STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

BILL SCHUETTE
ATTORNEY GENERAL

Review Process for Nonprofit Mergers or Sales

The Attorney General protects charitable assets in Michigan under broad common law and statutory authority. This authority extends over the merger or sale of charitable nonprofit corporations. Accordingly, many organizations prudently request review from the Attorney General *before* executing the merger or sale, and contact the Attorney General *before* publicizing the sale.

The Attorney General recognizes that parties to a proposed sale or merger may need to protect certain sensitive, proprietary information. The parties may enter into confidentiality agreements when appropriate before the parties submit confidential documents.

At a minimum, the Attorney General requests the below information for review, but may request more information as needed.

Process

1. A transaction narrative—including an overview of the seller's history (why it began, its purpose, services provided) and a detailed discussion of both the circumstances which led the seller to seek a partner or buyer, and the process by which the seller reached the proposed transaction.
2. The seller's articles of incorporation, bylaws, committee assignments, policies, and organizational charts, both pre-and post-closing.
3. Copies of any bona fide purchase offers from the past three years, including bid packages.
4. All board and committee minutes for the last year and any prior minutes that discussed the proposed transaction, search process, or circumstances that led to it.
5. Copies of all board resolutions related to the proposed transaction.
6. Copies of all due diligence materials which the board or committees used.
7. All representations and information related to or disclosing related-party transactions—including conflict policies and disclosure statements executed by board members, officers, or key employees of the seller.

8. A list of any special benefits proceeding to any officer, director, manager, or other key employee of the seller—or any related entity of the seller—as a result of the transaction.

Transaction

9. Copies of all sales documents—including letters of intent and purchase and sales agreements. Also include any collateral or ancillary agreements that may involve officers, directors, or employees.
10. A listing of any assets excluded from the sale.

Valuation and Financial Information

11. Copies of all valuations, appraisals, studies, reports, and opinions used in assessing the proposed transaction.
12. Copies of the seller's five most recent IRS Forms 990 and audited financial statements.
13. Financial projections and other records which may be used to assess future earnings and valuations.

Buyer Information

14. Identify the buyer, including whether it is a for-profit or nonprofit entity.
15. Information regarding existing presence in any Michigan markets of the buyer or any affiliate.
16. Information regarding any previous purchases of nonprofit operations or assets.

Other Relevant Information

17. Information showing how the seller will use any proceeds from the transaction.
18. All information and documents relating to donor-restricted assets and procedures proposed to ensure future compliance with restrictions.
19. Information regarding any existing foundations or other charitable funds that support, or are related to, the seller. If such a foundation exists, how will the proposed transaction affect its structure and purposes?
20. If the seller is a hospital or hospital system, a complete description of its charity care policy and procedures.

The Attorney General may also require the buyer or seller to fund an expert to assist the Attorney General in evaluating the proposed transaction. The buyer may also be required to fund a corporate monitor to monitor buyer's compliance with post-closing covenants.

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