



UPSET AND RESET: ASSOCIATION AFFILIATIONS AND MERGERS

Kellie L. Newton

Partner, Whiteford, Taylor & Preston, LLP

Marie Caputo

Principal, CliftonLarsonAllen



Whiteford|Taylor|Preston^{LLP}

Kellie Newton - Legal



Kellie Newton has more than 30 years of experience providing legal counsel and strategic guidance to nonprofit organizations. She is a member of Whiteford's Associations, Nonprofit and Political Organizations practice group, where she represents nonprofit organizations in all aspects of mergers, sales and other strategic combinations, including planning and closing of transactions and drafting and negotiation of all required documentation. She serves as a board member of Veritas Farms, Inc. and is a member of the Board of Trustees of Dickinson College, where she has served in several leadership positions. She is also Editor of Whiteford's Nonprofit Newsletter.

Marie Caputo - Accounting



Marie Caputo is a Principal with CLA (CliftonLarsonAllen) and has over 28 years of audit and accounting experience, specializing in providing services for associations, membership and nonprofit organizations. Marie is a nationally recognized expert in audit, accounting, tax and compliance issues facing these organizations including the compliance requirements that come with federal and global grant funding and the complexities of affiliations, mergers and acquisitions. She is a member of the firm's national nonprofit industry team. Marie is a board member and past chair of the Childrens Guild, board member of the Children's Guild DC Public Charter School, a member of the GWSCPA board, and Co-Chair of the MACPA's Not-for-Profit Committee.

Polling Question #1



What are you experiencing in your organization?

- Decline in members and/or revenue
- Desire to expand geographical footprint
- Desire to expand and enhance programming
- Competition for members and resources

Is a Combination Right for Your Organization



- Would the organizations accomplish more as a combined entity than they would as separate organizations?
- Are the two organizations' vision and culture sufficiently similar to result in a successful merger?
- What other practical issues would be considered?

Polling Question #2



Has your organization considered an affiliation other than a merger, such as a parent-subsidary relationship?

- Yes
- No



Affiliation

One organization becomes a subsidiary of another existing entity by giving the other entity reserved powers over its conduct and by entering into a cost sharing agreement

Accounting for an Affiliation



An *affiliate* is defined in the FASB ASC glossary as a party that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an entity.

Is consolidation required?

Yes

- Sole corporate membership
- Majority voting interest

No

- Existence of control or an economic interest, but not both

**Permitted but
not required**

- Control may be through contract or affiliation agreement

Legal Aspects of Affiliation

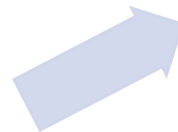
1. Enter into NDA and maybe a MOU or LOI



2. Review governance documents and state formation statues to determine requirements



3. Schedule and obtain consents of Boards and members and approval of revised governing document



5. Form 990



4. Cost-Sharing Agreement-Arm's Length

Polling Question #3



Is your association currently considering a merger with another association?

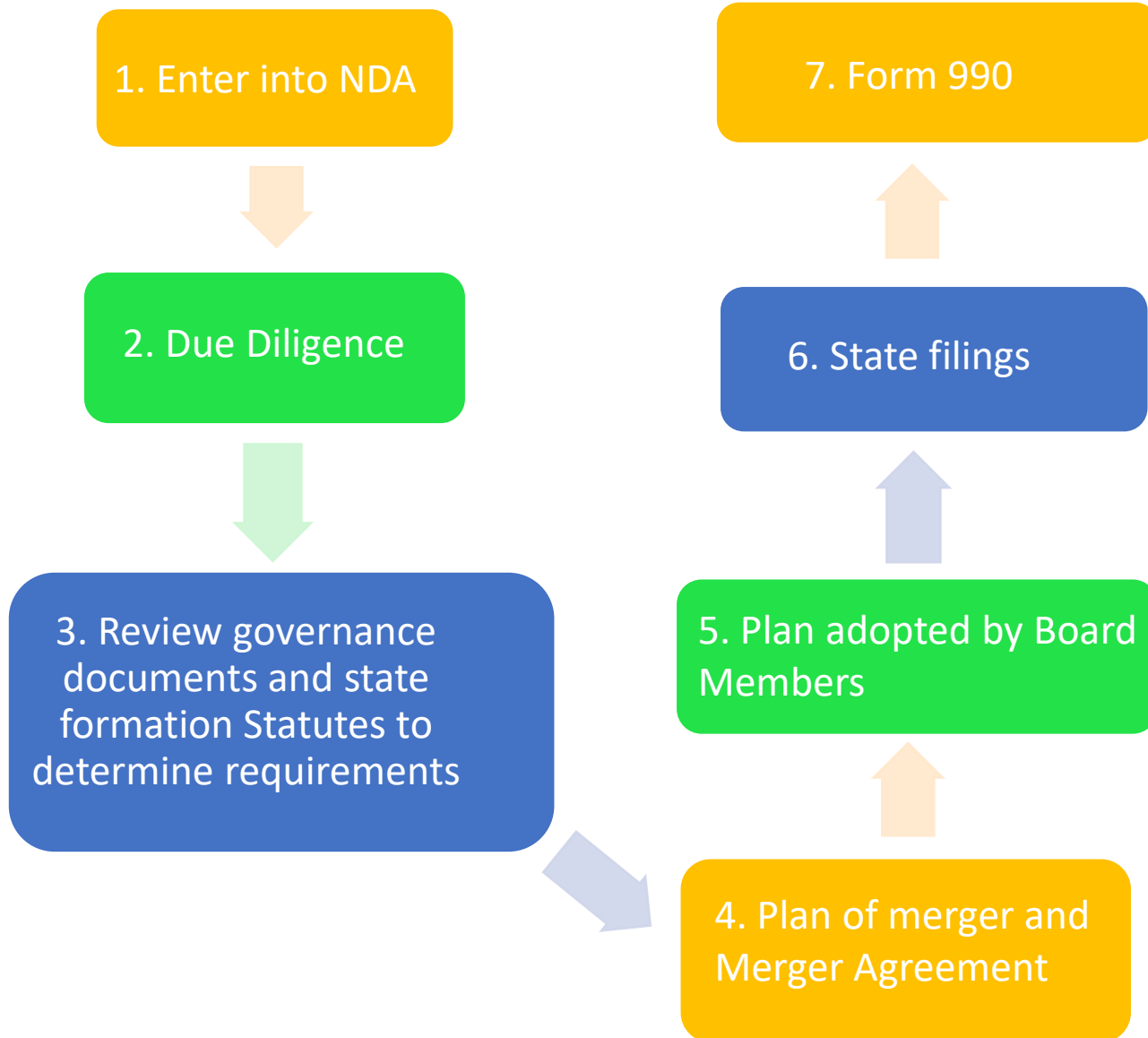
- Yes
- No

Merger



One organization merges into another and the other is the “surviving” entity. When the merger takes effect, the “merged” entity no longer exists as a separate entity. Others include combinations and sales of assets

Legal Aspects of a Merger



Accounting for a Merger



Is it a Merger or an Acquisition for accounting purposes?

Ceding of control by the entities is the sole definitive criterion for a **merger**.

One entity *obtaining control* over the other is the sole definitive criterion for an **acquisition**.



How is the transaction recorded?

Merger = Carryover method

Acquisition = Fair value



QUESTIONS?



Kellie L. Newton

Whiteford, Taylor & Preston
knewton@wtplaw.com
202.659.6776



Marie Caputo

CliftonLarsonAllen
marie.caputo@claconnect.com
301.902.8518