

# Nonprofit Affiliations, Collaborations, and Mergers: A How to Guide

A NonprofitWebAdvisor Webinar

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## OVERVIEW



**TRENDS, NATIONAL AND REGIONAL  
LANDSCAPE**

**REASONS TO SEEK OR AVOID  
COLLABORATION**

**CONTINUUM OF COLLABORATION**

**PROS, CONS, RISKS, AND EXAMPLES**

**ACCOUNTING, TAX, LIABILITY ISSUES**

**ATTORNEY GENERAL, ORPHANS COURT  
OVERSIGHT**

## TRENDS, LANDSCAPE

THE CONTRACTION IN THE NONPROFIT SECTOR IS COUPLED WITH SUPPORT FOR COLLABORATION



## HISTORICAL OVERVIEW – TRENDS

- Late 2008/early 2009: bankruptcies, dissolutions, and defaults, Bridgespan study
- End of 2009 to the present: upward trend of collaborations, affiliations, and combinations

## NATIONAL, REGIONAL SUPPORT

- [www.tides.org](http://www.tides.org)
- [www.nonprofitcenters.org](http://www.nonprofitcenters.org)
- <http://nonprofitfinancefund.org/northeast/new-england-catalyst-fund>

## REASONS FOR COLLABORATION

WHY AND WHEN SHOULD YOUR NONPROFIT CONSIDER SOME FORM OF COLLABORATION?



