

Managing

Collaboration Risks:

*Partnering with Confidence
and Success*



Compliments of:

**Nonprofits' Insurance
Alliance of California**

P.O. Box 8507 • Santa Cruz, CA 95061-8507

and

**Alliance of Nonprofits
for Insurance, *Risk Retention Group***

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- Nonprofit Directors and Officers: Key facts about legal liability and insurance
- What Nonprofit Managers Need to Know About Lawsuits
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Please note: This booklet is designed to provide general information to help nonprofit managers better understand issues relating to collaboration risks. It does not provide legal advice of any kind.

This booklet was authored by Melanie L. Herman, Executive Director of the Nonprofit Risk Management Center, a nonprofit resource center serving nonprofits throughout the United States. The Center is located in Washington, DC. Check out their web site at www.nonprofitrisk.org.

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Introduction

Nonprofit organizations are in the collaboration business. In fact, it would be difficult to find a nonprofit that isn't involved in collaboration with another entity. From joint purchasing arrangements and office-sharing commitments with other nonprofits, to product endorsements, community events and event sponsorships with for-profit businesses, nonprofits throughout the country recognize that when two or more organizations come together for a common purpose, the organizations and the clients they serve stand to win.

Collaboration is something that may bring joy to the collaborators and new revenues to the nonprofit involved, while making everyone's lives more interesting and the mission of a nonprofit within closer reach. Yet collaborations can also spell disaster for a nonprofit. Failed collaborations can affect the ability of the nonprofit to operate effectively in the long run or exhaust the valuable resources of the nonprofit that are needed for mission-critical activities.

Collaborations involve risk—*the measure of the possibility that the future may be surprisingly different from what we expect*. Collaborations may be inherently risky and riskier, in fact, than other activities undertaken by a nonprofit. This may be true because each collaborator exercises little control over the actions of the other collaborator. Unlike an activity where the nonprofit exercises control and can direct its staff members to do and not to do certain things, collaboration requires a heightened level of trust in the other party to do what it has promised it will do. And communication is not only important when collaborating, it's vital. When things don't go as expected, disciplining your partner in a joint activity is unlikely to be as "easy" as disciplining a paid or volunteer staff member.

Another element that makes collaboration inherently risky is that most of them represent an attempt to do something new. They frequently involve a first time effort at addressing a challenge. Many collaborating organizations don't know each other very well—have not worked with each other in the past.

Part I

Collaboration: How and Why?

Collaboration can take many forms, from the most informal agreement to work together on a one-time project, to multi-year joint ventures or full-blown mergers that involve substantial resource shifts and changes in organizational structure. Some collaborations result in the disappearance of one or more collaborators and the formation of entirely new entities.

Three broad categories of a continuum of collaboration that your nonprofit may consider as it looks for ways to expand services, improve service delivery, or further pursue your charitable mission are briefly described. These categories were adapted with permission from information contained in Chapter 17: Collaborations and Partnerships, of the *Accounting Aid Society's Michigan Nonprofit Management Manual, 3rd Edition*. (For more information on this publication, visit www.accountingaidsociety.org).

The continuum of collaboration begins at the informal end with a catch-all category titled “informal collaboration.” At the middle of the continuum are activities that involve “strategic restructuring.” The principal distinction between these forms of collaboration is that strategic restructuring requires organizational change in order to facilitate or accommodate the collaboration. At the opposite end of the spectrum from informal collaboration is “mergers,” whereby the legal status of the organizations involved has changed as part of the collaboration. This publication focuses principally on the risks associated with informal collaboration and strategic restructuring activities. Mergers are discussed briefly so that you will be able to identify where their efforts fall along the continuum. It's important to remember that risk management activities are important in all collaborative environments. Although risk management may be increasingly critical in a formal merger, the failure to pay attention to threats and opportunities in even an informal collaboration could spell disaster.

A. Informal Collaboration

For many nonprofits, informal collaborations provide immediate and important rewards, such as access to information and other valuable resources, recognition by important constituencies, and the ability to offer services and assistance beyond the immediate means or scope of the nonprofit. Examples of information collaborations include information sharing, joint purchasing, sharing staff/co-locating and program coordination. Details follow.

