

Building Blocks for a Successful Merger

By Brock R. Landry & Lisa M. Hix

Insights from experts who have handled many nonprofit mergers.

We've entered an era of unprecedented growth in nonprofit mergers. Many nonprofit organizations are eyeing current competitors as potential partners, and with good reason. In light of financial and other pressures, mergers often make good sense.

But mergers can fail if we lose sight of a central fact: Mergers don't occur between organizations. They occur between people.

Mergers fall apart for a variety of reasons: unexpected discoveries in the due diligence process, intractable issues that have been ignored, and differences in organizational cultures, among others. The following is a list of lessons learned from two attorneys who have handled a broad range of mergers between nonprofit associations.

ESTABLISH A CORE GROUP OF MERGER STEWARDS.

It's critical to create a group of volunteer and staff leaders to act as stewards of the merger. These stewards will have two roles:

- **Develop a merger plan**, and communicate it to the board, staff, and other stakeholders.

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- **Work through the inevitable issues** that arise in the due diligence process and as the groups integrate.

ASK THE HARD QUESTION EARLY: WHICH ORGANIZATION SURVIVES?

Strength of negotiation posture can be measured by an organization's contacts, financial assets, and depth of operational expertise. Deciding how to acknowledge this power disparity can be key to success in the long run.

Early on, the organizations should agree on whether one organization will be viewed as the “surviving” entity, or whether both organizations will combine as equals. Although most mergers are described as the marriage of equals, rarely is this the case.

ASK THE HARDER QUESTION: WHAT ARE THE ROLES OF THE RESPECTIVE STAFF AND OFFICERS?

Pinpoint the future roles of all staff members and officers from both organizations. Reach a clear understanding of what authority each will have. Such an understanding is central to a successful integration.

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JOINTLY CREATE A MERGER PLAN.

The merger stewards from each organization should work together to develop a plan that includes an outline of the combined governance structure, mission, core activities, and staffing. A critical component of this plan is identifying board appointment procedures and key leaders of the combined organization.

The merger plan should include sufficient detail on the hard issues. But it should be broad enough to allow for revision based on stakeholder input.

UNDERSTAND APPROVAL REQUIREMENTS AND DYNAMICS.

Once the core elements of the plan are in place, each organization should analyze its board approval requirements. These requirements will be outlined in the state corporate code provisions of the organization's state of incorporation, as well as each organization's governing documents, such as bylaws.

Early and active communication to the board is essential. So is a thorough understanding of permissible voting mechanisms.

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COORDINATE INTERNAL AND EXTERNAL COMMUNICATION.


Having a coordinated “sell” document for the staff and board of each organization is crucial. The two organizations should carefully coordinate release of information. Each should agree to give the other notice before making any announcements to the public. Nothing kills a merger faster than being blindsided by an unauthorized communication.

AGREE ON COORDINATED DUE DILIGENCE.

Merger timelines must allow for thorough due diligence. Organizations considering mergers face a multitude of legal, governance, financial, and administrative issues that must be carefully explored and coordinated.

Each organization needs time to look thoroughly into the other organization's workings. To facilitate this process, the parties should decide how extensive this examination will be and how long it will take.

CULTURE MATTERS.

Staff, volunteer leaders, and other stakeholders won't shift allegiances if the combined organization fails to bridge the cultures of both entities. Mergers work only when organizations take the necessary steps to build teamwork and a shared vision of the future. 

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This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to specific situations.



Put the Keys to Use

To build on the lessons outlined here, see these *Nonprofit World* articles (NonprofitWorld.org/members):

Grounded Visioning: A Quick Way to Create Shared Visions (Vol. 26, No. 4)

A Collaboration Checklist: Ten Questions for Success (Vol. 24, No. 1)

Organizational Culture: It's in the Walk, Not Just the Talk (Vol. 29, No. 6)

How Do Leaders of Nonprofit Partnerships Foster Collaboration? (Vol. 22, No. 3)

Eight Steps to Managing Conflict (Vol. 20, No. 4)

Keys to a Successful Nonprofit Merger (Vol. 10, No. 3)

The Promise and Pitfalls of Organizational Change (Vol. 28, No. 4)