

# Winding Out or Down: Mergers & Dissolutions

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September 3, 2025

Scholz NONPROFIT LAW LLC

Prepared by Attorneys  
Melissa Scholz and West Foster  
Scholz Nonprofit Law

# Key Points for Today

## Mergers and Dissolutions

1. Current landscape: Why are you here today?
2. Potential Benefits
3. Key Concepts
4. Key Considerations
5. Process Overview: What it looks like
6. Early Decisions
7. Taking the First Step: Due Diligence 101
8. Q&A

**Note:** Scholz Nonprofit Law is sharing only general information in this presentation. The information shared and the content of these slides does not constitute legal advice. No attorney-client relationship is created by viewing or participating in this presentation.

# Current Landscape

Many factors in today's nonprofit environment are pushing organizations to consider winding down or consolidating:

1. Urgent funding issues
2. Long-term stability issues
  - a. Foreseeable loss of funding
  - b. Staffing concerns
  - c. Leadership turnover
3. Changing community needs
4. Turnover or evolution of programs creating new opportunities for partnership

# Potential Benefits

- **Stronger financial base and fundraising position.**  
Combining funding streams and sharing reserves reduces vulnerability to loss of any single grant. Larger organizations often appeal more to institutional funders seeking efficiency and scale.
- **Reduced overhead.**  
Consolidated administrative functions (HR, accounting, compliance), lowering fixed costs.
- **Improved staff capacity.**  
Sharing specialized staff (fundraising, finance, program evaluation) that can be expensive for each to employ alone.
- **Expanded reach and services.**  
Serve more people, cover a wider geography, or provide a broader set of programs under one umbrella.
- **Eliminate duplication.**  
Reduce competition for the same donors, grants, or audiences.
- **Unified brand and voice.**  
Clearer presence in the community and with funders, rather than multiple small players.

- **Merger:** legal process in which two corporations become a single corporation. Completed by filing articles of merger with the State corporations division. “Surviving” corporation assumes all property and liabilities of the non-surviving corporation(s).
- **Asset Transfer:** moving assets from one corporation to another corporation. “Assets” can include everything from buildings, to employees, programs, IP, contracts, etc. Allows for the carving up of certain property and liabilities during the consolidation of organizations.
- **Dissolution:** legal process for terminating the existence of a corporation. Dissolution occurs after an asset transfer or distribution.

## Key Concepts

- **Fiscal Sponsorship:** arrangement where a 501(c)(3) organization provides tax-exempt status, oversight, and admin support to a group or project that lacks its own tax exemption or provides “back office” services to existing org.
- **Bankruptcy:** Legal process that allows organizations that cannot pay their debts to either eliminate or restructure those debts under court supervision. Provides protection from creditors while creating a plan to repay, reduce, or discharge financial obligations. Relevant when an organization is trying to survive and protect key assets. Not a topic of this presentation.

## Key Concepts

**For most situations, some variation of merger, asset transfer, dissolution, or fiscal sponsor is appropriate.**

**Considerations for options and timeline include:**

- What is the funding runway?
- Payroll obligations and employment taxes?
- Debts, including mortgages? Outstanding contracts for which funds have already been received?
- Identifiable programs that you want to preserve or continue?
- Staff you want to retain or transition?
- Property to sell or transfer? Building? Equipment?
- Cash accounts? Endowments or other reserves?  
Restricted funds?
- Restrictions on distributions in governing documents?

**Key  
Considerations  
to Determine  
Best Option**

# Simplified Merger (or ATA) Process

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1. **Identify essential decision makers** (members v non-members; funders; other stakeholders)
2. **Form joint-committee with reps from each org** (does due-diligence and makes recs to boards)
3. **Due Diligence**
4. **Determine new governance structure** (board composition, ED selection, etc.)
5. **Identify and secure third-party approvals** (funders, lenders, contracts to assign, gov agencies)
6. **Hold conversations with key stakeholders** (funders, clients, members, partners)
7. **Prepare a proposed budget for surviving org for the combined orgs**
8. **Prepare an operational transition plan** (address accounting and employee benefits transition)
9. **Prepare and adopt plan of merger or ATA; prepare articles and bylaws of surviving org**
10. **Submit articles of merger to WDFI** (if just an Asset Transfer, not submitted to State; submit articles of dissolution)
11. **Clean up or wind-down** (can continue after merger is effective)

# Early Decisions

## Things to think about early on:

- Create small circle of confidentiality for early talks
- Approach to funders/other key stakeholders, public perception
- Personnel issues including which staff will be retained and roles; employee benefits, pay, and employment terms take time (and usually further along in process)
- Transfer of assets and liabilities
  - Inventory of programs and property
  - Transfer of contract rights
  - Any restrictions on use (including IP)
- How to handle licenses or other qualification issues
- Expectations regarding the non-surviving organization's Board's ongoing role in governance
- Keep insurance coverage in place until all wrapped up
- Timeline (time with end of fiscal year?)

