.state.ny.us/localgov/pubs/research/munistructures.pdf. As Geography Professor Ronan Paddison has noted, "in the cities of North America of the 1870s, it is estimated that as many as 87 % in the labour force either walked or cycled to their workplaces. By 1990, the car accounted for 95 % of the journeys to work in extensive urbanized regions in North America."⁶⁵ This change in how people travel spurred housing and commercial development during the 20th Century with little regard to the boundaries of the State's general purpose local governments. Unfortunately, the local government boundaries did not change during that time, but remained ossified, failing to grow organically to reflect the residential and commercial growth occurring outside of their boundaries.

The result is that many areas outside cities and villages that were once solely rural in nature have become partly or even wholly suburban and even urban. The Comptroller’s Office notes that, currently, 29 towns are characterized as urban centers and 172 are characterized as suburban, with the remaining 731 towns still characterized as rural.⁶⁶

The growth of development outside of cities and villages has resulted in many cities and villages providing services outside of their boundaries and the creation of districts to provide, acquire and/or finance services to those suburban and urban areas.

B. Serving the Needs of Urban/Suburban Communities

The reason the distinction between urban/suburban and rural is so important and relevant to the local government efficiency issue and the large number of special districts in the state is that urban and suburban areas generally require more services than their rural counterparts.

The United States Bureau of the Census defines as urban any location with a population of at least 2,500 and a population density of 1,000 people per square mile. While this definition can be helpful for demographic purposes, there are areas of New York with populations below 2,500 but relatively high population densities that have the same needs as municipalities many times larger; needs such as water, sewer, fire, police, sidewalks, street lighting, parks, parking, senior and youth services, and the list goes on. In those areas, the residents need, in most instances, and demand, in others, that those services be provided. Which raises the issue: if a local government entity cannot provide those services without creating districts, then perhaps the logical step is to either expand the boundaries of a nearby local government entity that can provides those services without having to create a district or to create a new local government entity for that area to provide services.

Proponents of village dissolution often contend that village government is superfluous, and thus dissolving a village will result in significant cost-savings. Such a contention is misleading. First, the “village” moniker causes considerable confusion, giving many people the impression that village governments are for smaller communities or provide non-essential services. In reality, village government is New York’s alternate form of city government. There are two ways to form a city-like government in New York: (1) to receive a city charter from the state, or (2) to incorporate as a village under the petition and referendum provisions under Village Law. The last city charter approved by the State Legislature was granted to the City of Rye in 1942. Since 1942, numerous communities have requested that the state grant them a city charter, but the Legislature has failed to do so.

To better understand this issue, it is helpful to examine the number of governments classified as cities in other highly populated states:

STATE	POPULATION	NUMBER OF CITIES
California	36,961,664	477
Texas	24,782,302	1,222
New York	19,541,453	62
Florida	18,537,969	377
Illinois	12,910,409	299
Ohio	11,542,645	251

⁶⁶ *Outdated Municipal Structures*, p.7.

What is striking about this chart is that New York, the third most populous state in the country, has only 62 “cities,” a fraction of the number of cities in the other most populous states. The reason for this disparity is that in New York State, only 62 local governments have been granted city charters by the State Legislature. The remaining 555 city-type governments (in functional terms) have been created as villages, the formation of which does not need legislative approval.

Thus, it is a misnomer that villages are an inherently unnecessary layer of government that duplicate the services provided by towns. To the contrary, the vast majority of villages are urban (i.e., densely populated) in nature and have different service cost-structures than the towns in which they are located. Moreover, most villages provide different kinds and higher levels of services than the towns. Villages are providing “city” services.

C. Democratic Representation

Another issue that must be addressed in the urban/suburban versus rural dichotomy is the democratic principle of having a population with like needs and shared interests being served by a local government with boundaries that match the urban/suburban demography. Such is the argument for cities and villages to be formed, not only to provide services to those urban and suburban areas, but to represent their common interests, as compared to those of the residents of the rural area surrounding them. Having urban/suburban areas share a local government entity with rural communities can make it very difficult for the local government to respond to and represent the diverse needs of its constituents. Also, the merging of disparate governments and their constituencies may very well lead to a local government entity dominated by representatives of the urban/suburban area to the detriment of the residents of the rural area, or vice-versa.

D. Administrative Concerns and Accountability

The argument that urban/suburban areas are best served by cities and villages is not to argue that every continuous urban/suburban area should be a monolithic city or village. Democratic principles may warrant that multiple cities and villages abut each other. Moreover, when determining optimal municipal boundaries, local government officials should consider geographic features, governance issues, the economy, service delivery functions, administrative ease, and the responsiveness of the local governments to their constituents’ needs. The nature of services being provided, the distance and cost-effectiveness of providing those services, and the ability to control land uses are also factors that must be considered when assessing the rationale for determining to whom and how those services are provided and on which residents and properties a local government imposes land use and other regulations.

E. Problems with New York’s Annexation Laws

While there are many benefits of having one city or village provide services to urban and suburban areas instead of multiple districts, New York’s annexation laws are employed relatively infrequently to grow the boundaries of New York’s cities and villages. The reason that annexation is seldom used is that New York’s annexation law has three substantial procedural impediments that even the most logical, well-reasoned, and economically beneficial annexation has to overcome: (1) the annexation may only be commenced by the residents or property owners of the territory to be annexed filing a petition; (2) governing boards of both the local government from which and to which the property is being annexed must approve it; and (3) then a majority of the residents in the territory, if any, must vote to approve it.

Frequently, the local governing boards from which the territory is to be annexed oppose the annexation because it will negatively impact their property taxes. In addition, residents and property owners frequently object to annexation into villages because they will still have to pay a portion of the town taxes along with village taxes. Thus, New York’s Annexation Law has been and, until it is revised, will continue to be a major issue in, and obstacle to maximizing local government efficiency.