

# Beyond Mergers: Find the Right Structure for Your Combination



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**An association sometimes finds it desirable to combine or coordinate operations with another organization that has a similar mission and members. You might choose a merger, but other options may better meet your needs.**

There are many ways in which associations and other nonprofits can combine, affiliate, or otherwise come together. Some involve a complete integration of programs, activities, membership, donors, volunteer leadership, and staff, while others provide for varying degrees of separateness and autonomy. Sometimes one option can be a stepping stone to a fuller combination.

Often the decision to take one of these paths is based on legal, tax, or economic concerns. In other cases, power and politics dominate the decision-making process. Usually, it is a combination of all of these factors.

Each model has pros, cons, and considerations to take into account for any association that may be considering whether to join together with another organization.

## **Merger and Consolidation**

Nonprofit corporations, including associations, can completely integrate their programs, functions, and membership by merging or consolidating. When two nonprofit corporations merge, one entity legally becomes part of the other and dissolves. The surviving corporation takes title to all of the assets and assumes all of the liabilities of the other organization.

In a consolidation, unlike a merger, each of the organizations involved dissolves, and an entirely new nonprofit corporation is created to take on the programs, resources, and membership of the former entities. Although the outcome of a merger and a consolidation are the same—one entity with all the assets and liabilities of the two previous groups—many organizations prefer consolidation because it lends the perception that no organization has an advantage over the other.

Merger or consolidation of entities with similar exempt purposes may offer a number of benefits to the participating organizations and their members. The organizations may combine their assets, reduce costs by eliminating redundant administrative processes, and provide broader or improved services and resources to members and other constituents. Members who paid dues and fees to participate in what had been two separate organizations often can reduce the costs and time demands of participation by joining a single, combined organization. Finally, merger or consolidation may allow nonprofits serving the same field or industry to offer a wider array of educational programming, publications, advocacy, and other services to a larger constituency.

At the same time, it is possible to preserve some measure of autonomy for the two previously independent groups within the new corporation. Councils or divisions can be established to promote and protect the unique interests of the industry or professional subsets. Under this approach, the organization's bylaws can cede certain distinct areas of authority to these subordinate bodies. Balancing these levels of authority, finances, and management can be challenging, but the model is frequently used.

**“ Nonprofits may enter into limited strategic alliances that allow both entities to test the waters before binding themselves to a more involved or permanent arrangement. ”**

The law imposes stringent fiduciary responsibilities on the members of a nonprofit corporation's board of directors to ensure that any merger or consolidation is warranted, has been carefully considered, and is in the best interests of the organization. Directors and officers may be held personally and individually liable if they fail to act prudently and with due diligence.

## **Acquisition of Assets**

Another legal mechanism for "absorption" is the dissolution and distribution of assets of a target organization. This statutory procedure generally involves adopting a plan of dissolution and distribution of assets, satisfaction of outstanding liabilities, transfer of any remaining assets to another nonprofit entity, and finally dissolution.

While the dissolving entity must adhere to specific statutory procedures, this model is much less onerous than a merger or consolidation on the "successor" entity—the organization acquiring the dissolving entity's assets. Because the successor organization is merely absorbing the assets of another, a vote of the membership and accompanying state filings are typically not required. In addition, receiving a dissolving nonprofit corporation's assets typically does not affect the successor organization's tax-exempt status. However, as with merger or consolidation, a nonprofit organization must be cautious when taking on programs or activities to ensure that they support its stated tax-exempt purposes.

Asset transfer and dissolution may be strategically preferable when one organization is much smaller than the other. This type of transaction is particularly useful when an organization wishes to acquire the assets of another organization with significant future contingent liabilities. This is because the successor organization does not assume the liabilities of the dissolving corporation.

While a successor organization is typically shielded from its predecessor's debts and liabilities, an asset transfer always poses some risk of successor liability, particularly if adequate provision has not been made for pre-existing liabilities.

## Federation

A federation is generally an association of nonprofit associations. Federations are most often structured along regional lines (for example, a national nonprofit association whose members are state or local nonprofit associations). In some cases, a federation consists of special-interest groups that represent discrete segments of the industry or profession represented by the "umbrella" association.

The national or umbrella association's relationship with its affiliated associations generally is governed by written affiliation agreements. In the federation context, the national association is, for tax and liability purposes, a separate legal entity from its affiliated associations.

## Other Strategic Alliances

Merger, consolidation, acquisition, and the creation of a federation involve a substantial level of commitment—but organizations need not go so far in order to collaborate with one another. Nonprofits may enter into limited strategic alliances that allow both entities to test the waters before binding themselves to a more involved or permanent arrangement.

**Partial asset purchase or transfer.** A lesser alternative to dissolution and transfer of all of a nonprofit's assets is a limited asset purchase or transfer from one entity to another. This approach has obvious disadvantages for the ceding organization in terms of prestige and justification for the hand-off.

**Joint venture.** In this arrangement, two or more nonprofits lend their efforts, assets, and expertise to carry out a common purpose. The organizations involved may or may not develop a new entity (such as a limited liability company or a partnership) to implement the endeavor.

**Joint membership, programs, or activities.** Joint membership offerings generally allow individuals to join two organizations for a reduced fee. In addition, two or more organizations can come together to engage in joint programs or activities, such as conferences, tradeshow, and publications. This creates the synergies of operating jointly without the burdens and commitment of more-permanent combinations.

Which of these many options is the right one to pursue depends on the goals of the transaction and the potential ramifications for both groups. The underlying legal and tax issues are complex and nuanced, and a good understanding of them is essential to effectively weigh the pros and cons of the many alternatives available.

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