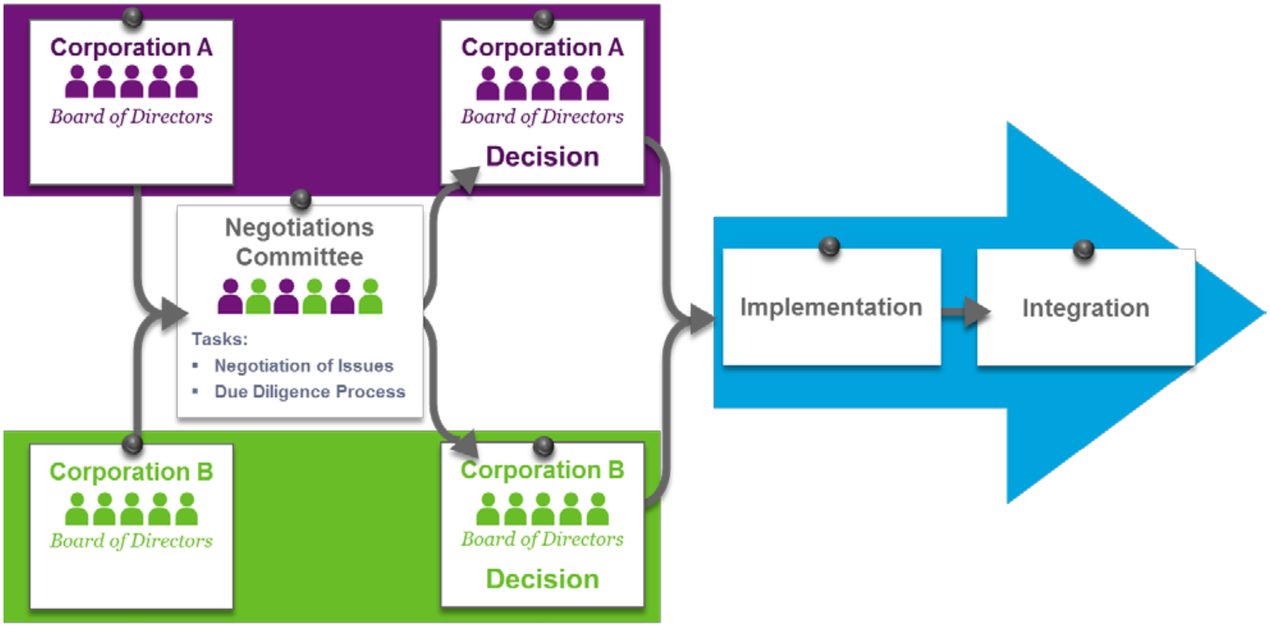
The Negotiations Process



When two (or more) nonprofit corporations decide to enter into merger negotiations. We recommend the following process.

The nonprofit corporate Boards of Directors each pass formal resolutions to enter into good faith negotiations. The resolution includes statements of:

- Commitment for a specific period of time (ex. 6 months) to good faith negotiations toward a potential merger (or other specific joint venture).
- During the commitment period neither organization will enter into merger negotiations with any other party, nor will it make any material changes affecting the corporation, its leadership or significant financial commitments without fully informing the other organization.
- Names the delegation of Staff/Board to a Joint Merger Negotiations Committee.
- The Joint Merger Negotiations Committee will submit its report and recommendations to the full Boards of each of the organizations.
- The time period may be extended by vote of the Boards upon request by the Joint Merger Negotiations Committee.

The Joint Merger Negotiations Committee has two primary tasks:

- Identify and negotiate all issues in the form of recommendations that the full Boards are going to need to consider in determining whether a merger is in the best interest of their mission, constituents served, and their organizations programmatic and administrative services (infrastructure).
- Oversee the financial and legal due diligence process. Due diligence is the process by which confidential and legal information is collected, exchanged, reviewed, and appraised by the parties. The essence of the due diligence process is an effort to make everyone on the negotiations committee, and by extension everyone on each board, as aware as a prudent board member can be of any liabilities or legal issues the other party may bring to the potential merger.

Upon completion of negotiating all of the issues determined to pertain to the potential merger and answering all questions coming out of due diligence to the satisfaction of the both Boards, the committee makes its recommendation to the respective Boards of Directors for consideration. Each of the Boards of Directors of the organizations independently votes on the Committee's recommendations for merger.

Upon vote for a merger of the organizations the following steps for implementation (the legal steps required to put a merger in place) occur.

- Determine the appropriate date of merger implementation (recommended by the Merger Negotiations Committee).
- It is recommended that the two organizations jointly engage an attorney to draft and file the documents required by the appropriate governmental agency to legally implement the merger.
- Attorney files the appropriate documents and appropriate waiting period and/or formal approvals are obtained.
- Merger is legally finalized on the agreed date of merger.

Upon finalization of legal implementation, formal integration of the organization begins. (Note: Integration planning begins during the negotiations process, continues during the time between Board vote on merger and legal implementation and for a significant period of time post implementation.

Integration includes the bringing together the systems, administrative and programmatic infrastructure, and the organizational and Board cultures of the previously separate organizations. Specific areas of integration include:

- Board of Directors – creating a new, effective Board of Directors for the merged organization.
- Management – the determination of key leadership, the creation of a new management culture, philosophy and structures.
- Staff – the establishment of clear roles, responsibilities and reporting structures.
- Program – the bringing together of distinct programs into a newly merged structure.
- Communications, Marketing and Development – the integration and development of systems and relationships to advance the needs of the organization with donors, and other stakeholders in order to market the new merged organization.
- Systems – a variety of systems are in need of integration after a merger including
    - Finance
    - Fundraising
    - Human Resources
    - Technology
    - Facilities