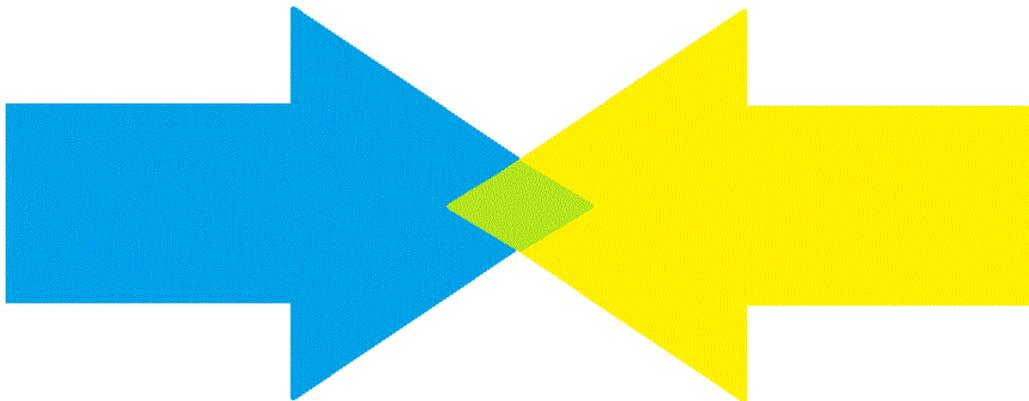




REALTOR[®] Association Merger Kit



Board Policy and Programs



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FOREWORD

(Note: As used throughout this publication, the terms "Association" and "Member Board" refer to Boards and Associations of REALTORS®.)

Article III of the Bylaws, NATIONAL ASSOCIATION OF REALTORS®, defines policies governing territorial jurisdiction of Member Boards. Since its founding in 1908, the National Association has granted Charters to local Member Boards, and these Boards have been essential "building blocks" of the Association. State Associations have been essential in helping to hold the blocks together in concerted effort by providing an important liaison between the National Association and Member Boards.

In granting Charters to local associations, the National Association has granted both authority and responsibility to associations to assign and protect the term REALTOR®, REALTORS®, and REALTOR-ASSOCIATE®, the Registered Collective Membership Marks of the National Association, and to enforce the Code of Ethics within the association's territorial jurisdiction. The team of organized real estate, operating at local, state, and national levels, has worked extremely well, and has produced an outstanding success story. Associations continually explore options to better serve their members through responsible allocation of association resources including, but not limited to, shared services with other associations, multi-board management, and association mergers.

The following Merger Kit Reference Guide was originally developed by the Membership Policy and Board Jurisdiction and Executive Officers Committees to assist associations in their merger discussions and was updated in 2013. It includes valuable information on the various aspects of a merger including (1) the potential benefits of a merger; (2) discussion of legal and financial considerations; (3) articles and other resources from industry experts; and (4) administrative procedures for processing a merger through the National Association.

The concept of "merging" will continue to be a subject of interest to Associations as the real estate industry evolves, and the Merger Kit will serve as a valuable guide to Associations in considering the possibility of a merger. For questions and additional information, contact NAR's Member Policy Department at (312) 329-8399.

INTRODUCTION

WHY CONSIDER MERGING?

Major changes are occurring in the real estate industry. The industry tends to be less localized and the number of multi-office firms and corporations is increasing. REALTORS® serve larger markets than ever before and are increasingly seeking economies of scale in all facets of their business. This has prompted many associations to investigate the possibility of merging with one or more neighboring associations.

In essence, the purpose of an association merger is to join association resources in order to create a larger, stronger organization. Because the individual association's fundamental mission (to provide services and promote the common interests of all its Members) is identical to the association(s) with which it intends to join, the merger will serve only to reaffirm and expand upon those principles and ideals.

Some of the potential benefits of an association merger include:

Increase the association's appeal to area Members, who in some cases would no longer be required to pay multiple association dues and service fees.

Reduce the association's direct costs (e.g., office buildings, staff salaries, duplicate services such as MLS, etc.)

Enhance the services provided to Members including additional educational offerings, more efficient and effective professional standards enforcement, and improved MLS systems (in some cases, resulting in a reduction of MLS fees).

