

COLLABORATIONS:

Legal Considerations for Nonprofits Considering Collaboration, Alliances, Joint Ventures, and Mergers



**MICHIGAN
COMMUNITY
RESOURCES**

This resource offers considerations 501(c)(3) nonprofit organizations should take into account before collaborating with other organizations.

Introduction

Nonprofit organizations across the country are experiencing a decline in funding. Many nonprofits have started to consider new ways to operate and accomplish their organizational missions. One approach is to find new ways to work with other organizations to manage programs and share resources.

Why Do Most Organizations Decide to Work Together?

The most common reasons nonprofit organizations consider strategic restructuring are related to financial considerations. An organization may need to work with other groups to receive funding. Organizations that join together often have increased success obtaining funding because they are not competing with each other to obtain limited resources. Working with another organization can reduce the costs associated with programming for both organizations.

What is Strategic Restructuring?

Strategic restructuring occurs when two or more nonprofit organizations that have something in common work together to better serve their target population. Examples of shared commonalities include: (1) serving the same geographic community, (2) serving the same target population (i.e. abused women), and (3) having the same program goals (i.e. providing affordable housing).

What Are The Most Common Ways That Nonprofits Work Together?

The most common types of strategic relationships are: (1) Collaborations; (2) Alliances; (3) Joint Ventures; and (4) Mergers and Consolidations. The various restructuring options have different advantages and disadvantages.

I. COLLABORATIONS

Collaborations involve agreements to work with other organizations. Collaborations can involve the following:

- Information sharing,
- Sharing administrative resources
- Joint planning of programs, and
- Joint purchasing of goods and professional services.

The organizations have the freedom to determine the purpose of the collaboration and how it will operate. Collaborations provide organizations with a high degree of autonomy, but do not involve any permanent organizational changes. Individual organizations

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maintain decision making authority over the operation of their organizations. The decision to collaborate does not require a formal agreement. However, there may be situations when the organizations will want to sign an agreement—often called a “memorandum of understanding”—specifying the terms of the collaboration.

How can an attorney provide assistance to organizations forming collaborations?

If the collaboration involves the sharing of significant resources, the organizations might want to have an attorney review or prepare the memorandum of understanding.

II. ALLIANCES

Alliances with other organizations involve a commitment to share or transfer decision-making power. An alliance involves a formal agreement between two organizations, but does not require a change to either organization’s corporate structure. There are at least two types of alliances that nonprofits might consider: administrative consolidations and joint programming.

Administrative consolidation can involve sharing human resource functions, information technology functions, or other professional services. Sharing administrative resources may increase the administrative efficiency of the organizations.

Joint programming enables the organizations to jointly launch and manage programs to further the missions and goals of the participating organizations. Through an alliance, organizations may make joint applications for grants as part of launching a program.

How can an attorney provide assistance to organizations forming alliances?

An attorney can prepare a formal agreement between the organizations which provides terms for how administrative services will be shared and how joint programming will be managed and financed.

III. JOINT VENTURES

A joint venture is a cooperative arrangement between organizations. A joint venture can be formed to complete one project or it can function as a continuing relationship. Joint ventures often require the formation of a new corporate entity. The formation of a new corporate entity decreases the amount of autonomy that each organization is able to maintain over the joint venture. The organizations will have to determine the leadership for the joint venture. This might result in a permanent change in the leadership of the individual organizations, if existing board members are requested to join the board of the joint venture entity. In a typical joint venture, each organization contributes assets and shares the risks associated with the joint venture.

How can an attorney provide assistance to organizations forming joint ventures?

1. An attorney can provide legal advice to determine if a joint venture requires the formation of a new corporate entity.
2. An attorney can review contracts with government agencies, funding sources and corporate documents to determine if a third party must approve the joint venture.

IV. MERGERS AND CONSOLIDATIONS

A merger occurs when two corporations join together to form one corporation. In a merger, only one of the two corporations survives, often with changes to its governing documents to reflect the merger; the other corporation automatically ceases to exist as a legal entity. Consolidations occur when two or more nonprofit organizations combine into a new corporate entity formed to represent the union of the organizations. In a

consolidation, only the new corporation survives; all of the original combining corporations cease to exist. Mergers and consolidations are the most complex form of strategic restructuring, because they require permanent changes to all organizations involved. These changes occur to the structure of organizations and the organization’s leadership. In a merger or consolidation the organization that survives following the transaction assumes the liabilities and assets of the constituent organizations.

How can an attorney provide assistance to organizations forming a merger or a consolidation?

1. Organizations should obtain legal advice to determine if there are legal reasons why the organizations should not merge or consolidate.
2. An attorney can review contracts with government agencies, funding sources and corporate documents to determine if a third party must approve the merger or consolidation.
3. Once the organizations decide to merge or consolidate an attorney should be hired to facilitate the organizational change. The attorney can provide advice and assistance on numerous transactions which are necessary to complete the merger, such as the following:
 - Preparation of the legal documents required for the merger or consolidation;
 - Changes to the governing board for the surviving organization;
 - Amendments to the surviving organization’s governing documents (Articles of Incorporation and Bylaws); or
 - The creation of a new corporate entity in a consolidation.

COLLABORATION	ALLIANCE	MERGER
<p>Purpose:</p> <ul style="list-style-type: none"> • Information sharing • Joint purchasing • Shared leadership development • Exchange of services <p>Characteristics:</p> <ul style="list-style-type: none"> • No permanent organizational changes • Individual organizations maintain decision making authority <p>Potential Legal Needs:</p> <ul style="list-style-type: none"> • Memoranda of understanding between organizations 	<p>Purpose:</p> <ul style="list-style-type: none"> • Jointly manage and launch programs • Joint applications for grants <p>Characteristics:</p> <ul style="list-style-type: none"> • Shared decision making • No permanent organizational changes <p>Potential Legal Needs:</p> <ul style="list-style-type: none"> • Contractual agreements 	<p>Purpose:</p> <ul style="list-style-type: none"> • Information sharing • Joint purchasing • Shared leadership development • Exchange of services <p>Characteristics:</p> <ul style="list-style-type: none"> • Permanent legal changes • Termination of non-surviving organizations <p>Potential Legal Needs:</p> <ul style="list-style-type: none"> • Corporate formation

Sources

Amelia Kohm, What happens when nonprofits consolidate (either partially or all the way)?, 5/1/02 Nonprofit World 24.

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Marion R. Fremont-Smith, A "How-To" for Joint Ventures, available at http://www.nationalcne.org/papers/joint_ventures_howto.htm (last visited July 20, 2006).

Nonprofit Sector Research Fund, Working Together Nonprofit Collaborations, Alliances, and Integrations Improve Performance and Advance Missions, available at http://www.nonprofitresearch.org/usr_doc/48553.pdf. (last visited July 20, 2006).

Additional Available Resources

- Michigan Nonprofit Association: www.mnaonline.org
- La Piana Associates, Inc.: www.lapiana.org

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Readers should not act upon this information without seeking professional counsel. Individual circumstances or other factors might affect the applicability of this information.

Nonprofit organizations are encouraged to contact Michigan Community Resources for specific legal assistance. For more information, please visit www.mi-community.org.