- In an *Information Sharing* arrangement, two organizations might agree to share information so that the resources of each can reach the constituents of the other. A legal aid program might collaborate with a homeless shelter and domestic abuse shelter so that it can share information on the resources available from these providers with clients who require services in addition to legal aid. The collaboration may be as simple as maintaining a list of other providers in the community, and updating the list periodically. Or it may evolve into a program whereby clients of one service provider enjoy ready access to the others, and intake procedures are simplified to the benefit of the client.
- Two organizations might pursue a *Joint Purchasing* arrangement when each believes that its purchasing power will be greater when they work in partnership to solicit bids for products or services both need. For example, the social services providers in one community may collaborate to hire a public relations firm that will assist in developing a public service

announcement to air on local radio stations. The announcement benefits each provider by raising awareness about the services available from the organizations, and the cost is shared amongst the providers, making the campaign affordable to each.

- Another example of collaboration at the informal end of the spectrum is when small and mid-sized organizations *Share Staff* or *Co-locate* their offices. Under such an arrangement, the collaborating organizations might be able to afford “shares” of state-of-the-art equipment, and under the arrangement each will enjoy access to staff specialists that would otherwise be out of reach to the organizations if operating independently. Certain equipment, such as photocopiers and high-speed scanners may be desirable but too expensive for one organization. Certain positions, such as graphic designer, MIS director, human resources manager and risk manager, may be vital to an organization, but only needed on a part-time basis. Staff sharing can be an effective solution to this dilemma. Or a nonprofit, such as a youth program, may enter into agreements with a local government that enable the nonprofit to operate out of government owned facilities, such as community centers. Without these collaborations, the nonprofit’s services would be restricted to its headquarters. Under these collaborations, the nonprofit can deliver services from several locations throughout the diverse community, nearer to residents who want to use the nonprofit’s services.
- *Program Coordination* is a form of collaboration that may take a range of forms, from two nonprofits working together to refer prospective clients to the other’s services, to the joint pursuit of funding and joint delivery of programs. For example, a domestic violence center may invite staff attorneys from the community legal aid’s or bar association’s pro bono program to host an onsite legal clinic at the center one day per month.

B. Strategic Restructuring

Sometimes working with another entity involves more than simply sharing resources or information. From time to time a partnership may require that each organization make changes in the way it operates to accommodate the requirements of the collaboration. Following are two examples of strategic restructuring: joint ventures, and confederations.

- *Joint Venture* – The term ‘joint venture’ most often refers to a one-time partnership whereby two entities join together, assuming shared responsibility for the success or failure of the undertaking. A joint venture may be limited to a project or by a time frame.
- *Confederation* – When several organizations collaborate on a project without relinquishing their legal status or independence, they have formed a confederation.

C. Mergers

When two or more organizations discuss the possibility of combining, creating a new entity, or changing one entity to incorporate the other, they are contemplating a merger. The outcome of merger negotiations include:

- The dissolution of two or more groups after these groups transfer their assets, liabilities and programs to a new entity;
- The concurrent expansion of one organization and the dissolution of another. The dissolving organization transfers its assets and liabilities to the surviving entity; or
- The failure to reach agreement and the decision to continue operating the groups as independent, unrelated organizations.

If a new entity derives from a merger, the new entity’s name may incorporate the names of one or

more predecessor groups, or represent an entirely new label. Mergers lie at the most extreme end of the collaboration continuum for obvious reasons: they involve significant legal and organizational changes and generally result in the creation of a new or substantially different organization.

Part II

Collaboration Risk: When Partnerships Fail to Meet Your Expectations

Collaborations and partnerships are becoming increasingly popular among nonprofits as organizations seek creative ways to undertake new initiatives, stretch limited resources, and build community-wide support for a charitable mission and services. The most common mistake in developing these initiatives is the failure to fully consider the risks of the project or program.

A nonprofit may enter into a contractual arrangement with a government agency to provide services. There may be opportunities for a nonprofit to secure long-term reliable funding for projects within the scope of its mission. When a nonprofit provides services on behalf of a local government, it is typical for the government agency to request that the nonprofit add the government agency as an “Additional Insured” to the nonprofit’s insurance policy. The insurance should be provided by the entity that is providing the service and has control over how the service is being provided. If the service is being provided by the nonprofit on behalf of the government, it is appropriate for your coverage to protect your government funder, as well as your nonprofit.

Another opportunity for constructive partnerships lies with other nonprofit organizations. It makes a lot of sense to collaborate with complimentary organizations. In times of increased competition and shrinking budgets, collaborating with another organization can be a way of conserving resources and accessing an expanded market for products and services.