Increase the operating income for the association which may result in the hiring of a staff person to manage association operations and provide continuity from year to year.

A stronger association can better sustain market fluctuations and can better cope with rising costs of operations.

One larger, stronger association provides the opportunity for wider recognition within the community and organized real estate.

FORMATION OF JOINT MERGER COMMITTEE/TASK FORCE

The process of merging associations is not a difficult task if a sound process is followed. The associations which are parties to the merger discussions should consider appointing a joint Merger Committee/Task Force consisting of an equal number of knowledgeable members from each association. The charge of the group would be to

consider the benefits of merging and resolve any issues that may be impediments to a successful merger. Consideration should be given to actively seeking input from the membership of the respective associations early in the merger discussions to help identify potential roadblocks.

ANALYSIS OF ASSOCIATION OPERATIONS

The following questions may be used by Merger Committees to help assess the effectiveness of Association operations. For example, does the Association:

Adequately meet the professional and educational needs of its Members?

Sufficiently represent REALTORS® and the industry before local and state legislative and regulatory bodies?

Have the resources to be financially viable?

Participate in REALTOR® Calls for Action, Broker Involvement Program and other REALTOR® advocacy efforts?

Take full advantage of the programs and services available from the State and National Associations?

Maintain complete, accurate, and ongoing membership, financial and legal records?

Have a Strategic Plan with a road map for the future?

Association Mergers

When two or more associations have determined that merging is a beneficial move for serving their Members, there are numerous steps that must be taken which will require the service of an attorney and a professional accountant. Associations may want to consider retaining separate counsel to advise them and look after their interests. Although a merger is essentially a cooperative transaction, the interests of each association do at times diverge and it may be prudent to have separate counsel.

Financial Considerations

The essence of a merger is the joining of forces to create a larger, stronger organization. The associated financial implications should result in a larger budget and greater assets.

In the process of merging the assets of each association, some property or other fixed assets may be sold to eliminate duplication or to make the new organization more responsive to Member needs. It should be clearly understood from the outset that the new organization will receive the proceeds from the sale of any assets.

A merger is different from an acquisition (where one group will be paid for its assets). Members should not expect to receive direct monetary remuneration for their past or ongoing contributions to the association.

In order to deal with the financial matters, the Merger Committee should request a current balance sheet from each association. The balance sheet should summarize the assets of the association. The assets of the association should include the cash, investments and accounts receivable (net of possible uncollectible amounts), property (including building, equipment and autos, etc.). The assets of the association should be reported at current market value. Any outstanding liabilities also should be listed. The liabilities of the association would include current amounts due to vendors, as well as long term liabilities such as the building mortgage.

The Merger Committee should periodically receive updated balance sheet data, since the operations of the association will continue during the period of time the committee is deliberating. Associations should retain the services of a professional accountant to guide them through the financial implications of the merger.

Legal Considerations

The legal process for merging two or more corporations is prescribed by state law and therefore, will differ from state to state. The association(s) should discuss these requirements with legal counsel early in the merger process so that compliance with all necessary requirements can be planned and more easily achieved. Although requirements may vary from state to state, they are likely to be generally similar, but not necessarily identical to the generic prototype format which follows.

Merger Agreement

The decision to merge requires working out some details, which ultimately will result in the merger agreement. Such an agreement may or may not be required by state law, but even if it is not, it is necessary to effectively and efficiently complete the merger. The merger agreement will establish the mutual understandings, rights and obligations of the associations which are parties to the merger, and establish the "ground rules" and processes which will lead to completion of the merger. It should identify each association involved in the merger and specify which of those associations will be the "surviving" association. A sample Merger Agreement can be found in Appendix 1 of the Merger Kit. Although it may not be all-inclusive of the issues which you will want to address in your agreement, it should serve as a valuable guide.

Name

The name of the corporation needs to be chosen as it is a part of the agreement. This name may be the name of the surviving association; the name of another of the merging associations, or a request for a new name may be submitted. In the event of a new name, the name must be descriptive of the actual area served by the association (see Name Policies and Procedures in Appendix 3.)

Composition of the Board of Directors

Among the amendments to the bylaws of the surviving corporation is the decision of the composition of the Board of Directors.