**FINANCIAL CRISIS, VULNERABILITY**

**STAGNATION**

**EMPLOYEE TURNOVER, FOUNDER DEPARTURE,  
RETENTION**

**OPPORTUNITY**

**STRATEGIC GROWTH**

**FUNDER “SUGGESTION”**

**Will the collaboration further  
the mission?**

## CONTINUUM OF COLLABORATION

NONPROFIT MERGERS AND ACQUISITIONS EXIST ALONG A CONTINUUM OF COLLABORATION WITH DIFFERING LEVELS OF COMMITMENT

### AFFILIATIONS

- 
- Referral networks
  - Management (shared) service organization subsidiaries

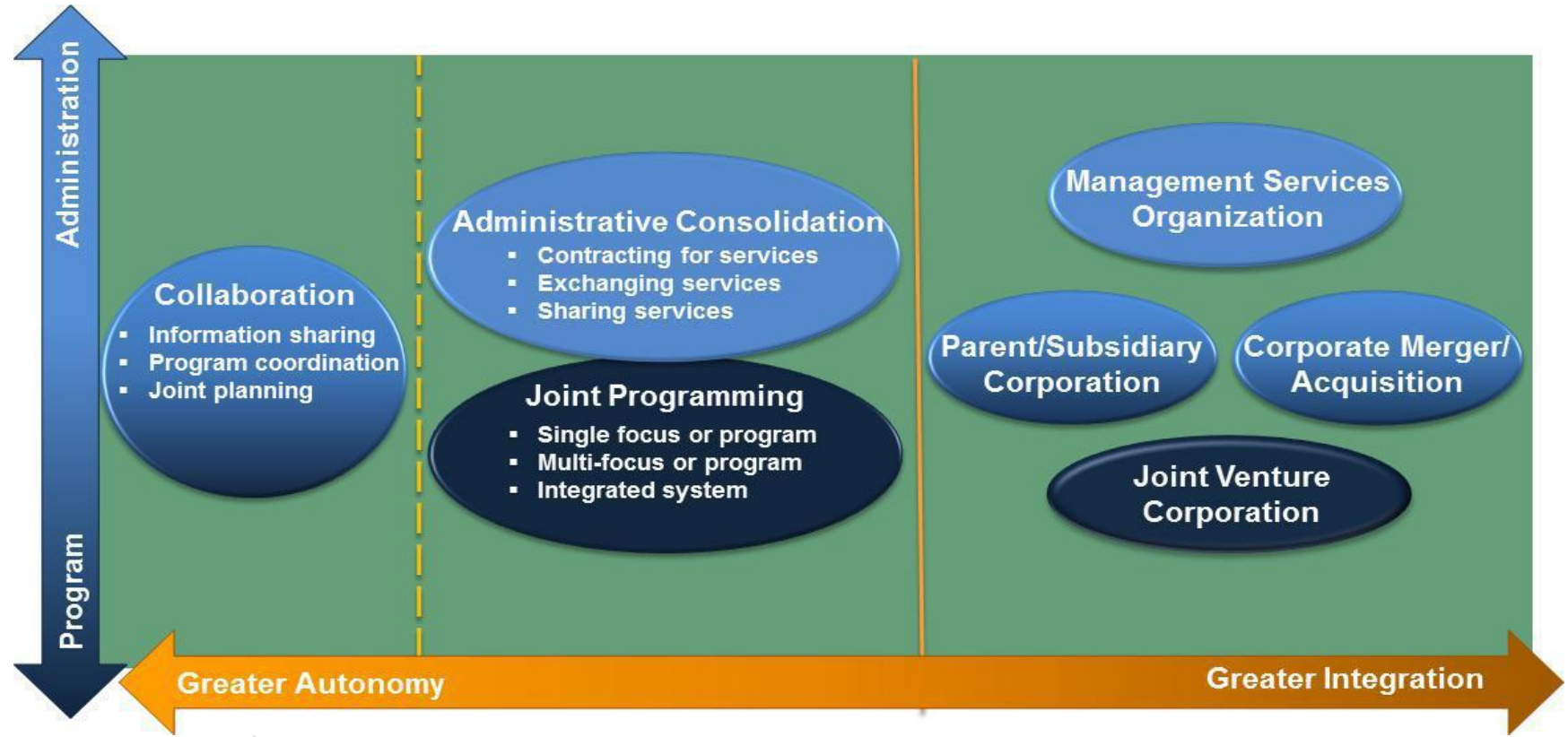
### JOINT VENTURES

- Ancillary

### MERGERS

- Traditional
- Sole member, “virtual”
- Asset transfer followed by dissolution

# LA PIANA'S PARTNERSHIP MATRIX



**Collaboration**

No permanent organizational commitment  
 Decision-making power remains w/ individual organizations

**Strategic Alliance**

Involves a commitment for the future  
 Decision-making power is shared or transferred  
 Is agreement-driven

**Corporate Integration**

Involves changes to corporate control and/or structure, including creation and/or dissolution of one or more organizations

**Strategic Restructuring**

## AFFILIATIONS - COLLABORATION

AFFILIATIONS ARE LIKE “DATING,” GIVING TWO ORGANIZATIONS THE OPPORTUNITY TO DETERMINE IF THEY ARE COMPATIBLE

### TYPES - TYPICALLY CONTRACTUAL

- Management, programming, referrals

### PRO

- Low degree of reputational risk and commitment, particularly with a favorable termination clause

### CON

- Negotiations and documentation take time and resources

### RISKS

- Unrelated business income tax (“UBIT”)
- Reputational issues, liability, mission creep
- Financial liability, vicarious liability for claims

### EXAMPLES

- PIFA
- Drake ballroom co-location of five theatre companies





## JOINT VENTURES – STRATEGIC ALLIANCE

JOINT VENTURES FALL IN THE MIDDLE GROUND, BETWEEN AFFILIATIONS AND MERGERS



### TWO TYPES

- Ancillary (shared service subsidiaries, MSO's) and “whole”

### PROS

- Shared risks
- Greater commitment (but not all) of resources

### CONS

- Shared benefits
- Legal issues if venture partner is for-profit
- Form 990 disclosure and audit risk
- Difficult to unwind

### RISKS

- UBIT, jeopardy to exempt status if not structured correctly
- (Potential) financial liability, vicarious liability for claims

## MERGERS - INTEGRATION

A MERGER IS LIKE A MARRIAGE BETWEEN TWO NONPROFIT ORGANIZATIONS



### THREE TYPES

- Traditional, asset transfer/dissolution, “virtual”

### PROS

- Marriage! For better or worse...

### CONS

- Difficult to build consensus
- Significant legal hurdles, time, and expense

### RISKS

- Mission, financial and vicarious liability

### EXAMPLE

- Barnes and de Mazia Foundations
- Drexel & Academy of Natural Sciences

# ACCOUNTING, TAX, LIABILITY ISSUES

## TAX, ACCOUNTING, AND LIABILITY ISSUES MAY LIMIT MERGER OPTIONS

### TAX ISSUES



- Scope (jeopardy) to tax-exempt status
- UBIT, tax-exempt bond restrictions

### ACCOUNTING ISSUES

- Restricted assets, liabilities may limit options
- Fiscal year; accounting methods
- Fair market valuation required

### LIABILITY CONCERNS

- Contingent liabilities - organization
- Fiduciary liability – individuals

### OTHER CONSIDERATIONS

- Donor relations
- PR, crisis management and communications

## REGULATORY OVERSIGHT

### THE ATTORNEY GENERAL AND ORPHANS COURTS HAVE OVERSIGHT OVER CHARITABLE MATTERS

#### OVERSIGHT



- Attorney General
  - “Parens patriae” authority
  - Focus on fiduciary duties
- Orphans Courts
  - Jurisdiction over charitable assets
  - Cy pres doctrine
- Nonprofit Corporation Law
  - Prohibits diversion of charitable assets; requires approval of fundamental changes

#### RECENT LITIGATION

- *In Re: Lemington Home for the Aged*

# THANK YOU

## Additional Resources: **NONPROFIT M&A**

### **Nonprofit Collaboration Database**

<http://collaboration.foundationcenter.org/search/searchGenerator.php>

### **Nonprofit Collaboration Prize**

<http://www.thecollaborationprize.org/>

**Bridgespan Study** – “Nonprofit Mergers and Acquisitions: More Than a Tool for Tough Times” by Alexander Cortez, William Foster and Katie Smith Milway:

<http://www.bridgespan.org/Nonprofit-M-and-A.aspx>

**Stanford Social Innovation review** – “Merging Wisely” by David La Piana:

<http://www.lapiana.org/research-publications/publications/articles/merging-wisely>

**The M Word: A Board Member’s Guide to Mergers How, Why & Why Not to Merge Nonprofit Organizations** By Alfredo Vergara-Lobo, Jan Masaoka & Sabrina L. Smith

**STRATEGIC RESTRUCTURING: Findings from a Study of Integrations and Alliances Among Nonprofit Social Service and Cultural Organizations in the United States** by Amelia Kohm, David La Piana, and Heather Gowdy

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