It’s important to remember that although your partner is another nonprofit organization, the same caveats for working with corporations and governments apply. It’s just as important to proceed carefully and diligently. When two organizations, with different cultures, histories and perspectives come together to accomplish something, a wide range of unexpected events can occur. Even groups that believe at the outset of the relationship that they are of “one mind,” often find the unique cultures of the groups emerge during the delivery of a collaborative effort. For example:

The motivation of one partner may change over time, and the partnership may no longer be in the best interest of the nonprofit.

A nonprofit enters into a collaboration with a municipal government whereby the government allows the nonprofit to use a small inner-city park for the nonprofit’s annual week-long day-camp. There is one small building on the park grounds with restrooms, office space, and a small community room. As awareness about the day-camp increases, the number of enrolled campers surpasses the nonprofit’s original projections. The park is large enough to accommodate the program on sunny days, but when the weather fails to cooperate with the camp schedule, the small community room doesn’t provide enough room for activities that will hold the interest of the young campers. Although it’s hard to pass up the “free rent” the city has offered, the nonprofit recognizes that it must move the program to an alternative location or

limit enrollment. It decides to move, and finds another site that is owned by another nonprofit and offered for a reasonable rental fee.

One or both organizations realize that they did not accurately project the amount of effort and resources the partnership would require. As a result, the partnership is consuming more resources than its benefits warrant.

Two nonprofits that provide training agree to collaborate and hold joint conferences in select locations across the country. Attendance for the conferences falls short of the collaborators' expectation, but participants give high marks to the training. During a review of the collaboration, the staff involved agrees that the amount of time required to coordinate training schedules, trainers and logistics far exceeds the benefit of holding the joint conferences.

One partner discovers something about the other that makes continued affiliation inappropriate or too risky.

A nonprofit partners with a corporation to develop a campaign that encourages local residents to undergo a test for a treatable form of cancer. The corporation's name will appear on all of the printed campaign materials as well as in the public service announcement. The nonprofit agrees to this publicity in exchange for the company's generous funding of the campaign. When the corporation is embroiled in a scandal alleging misrepresentation of income, the nonprofit decides that proceeding with the company as its partner will attract negative attention to the nonprofit and reduce the ultimate effectiveness of the public education campaign.

One partner fails to live up to the promises made to the other, putting in jeopardy the results sought by both.

Two nonprofits partner to sponsor a 5K run. The event is expected to raise \$10,000 and attract 500 runners. The nonprofits agree to split the net proceeds to support their charitable activities. Nonprofit A agrees to design and print 1,000 promotional flyers. Nonprofit B agrees to send its volunteers to businesses throughout the community to post the flyers. Both nonprofits agree to provide 10 volunteers each on the day of the 5K run. One week prior to the event, only 25 runners have registered. Nonprofit A learns that instead of visiting local businesses to obtain permission to post the flyers, Nonprofit B left the stack of flyers at the town's visitor's center. Rather than face embarrassment from low turnout, Nonprofit A decides to cancel the event.

The organizations involved in a collaborative effort discover they are not compatible, perhaps due to a culture clash or personality conflict involving representatives from each group.

A group of nonprofit performing arts organizations started a collaborative marketing effort. The immediate result of the collaboration was that all of the groups spent less to market tickets and ticket sales grew. Unfortunately, a serious dispute began about just who "owned" the patrons in the seats who were now donor prospects. The dispute resulted in a dissolving of the collaborative marketing program.

One or both partners feel that their "brand" has been lost or subsumed in the partnership.

Two nonprofits collaborate on a statewide conference for social workers. One organization is quite large and has the resources to produce eye-catching conference materials, including

banners and conference signs. The other nonprofit is comparatively small, and the organization's receptionist is responsible for graphic design and desktop publishing. At the conference the smaller nonprofit's materials and signs look amateurish next to the professional materials from the larger nonprofit. Several attendees ask whether the two organizations have merged, whether the smaller nonprofit has been "acquired" by the larger nonprofit, and whether the smaller organization is winding down its operations. The staff and board of the smaller nonprofit decide that while providing a meaningful educational opportunity, the joint conference left attendees with the false impression that the smaller organization was declining.

Assumptions made by one or both parties, such as attendance at an event, or community-support for the partnership, prove erroneous.

A government social-services agency contracts with a nonprofit to provide mentoring services to clients involved in the juvenile courts. When a mentor suffers an injury, the agency learns that the nonprofit hasn't purchased accident insurance and the organization doesn't have the funds needed to cover the participant's medical expenses.

Risk Management Checklist for Collaboration

Here are some general tips to keep in mind regardless of the type of organization you hope to partner with.