It may be most convenient for the association to make the merger effective at the end of an election year so members of the new merged association of REALTORS® may elect the new Board of Directors. Combining existing Boards of Directors for mid-year mergers can present complications. In the event of a mid-year merger, the associations may decide to have the "surviving" corporation's Board of Directors serve as Directors for the new association until the next election.

Approval

After the Boards of Directors of the associations have approved the merger, the matter must be submitted to the voting members of the respective Associations of REALTORS® for approval. Approval must be by a majority of the members present and qualified to vote at a general membership meeting called for such purpose at which a quorum is present, unless otherwise specified in the association's bylaws or unless there are other requirements of state law.

Upon approval of the merger by the National Association, the appropriate documentation, which may include the merger agreement, must be filed with the Secretary of State. Procedures for approval of the merger by the National Association are detailed in Appendix 2 of the Merger Kit.

Other Matters

Other matters which are not strictly legal that should also be considered and addressed by the merging associations are: (1) transferring the funds in association accounts to the account(s) of the surviving association and closure of the existing accounts; (2)

termination of liability and other insurance policies of the merging associations and procuring appropriate insurance for the surviving association; and (3) preparation and filing of an application for tax-exempt status for the surviving association or advising the Internal Revenue Service of revisions to the Articles of Incorporation and bylaws of the surviving association.

Sample Merger Agreement

General Comments on the Merger Agreement

Approval of the merger is required by NAR policy, and approval of the merger by the appropriate governing body of each Association, as prescribed by state law, must also be secured. Thus, the merger agreement should be prepared in such a way that completion of the merger is contingent on all such approvals being rendered, and that no obligations or duties of the various associations will arise or continue if such approvals are not rendered.

Prior to merging, the associations should choose a "surviving" corporation and designate the rest as the "dissolving" corporation(s). This designation is for purposes of providing a starting point and set of documents and does not necessarily mean that the chosen corporation is more dominant or more important. In fact, sometimes the surviving corporation will take on a dissolving corporation's name. An important consideration in choosing the "surviving" corporation is ownership of the primary assets of the merged association. That is, if it is intended that the building, property or facilities owned or leased by one association will continue to serve as offices for the merged association, then selection of that association as the survivor will avoid the need to transfer ownership of such assets to the new merged association. Particularly, where real estate is involved, avoiding such transfer may be advantageous.

The agreement should contain detailed representations of each association regarding assets, liabilities and contractual obligations, and provisions providing for the disposition of assets, the assumption or elimination of liabilities, and the performance, discharge or transfer of contractual obligations of each association. Significant assets to consider include real estate owned or leased and capital equipment and fixtures such as furniture, computers and office equipment. Liabilities will include not only accounts payable, but contingent liabilities such as unresolved lawsuits or claims. Contractual obligations may include employment contracts, leases, equipment maintenance agreements, and others.

Provisions should be included in the agreement regarding the responsibility for unforeseen or unknown liabilities or obligations which are identified prior to completion of the merger, or even thereafter. State law may establish whether the survivor shall bear responsibility for such obligations.

Consideration should be given, and appropriate provisions included in the agreement, to accommodate the employees of the merging associations. Particular attention must be given to any employees who have written agreements with the associations by which they are employed. Accommodation must also be made for any employment benefit

plans established by the merging associations or employees. If the merging associations have established such plans, the plans may also have to be combined in a formal way, or a new plan created and the assets of the prior plans transferred thereto.

The merging associations may also have subsidiary corporations such as separately incorporated MLS's. The agreement must also deal with any such subsidiaries by, for example, transferring ownership thereof to the survivor, merging the subsidiaries into the surviving association or into a single subsidiary owned by the survivor, or dissolving such subsidiary(s) and distributing the assets in an appropriate way.

The agreement should also establish a reasonable timetable for accomplishing all tasks and procedures necessary to complete the merger. The timetable should include some degree of flexibility in the event of unforeseen events or difficulties.

Generally, the merger agreement should also include the following:

- the amendments to the Articles of Incorporation of the surviving corporation to be affected by the merger;
- the new name (if any) of the corporation;
- Bylaws amendments (if any);
- the name and place of incorporation of each of the Associations of REALTORS® and a designation of which of the corporations is the "surviving" corporation;
- other details or provisions as are desired.

