



1000 University Ave., W. Suite 222  
Saint Paul, MN 55104  
651-330-8062 (Main)  
www.mendozalawoffice.com

By: Anthony S. Mendoza, Esq.  
Direct Dial: 651-340-8884  
[tony@mendozalawoffice.com](mailto:tony@mendozalawoffice.com)

## **EXISTENTIAL CONSEQUENCES: WHEN A NON-PROFIT FEELS IT MUST SEPARATE IN TWO**

Spin-offs happen in the for-profit sector quite frequently, and most often for financial reasons. For example, a company may develop a new product or service with the intention of eventually spinning off that service or product after it has come to market and developed independent marketable value. However, spin-offs in the non-profit sector happen much less frequently, and when one does occur, it is usually the result of an unfortunate sequence of events. This article explores the situations in which a non-profit board may want to consider separating their non-profit into two separate organizations. This is a decision that of course should not be made lightly.

*Conflicting Missions.* Many non-profits operate multiple programs. Programs operated under a single non-profit entity should be created with a singular mission in mind. However, occasionally, a program can develop into something much different than what may have been originally intended. It is possible for a program to conflict or compete with other programs operated by the same non-profit, or for a program to fundamentally come into conflict with the mission statement of the organization. Mission conflict can occur either because the program has changed, or because the mission of the organization has changed. Conflicts between a program and a mission, or between a program and a program, will inevitably lead to conflicts within a board of directors, with donors, within the executive management of the programs, and within the non-profit staff. It is the responsibility of the Board and the non-profit's management to spot these issues early and strive to resolve them. However, if a board or executive management fails to do so, the Board may find itself in the situation of being able to agree on only one thing: splitting the non-profit in two and spinning-off the program into its own separate entity.

*Financial Management Issues.* Conflict over financial management decisions can also lead to irreconcilable programmatic conflict. Favoritism for one program over another, or consistent underfunding of programs can result in resentment between and among the management, donors, staff, and constituents of the program. Boosters of an underfunded or neglected program may decide to look outside of the organization for financial support, which can lead to calls for the non-profit parent of that program to spin-off the program into a separate entity.

*Governance Issues.* Conflict within the governance structure of a non-profit organization can also lead to non-profit divorce. This is perhaps the most unfortunate circumstance at all leading to a non-profit separation. It could stem from a single breach of trust by a board member, or a manager, which divides an organization into competing camps. Emotions take over, trust continues to deplete, and eventually, the non-profit finds itself in the position of feeling it has no choice but to separate.

Separating a non-profit organization in two is never an easy process. It will be messy and costly, and has existential consequences. Attorneys will be involved. Unlike many spin-offs in the private sector, where the sale of a product line or business may have been planned from the beginning, non-profit separations can be much more akin to family divorces. Emotions run high. Words are said. Bad decisions follow bad decisions.

Because emotion can be a heavy element in a non-profit separation, a mediated separation should be strongly considered. A good mediator can help identify solutions that the parties may not be able to see through their emotions. A good mediator can de-escalate those emotions, and get the parties to focus on what's best for the mission of the organization and the program or programs in conflicts. A good mediator can help the parties ascertain whether separation really is the best and only solution to the conflict.

Once a non-profit is committed to separating, the parties must negotiate a separation agreement, which is very much like a divorce settlement. The primary exercise is deciding how assets will be divided. This exercise is never easy, and is not necessarily up to the sole discretion of the board, or even the competing parties. For example, when it comes to dividing cash or other donated property, the intent of the donors must be honored with respect to restricted donations, and must be strongly considered with respect to unrestricted donations. A separating organization may find itself with additional problems if donors suddenly realize that funds they thought were benefitting cats are now benefitting dogs. Mediating a separation agreement is strongly recommended. A mediator can help the parties soberly assess the various assets owned by non-profit, and help the parties make honest, objective allocations of those assets between the existing entity and the new non-profit organization.

Ideally, both the existing organization and the new one will go on to serve their missions well. But there is great risk to the organization and the separating program or programs. Great care, due diligence, and prudence must be exercised to avoid a

worst case scenario in which neither the existing organization, nor the separating program survive.