# Taking the First Step: Due Diligence

## Due Diligence 101

### **Analysis of Debt:**

- Employment taxes
- Collateralized debts
- Personal guarantees
- Government loans
- Outstanding payables

### **Analysis of Obligations:**

- Contracts – prepaid?
- Employees
- Future commitments and unfilled grants

### **Analysis of Assets:**

- Cash on hand
- Account receivables
- Endowment funds
- Intellectual Property – transferable?
- Future contract & grant rights – transferable?
- Real estate or equipment
- Digital assets

# More Resources on our Website

Three 30-minute videos discussing the mergers, asset transfers and dissolutions in more detail

<https://scholznprofitlaw.com/resources/>

- **Video 1: Nonprofit Mergers & Dissolutions: Overview of Landscape and Timing** – lays out options for nonprofits who are considering winding down or combining operations with another organization, including mergers, asset transfers, and dissolutions.
- **Video 2 – Nonprofit Mergers & Dissolutions: Details on Options and Applicability** – focuses on the differences between a merger, asset transfer, and dissolution and which option may be the most appropriate for the circumstances.
- **Video 3 – Nonprofit Mergers & Dissolutions: Focus on Winding Down** – outlines the considerations and steps for a nonprofit winding down, including evaluating their assets, liabilities, and the steps toward dissolution.

See chart on next page for summary of key topics covered.

<p><b>Definition:</b> *Video 1 &amp; 2 (start)*</p>	<p>Two organizations combine into one entity, including all of its assets and liabilities; surviving entity is called the "surviving corporation"</p> <ul style="list-style-type: none"> <li>- Can use the names of one of the organizations or create a new name</li> </ul>	<p>Some (or all) of assets or liabilities from one entity are transferred to another entity</p> <ul style="list-style-type: none"> <li>- All or some programs can continue under the control of new entity, but those programs can maintain their old identity</li> <li>- After transfer, the transferring entity is dissolved permanently</li> </ul>	<p>Shutting down the organization with or without asset transfer</p> <ul style="list-style-type: none"> <li>- Liabilities are satisfied as much as possible</li> <li>- Any outstanding payments are collected</li> <li>- Property sold or transferred</li> <li>- Distribute assets to other nonprofits as prescribed by dissolution clause of organization's articles of incorporation</li> </ul>
<p><b>Legal Effect:</b> *Video 1 &amp; 2 &amp; 3*</p>	<p>State records will reflect the merger; easy paper trail to follow</p> <ul style="list-style-type: none"> <li>- Real estate transfers but update deed</li> <li>- All liabilities transfer, including unknown ones arising from past activities</li> </ul>	<p>Essentially a contract between the two parties, no record with the state</p> <ul style="list-style-type: none"> <li>- Real estate transfers per legal agreement; deed must be updated</li> <li>- Acceptance of liabilities can be limited to date of transfer but if taking over programs or certain assets, those liabilities will travel</li> </ul>	<p>Organization terminates existence as a corporation and any remaining assets are distributed to other 501c3s</p> <ul style="list-style-type: none"> <li>- Real estate must be transferred or sold</li> </ul>
<p><b>Programmatic Effect:</b> *Video 1 &amp; 2 &amp; 3 (start)*</p>	<p>All programs and activities of non-surviving entity become part of surviving entity to the extent agreed and budgeted, with same names or not (negotiated);</p> <ul style="list-style-type: none"> <li>- Confirm that grant is transferable under terms</li> </ul>	<p>Some or all programs and activities of non-surviving entity become part of surviving entity to the extent agreed and budgeted, with same names or not (negotiated);</p> <ul style="list-style-type: none"> <li>- Confirm that grant is transferable under terms</li> </ul>	<p>All programs and activities stop</p>
<p><b>Employee Effect:</b> *Video 1 &amp; 2 (end) &amp; 3 (start and end)*</p>	<p>Employees of non-surviving entity are terminated but can be immediately rehired by surviving entity (but not automatic)</p>	<p>Employees of non-surviving entity are terminated but can be immediately rehired by surviving entity if agreed upon in Asset Transfer Agreement</p>	<p>Employees terminated</p>
<p><b>Donation Effects:</b> *Video 1 (end) &amp; 2 (middle) &amp; 3*</p>	<p>All donations automatically transfer to surviving entity; bequests automatically become the property of surviving entity</p>	<p>Funds transferred as part of initial transfer agreement migrate with original restrictions; future donations do not automatically transfer but may be addressed in transfer agreement</p> <ul style="list-style-type: none"> <li>- Can be challenging for estate representative to identify successor organization on a bequest; communication should happen with known donors</li> </ul>	<p>Funds distributed upon dissolution must respect restrictions; no ability for future donations</p>

Thank You

Scholz NONPROFIT LAW<sup>LLC</sup>

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Melissa Auchard Scholz

West Foster

Scholz Nonprofit Law

[Melissa@scholznprofitlaw.com](mailto:Melissa@scholznprofitlaw.com)

[West@scholznprofitlaw.com](mailto:West@scholznprofitlaw.com)

[www.scholznprofitlaw.com](http://www.scholznprofitlaw.com)