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Taking Things Apart: Unwinding Organizations, Ventures and Collaborations

Diara M. Holmes

John E. Tyler III

Author Contact Information:

Diara M. Holmes

Loeb & Loeb

Washington, DC

Dholmes&loeb.com

202.618.5012

John E. Tyler III

Ewing Marion Kauffman Foundation

Kansas City, MO

jtyler@kauffman.org

816.932.1293

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Diara M. Holmes, Loeb & Loeb, Washington, DC
John Tyler, Ewing Marion Kauffman Foundation, Kansas City, MO

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I. Introduction

Just as charitable and joint endeavors come together for a variety of reasons and in numerous ways, they also progress (or sometimes digress) to points when it is appropriate that they be taken apart or wound down. In the best of cases, they may have achieved their charitable purpose(s). In other instances, the agreed upon time frame may have expired, funding may have run out, qualified volunteer and/or paid staff may no longer be available, strategies or priorities may have changed, competition may have driven the outcome, regulation may have changed the context for the work, seemingly irreconcilable conflicts may have arisen among certain people involved with the endeavor, or any number of other reasons. Some may be anticipated while others may not be as easily predicted.

At such times, those involved will need to decide how to transition, including transferring assets, liabilities, programs, and decision making authority; allowing some or nearly all involved to exit from the endeavor; merging with another enterprise(s); spinning out specific aspects of an endeavor; shutting down entirely; or perhaps even

declaring bankruptcy. Sometimes what results is a new beginning while other times it is a definitive ending.

Regardless of the situation, there are a number of common legal and practical issues that those involved should/must consider. The legal “checklist” includes following proper governance protocols for making and documenting decisions, complying with tax filing and reporting obligations, notifying and satisfying creditors and government agencies, and properly disposing of remaining (especially charitable) assets and intellectual property. Practical issues with legal overtones include addressing personnel who have done the organization’s work. In some cases, there may be severance, retention bonuses or other special payments to consider. In every case, there will be tax and payroll obligations, and it will be important to protect the privacy, confidentiality, and reputations of both the affected personnel and the organization.

A key practical topic is communication—specifically, ensuring that the endeavor’s stakeholders receive timely and sufficient notice of the pending or imminent transition. Those who are served by or dependent on the organization for support may also need to know the availability of alternative resources for meeting their needs. While not seemingly involving legal considerations, these practical elements of transitions (such as public relations) can substantially impact whether legal processes proceed smoothly or are complicated to the point of delaying the transition’s ends and increasing the expense of doing so.

Transitioning the endeavor’s intellectual property can present unique legal and practical challenges whether the transition is a new beginning or a final ending.

Intellectual property could include patents, revenue generating licenses, software or apps,

trademarks, brand names and logos, photographs or audio-visual products, reports, survey tools, various data points and sets, analytical algorithms, methodologies, donor and/or beneficiary lists, outreach tools, websites, urls, web user tracking data, transferrable licenses or permissions, etc. All of these can be assets of the endeavor in much the same way as bank and investment accounts, furniture, computers, cars, buildings, and more, and they may substantively impact how a transition proceeds.

First among challenges with IP is ensuring and documenting its ownership or at least the authority to make the necessary decisions towards executing the transition. Another will be determining whether any of the items of IP have monetary value that can or should be responsibly realized while minimizing unrelated business taxable income and avoiding impermissible private benefit. Yet another challenge with certain IP is to ensure respect for privacy rights that attach to it whether by law, contract, or moral or ethical duty. Examples of IP for which there are explicit legal mandates include student academic data, medical/health data, personally identifiable information as defined by applicable countries' laws, data on homeless people, employee data, and information about children.

Many of these challenges with IP can be preempted by understanding and addressing them in advance as part of the normal, ordinary operations of the underlying endeavor. For instance, ensuring that ownership interests, use rights, and other interests in IP are properly documented as they are created will expedite any later transitions that might be pursued. Having privacy policies in place and adhering to them can facilitate decision making about what happens to the IP covered by them, including perhaps decisions to destroy certain data as part of transitioning. Such policies often identify the

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