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Strengthening Your Charitable Mission Through Partnership & Collaboration

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As attorneys who work primarily with not-for-profit organizations, one challenge in charitable operations that comes up time and time again is how to further the charitable mission. Whether it's feeding hungry people, providing residential services for people with disabilities or offering art programs for local youth – the mission and its continued growth and development must remain paramount. Sometimes strengthening the mission means creating partnerships or collaborations with other not-for-profits to expand services, extend into other communities or reach new service recipients. Or, an affiliation or collaboration might assist a struggling agency by providing an infusion of cash, staff or other resources.

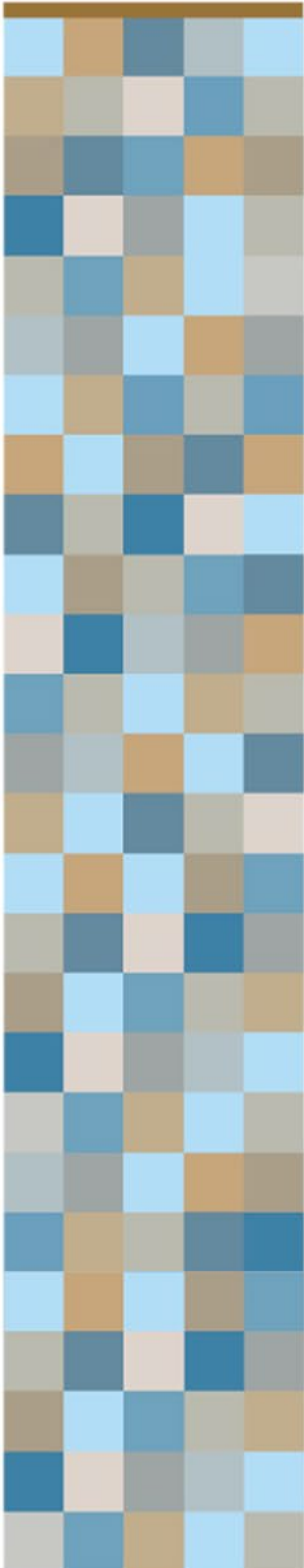
Why Collaborate?

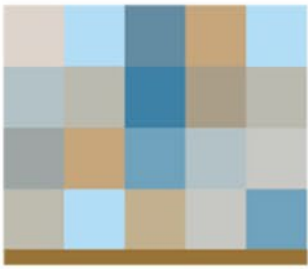
There are many reasons why not-for-profit organizations would seek to partner or collaborate. Informal partnerships or contractual relationships enhance the ability to take advantage of other expertise in the community, such as nursing or other professional services that are not available in-house. If one agency is experiencing operational or financial difficulties, partnerships or affiliations may be a much-needed lifeline to preserve and ensure the seamless continuation of essential services.

How to Structure Collaborations and Partnerships

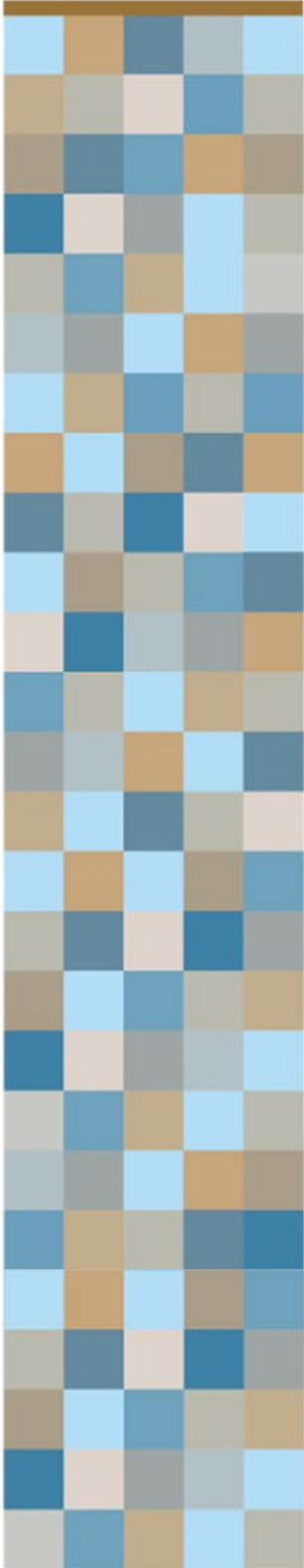
The most basic form of collaboration is a written memorandum of understanding or agreement that memorializes the parties' intent to work together on a program or project or for one agency to provide services to the other. Another common affiliation is a management services arrangement in which one entity is hired by the other to provide administrative services, such as financial services, billing, payroll, purchasing or HR services, for a set fee.