- ✓ *Confirm Compatibility* – Is your organization compatible with your intended partner? Will you violate any precedents or policy by partnering with the organization? For example, is it appropriate for a youth-serving agency to engage an alcohol or tobacco producer (or the subsidiary of one) as a lead sponsor of an educational program?
- ✓ *Understand Motivations* – The motivation for a nonprofit may be clear – to raise additional monies for a critical initiative. Your partner may be motivated by a number of factors, including some that may not be obvious, such as the desire to cleanse an image, or to target a new consumer group, such as young adults or members of an ethnic minority group.
- ✓ *Conduct Due Diligence* – It pays to conduct a minimal level of due diligence before formalizing a partnership. For example, is a business partner a subsidiary of a company that engages in activities your constituents may find objectionable? Does the company engage in unacceptable business practices, such as foreign labor, child labor, or inadequate attention to environmental safeguards?
- ✓ *Interpret the Message* – Carefully consider the message your constituents will receive when they learn of your partnership or collaboration. Will they be bombarded with advertising that contains your partner's logo? Will it appear that you have endorsed a company's or another nonprofit's products or services? Have you?
- ✓ *Clarify Expectations* – The most important ingredient to a successful partnership is clarity of expectations. Make certain you know and acknowledge what your partner hopes to get out of the endeavor. If a business partner expects an increase in sales to a specific constituency, determine what they expect you to do to accomplish that goal. If a government agency expects 100 percent enrollment, discuss what steps will be taken if some clients refuse to participate. Push for additional clarity beyond the simple altruistic or operational motives your contacts may describe.

- ✓ *Put it in Writing* – Any partnership or collaboration that spans a period of time, involves a substantial sum of money (from the nonprofit’s perspective), or where each partner has specific responsibilities, should be put in writing. A brief Memorandum of Understanding or Memorandum of Agreement provides an opportunity to outline expectations and responsibilities, and assign risk to those who will be responsible if something goes wrong.

Another common danger is that one or a few of the partners will end up doing most of the work, with some of the groups shirking their responsibilities or unable to meet their requirements. It’s unlikely that all participating organizations are able to make their respective efforts equal.

Risk Management Strategies for Successful Collaborations

With care, caution and due diligence, collaborative efforts with other organizations can be an effective way to conserve resources and advance your organization’s mission. Another way to think about risk management for collaborative efforts is to consider the steps that should be taken during the phases of the relationship. The three phases of collaboration and practical tips for each phase follow.

Phase I: Before You Partner

Risk management and common sense go hand in hand when a nonprofit is preparing to enter into a partnership with another organization. Here are some tips for getting it right before you leave the starting gate.

Ask and Answer Key Questions*

Before working out the details of a partnership, consider asking the following questions. Your answers will help guide you to a decision to proceed or to look elsewhere for a partner.

- *Why are you considering this collaboration?*
- *How did the idea to collaborate come about?*
- *Are you confident that there is an audience or demand for the outcome of the collaboration?*
- *Is the proposed collaboration consistent with your mission? Will the collaboration contribute to your mission—or simply generate funds for low-priority or unnecessary activities or services? Are the anticipated outcomes (including products, events, or services) consistent with your mission?*
- *Does any other group currently provide the product or service that will be developed through the collaboration? If yes, how will you compete?*
- *How will stakeholders (donors, service recipients, the public and others) likely perceive the collaboration, particularly in terms of your reputation? Will the collaboration alienate any of the organizations or supporters with whom you work currently?*
- *Will the collaboration cause an undue hardship on the organization, including the staff?*
- *How will you measure the success or failure of the collaboration?*
- *If the business partner goes out of business, could the program continue? If not, could it be disbanded without causing a serious negative impact on the nonprofit?*
- *What are the best and worst possible outcomes of the collaboration? Are you prepared for both?*
- *Will the partnership enable your nonprofit to deliver additional services or reach a wider audience?*
- *Is the proposed collaboration cost effective? Will the outcomes of the collaboration be worth the investment of time and resources? Do you have enough information about the strategy to evaluate whether it will be cost effective? (Have you done your homework?)*

- *Does the technique require a long-term investment of time or substantial investment of resources?*
- *What time and resource commitments are you making to this collaboration?*
- *What “return on investment” do you expect over what period of time? How will you evaluate success?*
- *Is the proposed collaboration ethical and above reproach?*

*These questions were adapted with permission from “Quizzing for Quality Services and Strategic Partners,” featured in *Association Management*, September 2002. *Association Management* is the monthly magazine of the American Society of Association Executives (For more information on the products and services available from ASAE, visit www.asaenet.org).