SAMPLE AGREEMENT OF MERGER OF ABC BOARD OF REALTORS®, INC. AND DEF BOARD OF REALTORS®, INC.

The following Agreement of Merger has been adopted at a meeting of the Board of Directors of the above corporations as follows:

ABC Board/Association of REALTORS®, Inc. (date)

DEF Board/Association of REALTORS®, Inc. (date)

The name of each constituent corporation to the merger is ABC Board/Association of REALTORS®, Inc. and DEF Board/Association of REALTORS®, Inc.

The Certificate of Incorporation of ABC Board/Association of REALTORS®, Inc. was filed in the (NAME OF STATE) Secretary of State's Office on (date).

The Certificate of Incorporation of DEF Board/Association of REALTORS®, Inc. was filed in the (NAME OF STATE) Secretary of State's Office on (date).

The name of the surviving corporation is ABC Board/Association of REALTORS®, Inc. However, simultaneously with the filing of this Agreement of Merger (and related documents) with the (NAME OF STATE) Secretary of State's Office, the name of ABC Board/Association of REALTORS®, Inc., shall be changed and amended to "XYZ Board/Association of REALTORS®, Inc."

The terms and conditions of the merger are as follows:

- a. Upon the effective date of the merger, the Members of DEF Board/Association of REALTORS®, Inc., shall be Members of XYZ Board/Association of REALTORS®, Inc., of the same classification. The conversion of membership as provided by this Agreement shall occur automatically upon the effective date without further action by the Members thereof.
- b. Upon the effective date of the merger, the Bylaws attached hereto as EXHIBIT A shall become the Bylaws of the surviving corporation.
- c. The first annual meeting of the Members of the surviving corporation after the effective date of this merger shall be as set forth in the Bylaws which are attached hereto as EXHIBIT A.
- d. Upon the effective date of the merger, the Board of Directors of the XYZ Board/Association of REALTORS®, Inc., shall consist of ___ Members to be elected in accordance with the procedures established in the Board's Bylaws.

(Alternative language for Subsection d: "Upon the effective date of the merger, the Board of Directors of XYZ Board/Association of REALTORS®, Inc. shall be and remain as Directors until the next annual election.")

e. Upon the effective date of the merger, the officers of the XYZ Board/Association of REALTORS®, Inc., shall be and remain as officers until the newly constituted Board of Directors at their next annual meeting shall elect their successors, in accordance with the attached Bylaws.

f. Each of the constituent corporations shall equally pay all expenses of carrying this Agreement of Merger into effect and accomplishing the merger. In the event that, subsequent to the adoption of this Agreement of Merger by the respective corporations, if for any reason the merger shall fail to be completed, then each corporation shall equally pay all legal expenses and disbursements incurred for attempting to effectuate this merger.

g. When the merger shall become effective, the separate existence of the DEF Board/Association of REALTORS®, Inc., shall cease and be merged into the surviving corporation, which shall possess all the rights, privileges, powers and franchises of public as well as of private nature and be subject to all the restrictions, disabilities and duties of each of the parties to this Agreement. The surviving corporation shall be vested with the rights, privileges, powers and franchises for each of the constituent corporations; all property, real, personal and mixed, all debts due to each of the corporations on whatever account, liabilities of or claims against the respective corporations as well as for all other things in action or belonging to each of the corporations.

h. If at any time the surviving corporation shall consider or be advised that any further assignments or assurances in law or any things are necessary or desirable to vest in the surviving corporation the title to any property or rights of the constituent corporation, the proper officers and directors of the merging corporations shall execute and make all proper assignments and assurances and do all things necessary to vest title in such property in XYZ Board/Association of REALTORS®, Inc.

i. All persons who, on the date of the merger shall become effective, are elected officers of the surviving corporation, shall be and remain officers of the surviving corporation until the newly constituted Board of Directors shall select their successors in accordance with the Board's Bylaws.

j.

(1) DEF Board hereby represents that a true and accurate statement of its assets, liabilities and obligations has been provided to ABC Board (or is attached hereto as Exhibit ____), and that any changes in such statement have been and will be provided to ABC Board on an ongoing basis, up to and including the effective date of the merger.