There are also partnerships which are more formal and involve a change of control on a corporate level. First, there is a member substitution, where corporation A becomes the sole corporate member of corporation B and B becomes a controlled affiliate of A. In this scenario, the sole corporate member has certain reserved powers with respect to the controlled affiliate, including the power to elect or remove the directors of the controlled organization, the sole power to approve fundamental transactions or approval of financial





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expenditures over a certain amount. A member substitution is customarily accomplished without government oversight or approval.

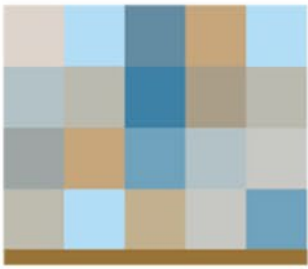
A second type of formal partnership is a corporate merger, where one entity merges into another entity and the merging entity ceases to exist. The surviving entity acquires all of the assets and assumes all the liabilities of the merging entity. Third, similar to a merger, but slightly different, is a consolidation, which is when corporation A and corporation B consolidate to form C, a new corporation. A consolidation may be preferable when two entities want equal footing with no inference that one entity is taking over the other. In this case, the new entity acquires the assets and assumes the liabilities of both of the previous entities. Both a merger and a consolidation are complex legal transactions that require approval of the New York State Attorney General and/or the New York State Supreme Court.

The final formal option for affiliation between two entities is dissolution and distribution of assets. In this situation, one entity will dissolve and distribute all of its remaining assets to a second entity with a similar mission to ensure that the mission of the dissolving entity is furthered. In this situation, the dissolving entity will adopt a plan of dissolution, payoff or discharge all of its liabilities and then distribute all remaining assets to the designated recipient. An asset dissolution also requires government approval.

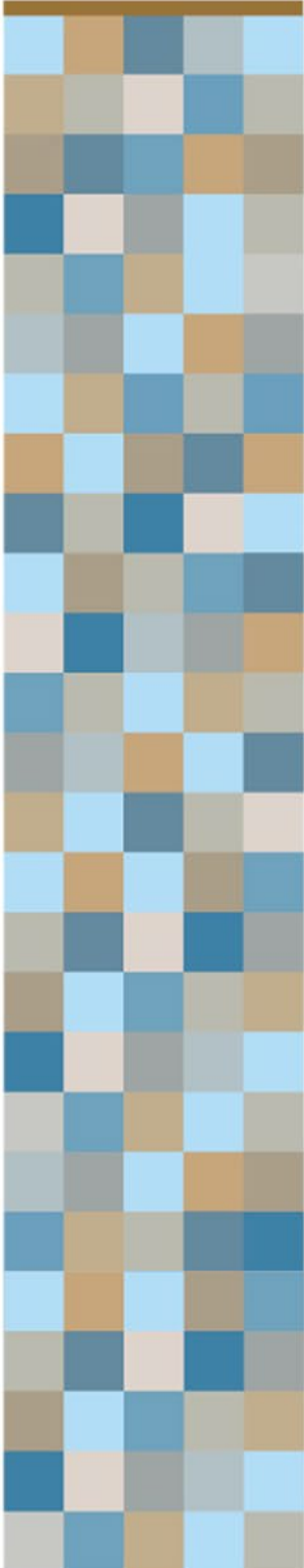
Diligence and Other Considerations

Depending on the activities of the organizations wishing to collaborate, the parties may need to confirm whether there are any federal, state or local regulatory requirements that must be met. For example, if the activities or services provided by the parties are regulated by state agencies, such as the NYS Office of Mental Health or the NYS Office for People with Developmental Disabilities, new operating certificates may need to be issued. There may be existing governmental liens or restrictions prohibiting changes in corporate structure or transfers of ownership of real or personal property, all of which may require government consent. At the local level, other approvals may be necessary depending on the type of collaboration, including building permits or environmental and zoning approvals.

Further, for existing lines of credit, loans, and bond financings, the parties should review relevant loan documents, including any guaranties, as there may be a need to provide notice to or obtain lender consent to the proposed collaboration. As an example, loan documents may contain provisions that prohibit transfers of property or additional liens or indebtedness.



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Similarly, real estate leases, major contracts and vendor agreements may include provisions prohibiting transfer of control of ownership or assignments of the agreement to another party. Therefore, all relevant agreements of the parties to a collaboration must be reviewed for any pertinent compliance and consents needed.

Collaborations among organizations can be an invaluable tool in expanding or enhancing charitable services or aiding a struggling program. In order to establish positive and effective partnerships, the key is to plan ahead, do your due diligence and consult with well-respected legal, financial and accounting professionals to ensure that your organization and its mission are well protected.

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