Work Out the Details

Decide “who” –

Before you proceed with a partnership, work with your partner organization to hammer out the details of your collaboration. Make certain that your discussions and negotiations determine:

- ✓ *Point person in each organization*
 - Who will do what, and by when;
 - Who will pay for expenses incurred to support the partnership; and
 - Who will be responsible if someone gets hurt.
- ✓ *Put your commitments in writing* – Discuss the value of a written Memorandum of Understanding that memorializes your commitments. Be wary of a partner who refuses to put partnership details in writing and insists that you proceed with a handshake. A sample Memorandum of Understanding is featured as Appendix A.
- ✓ *Don’t rush* – Take the time required to work out the details of your partnership and avoid rushing to move forward until all the parties to the agreement have had a chance to ask questions, pose concerns, and resolve differences of opinion. The most important issue is a shared vision of the outcomes of the partnership (the number of people who will attend the event, the distribution of net proceeds, etc.). When partners have divergent expectations in terms of the results, it’s a recipe for discord and the chance that both will be satisfied with the outcome is slim.
- ✓ *Get support from the top* – Partnerships with the best chances of success enjoy support from senior management at both organizations. To avoid a situation where management priorities are out of sync with the goals of your partnership, seek high-ranking support for the partnership and request that written commitments concerning the partnership are executed by senior officials at both partner organizations.
- ✓ *Resolve the downsides before they materialize* – While many nonprofits find it easy to discuss all the positive outcomes that will flow from a collaboration, it’s difficult to discuss how the relationship could sour or what the partners will do if things go awry. But it’s essential to have a discussion about possible misfires, accidents and harm before they occur. Both parties to the collaboration should discuss the following “what ifs” and make certain that the organizations are in agreement about what will occur in the event one of these downsides occurs:
 - What if someone gets hurt?
 - What if the event/program is under-subscribed?
 - Under what circumstances will we cancel? Is there a time deadline for doing so?

What if one partner decides not to continue with the partnership? May the other party “go it alone” and continue with the program or must the effort be abandoned if one partner backs out?

Phase II: While You're Working in Partnership

- ✓ *Act promptly* – While the partnership is ongoing you should act promptly if the key contact at your partner is unresponsive or appears unable to fulfill the requirements or duties identified in the written Memorandum of Agreement.
- ✓ *Communicate often and openly* – Make certain that there is a process that encourages representatives of the partners to communicate as often as is necessary to keep information flowing between the partners. Partners should be encouraged to call on each other if problems or concerns arise, if one partner wants to make a change in the program or pursue a different course from the one that the parties agreed to at the outset of the collaboration.
- ✓ *Fulfill your part of the bargain* – Make certain your point person supervises the activities your nonprofit agreed to provide. See that they are done to specification, on time and within budget. Have your point person work out any discrepancies with the point person for the other nonprofit to avoid delaying the project.

Phase III: After the Partnership Concludes

- ✓ *Review what transpired* – Before the dust settles on a collaborative effort, take some time to review the processes used, expected and unintentional outcomes, and the ups and downs of working with your partner. In some cases, the lead representatives from both collaborators will get together for this review. If the collaboration wasn't successful or there was a disagreement or falling out, you may want to undertake this review alone. As part of this review, consider asking:
 - Did we achieve the principal goal of the collaboration? To what degree (100 percent, 50 percent)?
 - What went especially well with the collaboration, and why (partners were open with each other, representatives got along well)?
 - Did anything go wrong? If so, what could we have done, if anything, to prevent it?
- ✓ *Review the written agreement* – When the partnership or activity in which the partners are involved has concluded, you should review the Memorandum of Agreement used for that collaboration and ask:
 - Were there other areas that we should have discussed and memorialized in writing before we began this?
 - If so, would they be applicable to other partnerships?
 - What modifications to our template Memorandum of Agreement would improve the value of this document in our next collaboration?
- ✓ *Review the potential for future collaboration* – Consider whether your nonprofit would entertain partnerships with this organization in the future. Consider asking the following questions:

- Under what circumstances would you partner with this group again?
- What would you do differently if collaborating with this group again?
- Are there similar groups that would be suitable partners for future collaborations? If yes, who are they? If not, why not?