(2) The assets, liabilities and obligations of DEF shall be transferred, discharged or disposed of on or before the effective date of the merger, as follows:

Assets (Identify those to be conveyed to ABC, those to be sold, and those to be otherwise disposed of)

Liabilities and Obligations (Identify those to be discharged, those to be assumed by ABC, and those to be assumed by others)

(3) Liabilities or obligations not heretofore disclosed by DEF or unknown to the parties shall be borne by _____, or as otherwise provided by law.

k. (1) Employees. (Subject to the need to keep such matters confidential, include any provisions agreed upon by the respective Boards regarding continued employment of employees of the merging Board by the surviving Board. It may, however, be inappropriate to include such provisions where any employees whose employment will not continue have not yet been so advised.)

(2) All retirement and other employee benefit plans established for the benefit of employees of DEF shall be transferred/distributed as follows: ... (Transfer of qualified or unqualified employee benefit plans is a highly technical matter, and should be carefully addressed by counsel experienced in employee benefit issues.)

l. Subsidiaries. _____, a wholly-owned subsidiary of DEF, shall be ... (Describe disposition of the subsidiary, such as whether the stock will be conveyed to ABC, sold, the subsidiary dissolved, or whatever other disposition may be agreed upon.)

m. The parties shall cooperate to satisfactorily perform the aforesaid duties and obligations of each and all other things necessary to the consummation of this merger not later than (date). In the event such duties and obligations and other matters are not accomplished by said date, or such later date as the parties may agree, then either party may declare this agreement null and void and in that event each shall be released of all obligations hereunder, except for the obligation to share equally all legal costs related to the creation of the surviving corporation as set forth in paragraph 5.f hereof.

6. The effective date of the merger shall be the date that the Agreement of Merger (and related documents) are filed in the Secretary of State's Office pursuant to Section ___ of the (NAME OF STATE) Not-for-Profit Corporation Law.

ABC Board/Association of REALTORS®, Inc.

By: _____ Date: _____

President

DEF Board/Association of REALTORS®, Inc.

By: _____ Date: _____

President

Procedures for Processing a Merger Application through the State and National Association

Requirements for a Merger of Member Associations

This information is provided by the National Association to assist local Member Associations in processing an application for merger of Member Associations. Member Associations requesting a merger must complete an Application for Merger of Member Associations and submit it along with other required documents to the National Association for consideration. The applicant Associations shall also forward a copy of the merger application (with supporting materials) to the State Association for its information. The following documents are required to be submitted.

(IMPORTANT NOTE: These procedures should only be used by associations that are completing a legal merger. There is a distinction between a merger of two associations and an association that simply dissolves without executing a legal merger with another association. A merger of associations is a legal process that involves one association that dissolves, with its business affairs wound down and its assets and liabilities transferred to the other (“surviving”) association. The assigned territory of both associations is also combined. Associations should consult with local legal counsel on the legal aspects of a merger. This is distinguishable from instances where an association has determined that relinquishing the association’s charter with NAR and dissolving the corporation is preferable to expending the time, effort and money that considering, negotiating and implementing a merger would involve. Following dissolution of the association, members are free to join another association. However, under NAR policy, when an association dissolves, the territory of the association becomes “unassigned”. Dissolving associations do not have the authority to transfer their assigned territory to another association. Rather, any association interested in requesting the unassigned territory must file an application for change of jurisdiction with NAR. Refer to the section entitled Unassigned Territory for [filing a request for change of jurisdiction](#).)

1. Application for Merger of Member Associations: This form must be completed and signed by each Association's President.
2. Minutes: Each signatory Association is required to submit a copy of the minutes from its general membership meeting which includes the official action taken in approving the merger. The merger must be approved by a majority of the members present and qualified to vote at a general membership meeting called for such purpose at which a quorum is present, unless otherwise specified in the Association's Bylaws, or unless there are other requirements of state law.

3. Agreement To Use The Term REALTOR®: If a new name is selected for the Association, this form must be completed and signed by the Association's President.

Note: There are two (2) forms of the Agreement to Use the Term REALTOR® in the name of the local Association: one for incorporated Associations, the other for unincorporated Associations. The proper form must be utilized consistent with the Association's corporate status.

