

Merging Nonprofit Organizations

A look at accounting due diligence issues for considering nonprofit mergers.

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A Merger – Who Us??

- What is the best strategy for success in achieving your mission?
- Sometimes the answer is a merger.

A Merger Is Not Always Caused by Distress (financial or otherwise)

- There may be duplicative services offered in the community.
- They may want to combine services to the same constituents (integrate services).
- They may need to merge to take advantage of new technologies rather than incurring the cost twice.
- Donors may wonder why they are contributing to both organizations.
- There may be a chapter close enough in geographic proximity to house much of the office related costs.
- Others???

Distressed Mergers

- Major loss of revenue source or funder.
- The board is not able to attract new board members.
- Legitimacy of the organization is brought into question.

The Board's Role

- A merger is a clear governance role and the board must be engaged and lead this process as they will be the ones making the decision to merge or not.
- They need to weigh the potential risks of a merger against the benefit perceived.
- They need to represent the public's interest in the organization they are governing.
- They need to determine if the organization is in need of collaboration or a merger.

Government Agencies Role

- IRS must decide if the newly merged organization is exempt from income tax.
- State's Attorney General and Secretary of State need to review and approve the terms of the merger.

Do you Need to Identify a Potential Partner?

- This is a strategic decision – consider the following:
 - Reputation
 - Mission and Values aligned
 - Financial Condition

Begin Negotiations

- First have the board vote to document the consideration of a merger.
- Form a joint merger committee which has board and management of both organizations.
- Keep minutes, report back to your board.
- Consider hiring an experienced facilitator to keep you on track.
- Break the ice, give the history of the organizations and what the public seeks to gain through a merger.
- Confidentiality Agreements should be signed.

Dealing with Rumors

- Once negotiations begin –communicate timely to all concerned including staff, donors and the people served by the organizations.
- Understand the concerns of the constituents and address those as soon as possible without compromising the confidentiality of the process.
- If negotiations break down, be respectful and issue a joint statement.

Due Diligence

- Obtain articles of incorporation and bylaws.
- Obtain audits and tax returns – for the last 3-5 years.
- Listing of fixed assets and estimated useful life.
- Obtain a current unaudited financial statement.
- Obtain copies of the bank and investment statements.

Due Diligence Continued...

- Obtain a current list of receivables.
- Obtain a listing of pledges receivable.
- Obtain a listing of insurance coverage in place.
- Obtain a current list of payables.
- Obtain a list of investments and the investment policy and understand the valuation process if the investments are not traded on an active market.

Due Diligence Continued...

- Understand the limitations on the use of funds – permanent and temporarily restricted funds.
- Listing of any commitments such as leases or grants.
- Obtain all employment contracts.
- Obtain a list of active employees and the related salary schedule.
- Obtain a copy of any collective bargaining agreements.

Due Diligence Continued...

- Obtain a copy of the personnel handbook with related policies and benefits.
- Obtain a history of workers' compensation claims.
- Obtain vacation accruals.
- Obtain a list of litigation outstanding against the organization.
- Obtain a list of legal judgments in the past.

Due Diligence Continued...

- Obtain copies any loans outstanding.
- Obtain deferred compensation arrangements.
- Obtain a copy of the pension plan.
- Obtain a list of any regulatory audits and their outcomes over the past 3 years.
- Obtain a list of any outstanding issues with regulatory parties.

Due Diligence Continued...

- Obtain the Board and Executive Committee minutes for the last year or so.
- Obtain a copy of licenses and permits.
- Obtain a copy of the current approved budget.
- Other

Due Diligence Interviews and Other

- Executive director
- Major donors
- Program directors
- CFO
- Background checks of key people

The Tough Stuff

- Do you dissolve both organizations or is there a surviving entity? – LEGAL COUNSEL
- What will the name be of the new organization or surviving entity?
- How many board members will there be and who will be on the board?
- Who will be the chief executive?
- What about the staff – are they all needed?

The Details----of Making it Happen ---

- Merger Agreement submitted to Attorney General.
- Need for application for new Entity?
- Merging the donor database.
- Final audits and tax returns.
- Employee transfers to payroll, health, pension and other benefits.

The Details----of Making it Happen Continued...

- Donors that named your organization in their trust or will.
- New chart of accounts.
- Transferring the assets and the liabilities.
- Disposition of old entity.

The Details----of Making it Happen Continued...

- Properly recording restrictions that are transferred.
- Understand the burden on your staff during this transition.
- Often temporary staffing costs are necessary in this transition period.
- Depending on the size expect the transition to take from 6 months to 2 years.

Budgeting for a Merger ---Try to Raise Funds To Cover such Costs

- Attorney
- Facilitator
- Due Diligence
- Meeting expenses
- Final reporting of tax returns and audits

Budgeting for a Merger, Continued...

- Relocation fees.
- Potential logo change.
- Changes needed in Collateral Material – addresses and other.
- Communications to constituents – Advertising and PR.
- Compensation packages for employee reductions.

Budgeting for a Merger, Continued

- Benefits equalization.
- Incentive packages to hold on to key people through the transition.
- Temporary employee costs after the merger to do all that is needed.
- Dissolving a pension plan.

Announce and Celebrate the Merger

- Evaluate how well you achieved the goal of merging.
- Share the knowledge you gained!

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