Part III

Special Collaboration Issues

Collaborating With Insiders

Nonprofits often collaborate with “insiders,” such as board members and friends. Doing so may be necessary for small start-ups. Although they have more options and more developed networks of contacts, larger, more mature nonprofits may determine that collaborating with insiders is in the best interests of the nonprofit. For example, a board member or relative of a staff member may have special or unique skills the nonprofit requires, and be willing to offer these skills at a reduced price to the nonprofit.

Or a board member or donor may offer his or her home as a site for the nonprofit’s upcoming fund-raiser. The reasons to collaborate with insiders include:

- ✓ You’re most comfortable working with someone or an organization you know—particularly when the project is of great importance or special significance.
- ✓ You’re able to obtain services, support or assistance at a lower than market price.
- ✓ There is no steep learning curve when you work with an insider—your partner is familiar with the organization and won’t need time to understand the culture, decision-making process or mission of the organization.

Risk Management Strategies for Familiar Collaborations

When collaborating with insiders, it’s important to consider the following risk management precautions:

- ✓ Select key contacts from each organization that pose the most limited conflict of interest. For example, if Nonprofit A and B are collaborating, and the president of Nonprofit A is the board chair of Nonprofit B, then someone other than the president of Nonprofit A should be the key contact from that group. Otherwise, Nonprofit B may feel undue pressure to please Nonprofit A and not forcefully advance the mission of Nonprofit B.
- ✓ Don’t rely on a longstanding relationship and good feelings and forgo a written agreement memorializing the partnership. When you’re comfortable with a potential partner, there’s a tendency to want to skip the formal process and move straight into implementation. This is generally unwise. A written agreement helps both parties stay on course and live up to their commitments.
- ✓ Settle differences promptly. If something goes awry (missed deadline, contention), stop action and clear the air. Petty squabbles could develop into a ruined relationship. With insider collaborations, there is more at stake than the one-time project or event. You risk

offending or, at worse, severing a long-term relationship if disagreements aren't aired and a mutually agreeable conclusion found.

Make sure the deal is in the best interest of the nonprofit—obtain approval from parties independent of the key players.

Business–Nonprofit Collaborations

Business–nonprofit collaborations can yield valuable dividends for a nonprofit. But even the best thought out collaboration can encounter difficulties. It's important to keep in mind some of the potential negative consequences of entering into a partnership with a for-profit entity.

- *Wasted resources* – You could spend lots of money and time on an endeavor that doesn't produce the results you want.
- *Reduced donations* – Other funders may see a splashy corporate-funded educational or other program and believe that your organization no longer needs additional financial support.
- *Loss of organizational flexibility* – A significant part of your operation and a lot of energy may go into making a program work, leaving you with less time and fewer resources to focus on your mission.
- *Tainted partners* – Even with appropriate due diligence, there is always the risk that the affiliated company suffers a public relations nightmare. Your name could also get dragged through the mud.
- *Antithetical marketing* – The company's marketing strategy, product line, or reputation could be inconsistent with your message and mission.
- *Overwhelming success* – The program could become so successful that it becomes the dog and everything else you do is the tail. Are you a charity providing mentors for inner-city kids, or a sales force for an athletic apparel company?
- *Structural atrophy* – So much effort may be required to make this arrangement work that other departments, units, and programs start to suffer from neglect.

In early 2002, the American Association of Museums, a nearly century old association representing the entire scope of museums and paid or volunteer staff who work for museums, adopted "Guidelines for Museums on Developing and Managing Business Support." This document outlines a suggested approach to developing a policy on business support. Some of the key elements in the guidelines include avoiding conflicts of interest, proper use of a museum's name and logo, and the appropriate promotion of business relationships. The full guidelines can be found at www.aam-us.org, in the section titled Ethical Guidelines.

AAM advocates that its members develop written policies covering business support and obtain board approval of these policies. The policy should define the museum's goals for developing and managing "business support," as well as the relationship of such support to the museum's mission. Additional recommendations found in the document include:

- The importance of explaining how the organization will support its business relationships;
- A provision explaining how the organization will deal with conflicts of interest – such as when a business relationship is considered in which a member of the nonprofit's board has a personal interest;

- The need to determine whether an organization intends to exclude any business or category of business from consideration for collaboration because of the business's products and/or services;
- What restrictions apply with respect to the use of the organization's name and marks;
- What restrictions or conditions apply with respect to the manner in which the business may promote its relationship with the organization and whether the organization requires that its approval be obtained in advance;
- Thinking about the organization's standards for recognizing business supporters/partners;
- Whether the organization will entertain offers of exclusive partnerships or collaborations; and
- The commitment of the organization to develop and maintain documents about the relationship.

