

Mergers, Acquisitions and Affiliations



PRESENTED BY:
DON KRAMER, ESQ.
EDITOR, *NONPROFIT ISSUES*®
&
VIRGINIA SIKES, ESQ.
MONTGOMERY, MCCRACKEN

PROGRAM FACILITATOR:
TISH MOGAN
STANDARDS FOR EXCELLENCE DIRECTOR
PENNSYLVANIA ASSOCIATION OF NONPROFIT
ORGANIZATIONS



About PANO



PANO amplifies the impact of Pennsylvania's Community Benefit Sector through advocacy, collaboration, learning and support.

The Benefit of Membership

Education Programs *(including workshops, seminar and webinars on governance, fundraising, legal issues, grant writing accounting and budgeting)*

Advocacy

Leadership Development

Resource Library

Technical Assistance

Discounted Services

Standards for Excellence Program®



About *Nonprofit Issues*®



Don Kramer's An Electronic Newsletter of "Nonprofit Law You Need to Know"

NONPROFIT ISSUES

www.nonprofitissues.com

Nonprofit Issues® is a national Web newsletter of "Nonprofit Law You Need To Know." Written for nonprofit executives and their advisors, *Nonprofit Issues* provides clear, concise and comprehensive coverage of real issues that affect nonprofits every day.

Mergers, Acquisitions and Affiliations



- **The environment**
- **The Business model**
- **The Nonprofit model**

Why Do You Want to Merge?



- **Internal assessments**
- **Consideration before a crisis**
- **Willingness to be taken over**

Identifying Potential Partners



- Affiliates of national organizations
- Former collaborators
- Foundation recommendations
- Compatibility of mission
- Compatibility of culture
 - Catholic Health Care Directives
- The courting process

Getting Started



❖ Funding the Planning Process

❖ Foundations' role

Forms of “Merger”

Acquisition of Assets

- Purchase of assets
 - Conversion foundations
- Purchase out of bankruptcy
- Dissolution and transfer of assets

Forms of “Merger”

Acquisition of Control

- Acquisition of stock
- Acquisition of membership interests
- Substitution of members
- Substitution of directors

Forms of “Merger”

True Mergers

- Statutory Merger
 - Dissolution into survivor
 - Which is surviving entity?
- Consolidation into new entity
- New “Parent” organization
- Operating within a “system”

General Considerations

- Representations and warranties
- Property transfer taxes
- Attorney General, Court review
- Interstate mergers
- Status of future bequests & gifts
- IRS recognition of exemption
- An exit strategy

Due Diligence

- Letter of intent
- Confidentiality Agreement



Due Diligence

Organizational Documents

- Articles or Certificate of Incorporation
- Bylaws
- Approvals required
- Board minutes
- Conflict of interest policy declarations





Due Diligence

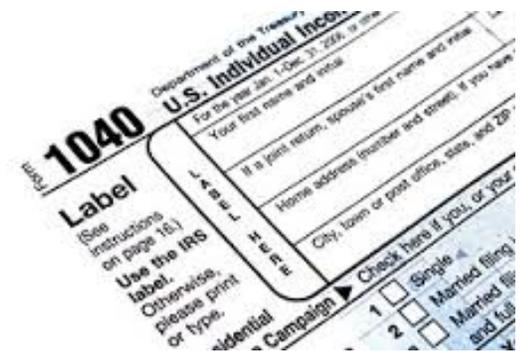
Financial Information

- Audited financials
- Interim financial reports and budget
- Form 990 tax returns
- Auditor's management letters
- Loan Agreements

Due Diligence

Federal and State Taxes

- Filed returns
- Withholding taxes



Due Diligence

- Past, pending or threatened litigation
- Insurance policies
- Personnel and benefits
 - Compatibility of compensation and benefits
- Property and leases
 - Condition, environmental issues

Due Diligence

Operating Licenses

- Accreditation
- Transferability

Due Diligence

- Grants and Contracts
 - Approval requirements
- Fundraising programs
 - Overlapping funders
- Subsidiaries and affiliates
- After transaction harmonization



Due Diligence

- Governance
- Name
- Executive leadership
- Preparing the community
- Strategic planning

Situation #1

.

Local Color, Inc.

Situation #2

.

Bright Horizons, Inc.

Situation #3

.

Make Us Well, Inc.

Situation #4

Heavenly Residence, Inc.

Questions?



Our Contact Information



Don Kramer, Esq.

Editor, *Nonprofit Issues*®

Montgomery McCracken

dkramer@mmwr.com

215-772-7277

www.nonprofitissues.com

Tish Mogan, PANO,

Standards for Excellence Officer

2040 Linglestown Road,

Suite 302

Harrisburg, PA 17110

717-236-8584

tish@pano.org |

www.pano.org