Insurance Considerations and Checklist

As mentioned in a prior section, many collaborators assume things about their partner that turn out to be untrue. The topic of insurance is a common area for such mistakes, and it's not unusual for one partner to assume that the other partner's insurance coverage will protect everyone involved in the collaboration. Don't let this happen to you. First, don't assume that your partner has you covered. Second, don't assume that your existing insurance program is adequate. Clarify. Investigate. Put your expectations and requirements in writing. The following checklist will help you get started identifying insurance considerations for your next collaboration.

- *Will the collaboration involve the rental or purchase of property?* If yes, determine who will be responsible for insuring this property.
- *Will automobiles be used in the delivery of services under the partnership? If yes, do the vehicle owners have insurance?* Keep in mind that "insurance follows the car" and non-owned vehicles owned by employees and volunteers may be used. This means that the vehicle owner's coverage responds first and the organization's non-owned auto insurance applies only after the individual's insurance is exhausted.
- *Does the collaboration agreement make the employment status of all persons working on the project clear?* State law mandates that employees be covered by workers' compensation coverage.
- *Does the collaboration agreement contain a mutual indemnification clause? Does each party agree to be responsible for their own negligence and indemnify the other for legal expenses and claims based on their negligence?*
- *Does the collaboration create any special committees or governing groups? Are the management acts (decisions) of these groups covered under one or both partners' directors and officers liability insurance?*
- *Will the partners rent facilities as part of the collaboration, or use each other's facilities?* Landlords often require that organizations that rent facilities provide proof of insurance coverage, so that the user pays for claims for liability or property damage.
- *Will the collaboration involve the use of equipment?* Make certain that property coverage is in place to pay for damage to property caused by any person exercising control over the equipment.

- *Does the collaboration involve the delivery of professional services (medical, counseling, legal services)?* If so, does one or both partners have appropriate professional liability insurance to cover claims alleging errors in the delivery of professional services?
- *Will the collaboration involve the collection and transportation of money?* If so, verify that these activities are covered under the appropriate crime insurance policy. Keep in mind that crime policies may only cover theft by employees of the insured.
- *Does the collaboration involve service delivery to vulnerable clients?* If so, will those services be provided on a one-to-one basis or otherwise unsupervised? Unsupervised or one-to-one service delivery to vulnerable clients (children, the elderly, or persons with disabilities) heightens the risk associated with the staff or volunteer position. As a result, a more rigorous screening process is in order, and the organization retaining these personnel should make certain that its insurance program includes coverage for allegations of sexual misconduct/abuse.
- *Does the written agreement indicate whether each partner has insurance coverage at a specified limit?* Remember that promises to indemnify are hollow unless backed by the ability to pay another party's legal costs. For most nonprofits, insurance backs the promises to pay. Here is an example of insurance requirements for a party agreeing to indemnify another:

Sample Insurance Requirements

1. Commercial General Liability policy in the amount of at least \$1 million combined single limit for each occurrence, written on an occurrence form;
2. Auto Liability policy including coverage for owned (if any), non-owned and hired vehicles in an amount not less than \$1 million.
3. Workers' Compensation Coverage covering all employees working on the collaboration and having statutory limits for each jurisdiction where the work under the collaboration is performed, and an Employer's Liability policy with at least the following limits: \$250,000 per accident and \$500,000 per disease.
4. Willingness to name [Name of Partner Nonprofit] as an Additional Insured on all applicable policies and provide valid Certificates of Insurance indicating coverage.

Drafting a Memorandum of Understanding

An effective Memorandum of Understanding (or MOU) prevents misunderstandings and disputes by clarifying the expectations of the partners. The process of developing an MOU is an instructive and potentially invaluable experience in partnering. You will learn how responsive your partner will be—are your calls returned promptly? Does your partner give the partnership the attention and seriousness it requires? You may also learn how your partner reacts when you disagree on an issue. In many cases, you will learn vital information such as:

- The corporate structure of your partner (don't assume!);
- Whether your partner has liability and other types of insurance;
- What specifically the partner is willing to promise (ambitious projections may dissipate as your partner commits to something realistic);
- What aspects of the project your partner is willing to be responsible for;
- How each organization will assess or evaluate the success of the project; and
- Your partner's overall commitment to the project.

The refusal to put anything in writing is a red flag and may be the sole reason not to proceed with the arrangement.

There are a number of elements that should be contained in a typical Memorandum of Understanding. Since each project and its partners are unique, the following suggestions are provided as an example. As with any contract, it's critical to obtain legal counsel before obligating your non-profit.

Overall Intent: Many MOUs begin with a brief description of the overall intent of the parties, such as

“Whereas the mission of We CARE is to provide hot meals to homeless persons living in the District of Columbia, and the mission of We DELIVER is to deliver food to homeless persons living in the District of Columbia, the organizations hereby agree to collaborate in developing an integrated food preparation and delivery system beginning September 1, 2003.”

The overall intent clause must accurately reflect what the parties are intending to do. Ulterior motives have no place in effective partnerships.

The Parties: The next clause in an MOU describes the parties to the agreement. It should be specific to indicate the types of organizations (“a nonprofit corporation headquartered in the District of Columbia”).

The Period: Specify a time period for the partnership.

Assignments/Responsibilities: This important section of the MOU describes the duties and responsibilities of each partner. It's generally more effective to describe each organization's responsibilities separately, beginning with the items that are an organization's sole responsibility. List each group's sole responsibilities, followed by a description of shared responsibilities, if any. In many cases, this section of the agreement will be the most detailed and lengthy. Clarifying responsibilities is the number one purpose of a written agreement.

Disclaimers: Many MOUs will contain one or more disclaimers, including one indicating that employees of Organization A are not to be considered employees, borrowed or otherwise, of Organization B and vice versa. It may also be worthwhile to disclaim what the partnership is not intended to do, guarantee, or create.

Financial Arrangements: A typical partnership will have financial implications. These should be spelled out in detail including which entity will pay for each item and when payment is due.

Risk Sharing: Another critical element of an MOU is a description of who will bear the risk of a mishap. What if something goes wrong? What if the partnership's activities result in injury, death or a financial loss? An important tenet of risk management is that an organization should never assume responsibility for something over which it doesn't have control. For example, a nonprofit renting a building to hold a dinner meeting shouldn't assume responsibility for the damage caused by a leaky roof. A formal MOU may include an indemnification provision, promising that Organization A will pay for losses suffered by or caused by Organization B. Ideally, indemnification provisions should be mutual in that each party will be responsible for its own negligent acts or omissions. Remember that an organization's agreement to indemnify your nonprofit without the financial resources (including insurance) to meet this responsibility is a hollow promise. So make certain your partner is not only willing but also able to pay for losses it causes. An “insurance requirements” section is one way to do this.

Insurance Requirements: This section indicates the insurance requirements that each organization places on the other. In some cases, one organization will require that its partner have certain insurance in place. If the parties have agreed to a mutual indemnification provision (see Risk Sharing, above), the insurance requirements should be bilateral. For example:

The parties to this agreement hereby agree that each will maintain insurance throughout the duration of the collaboration, that meets or exceeds the following:

- *Commercial General Liability policy in the amount of at least \$1 million combined single limit for each occurrence, written on an occurrence form;*
- *Auto Liability policy including coverage for owned (if any), non-owned and hired vehicles in an amount not less than \$1 million;*
- *Workers' Compensation Coverage covering all employees working on the collaboration and having statutory limits for each jurisdiction where the work under the collaboration is performed, and an Employers' Liability policy with at least the following limits: \$250,000 per accident and \$500,000 per disease.*

In addition, each party to this agreement will name the other party as an Additional Insured on all applicable policies and provide valid Certificates of Insurance indicating coverage.

Signatures: A representative from each partner with authority to bind their organizations contractually should sign the MOU. Each partner should retain a copy of the signed agreement.

Resources

We invite readers of this booklet to check out the materials listed below, which offer additional insights on successful collaborations.

“Guidelines for Museums on Developing and Managing Business Support,” American Association of Museums, www.aam-us.org. See the section titled “Ethical Guidelines.”

The Michigan Nonprofit Management Manual, Third Edition, The Accounting Aid Society, www.accountingaidsociety.org. See Chapter 17: Collaborations and Partnerships.

No Strings Attached: Managing the Risk of Fundraising and Collaboration, available from the Non-profit Risk Management Center, www.nonprofitrisk.org.

Dimensions of School/Community Collaboration: What It Takes To Make Collaboration Work, from the National Assembly. Visit: www.nassembly.org.

“Collaboration Strategies for Nonprofit Organizations,” by Maurice A. Selinger, III, Esq., www.curthax.com/articles/collab.html.

The Collaboration Challenge, by James E. Austin, John C. Whitehead, and Frances Hesselbein, Jossey-Bass Publishers. Available from www.amazon.com.