4. Choice of Association Name: If a new name is selected for the merged Association, the name change portion of the merger application will be processed in accordance with the attached name change procedure.

5. Charter Date: Unless otherwise requested, the merged Association will retain the oldest charter date of the Associations which are signatories to the application for merger.

If the application for merger is in order, and the file of supporting materials is complete, the merger shall be administratively approved and NAR's jurisdiction records shall be updated accordingly. The applicant Associations and State Association shall be notified in writing of final approval. Nothing herein and nothing in the jurisdiction policies of the National Association shall prohibit non-contiguous Member Associations from merging.

Local Association Checklist

- Application for Merger of Member Associations completed and signed by President of each signatory Association. We recommend the Associations contact NAR's Member Policy department to verify each Associations jurisdiction prior to submitting the application for merger.
- Copy of Association minutes from general membership meetings approving the merger.
- Agreement to Use the Term REALTOR® for completed and signed by the President and Secretary.

Note: The last item above is not required to be submitted if the Association retains the present name of one of the signatory Associations.

Administrative note: The surviving Association should contact NAR's Membership Records at (312) 329-8357 to receive a ledger of members for all Associations that are involved in the merger and for specific instructions on how to reconcile the member records in automated and non-automated States. This will ensure that accurate member counts and records are reflected in NAR's database for use in dues calculations and director entitlement. Membership Records does not automatically transfer the members into the surviving Association when an Association merger takes place and relies on the

Association to confirm who should be transferred or dropped from membership in the surviving Association.

Application for Merger of Member Associations

NATIONAL ASSOCIATION OF REALTORS®
430 N. Michigan Avenue
Chicago, Illinois 60611

APPLICATION FOR MERGER OF MEMBER ASSOCIATIONS

This constitutes a voluntary merger of two or more member Associations into one jurisdiction under a common name. This request has been considered by the officers, directors, and members of each of the signatory Associations and has been duly approved.

Request for merger is hereby made by:

(Name of Association #1)
(Name of Association #2),
(Name of Association #3)
(Name of Association #4)

And _____
in the state of _____
to be known as _____ (Indicate new name of Association, if
applicable)

Effective Date _____ (include the effective date of the merger as agreed
to by the signatory boards)

Choice of Name: The consolidated Association may retain the present name of one of the signatory Associations or it may select a new name. If a new name is selected, the name change portion of the application will be processed separately under the existing name change procedures. Approval of the merger is not contingent on approval of the name change. However, the consolidated board/association has no authority to use the new name until approval of the name by the National Association.

General Membership Approval: Each member Association party to the proposed merger is required to submit a copy of the minutes from its general membership meeting which includes the official action taken in approving the proposed merger. The proposed merger must be approved by a majority of the members present and qualified to vote at a general membership meeting called for such purpose at which a quorum is present, unless otherwise specified in the Association's bylaws, or unless there are other requirements of state law.

Indicate present jurisdiction of signatory Associations in the spaces provided below.

1. Present jurisdiction of _____
(Name of Association #1)

is:

(Continue description on addendum if necessary)

2. Present jurisdiction of _____
(Name of Association #2)

is:

(Continue description on addendum if necessary)

3. Present jurisdiction of _____
(Name of Association #3)

is:

(Continue description on addendum if necessary)

4. Present jurisdiction of _____
(Name of Association #4)

is:

(Continue description on addendum if necessary)

Select one of the following methods of description, and then describe the combined jurisdiction of the consolidated Association using the method selected. (In all cases, include a copy of street or county map which has been shaded to show the combined jurisdiction.)

Description by metes and bounds

Note: Description must be specific and definitive using name of street, road, highway, or natural boundaries (rivers, mountain summits, etc.). The description must NOT be defined by school, water, fire or judicial district, or city limits where street names, roads or highways are not available. Use an additional sheet if necessary.

Northern boundary: "Beginning at (street location) and proceeding: _____

Eastern boundary:

Southern boundary:

Western boundary:

This metes and bounds description includes the communities of: _____

Description by county/counties

Note: Where jurisdiction requested is confined to an entire county or counties, the name(s) of the county or counties must be listed in the space below.

All within the county or counties of: _____

Description by city/town

Note: If jurisdictional boundary is indicated by city limits where metes and bounds description is not feasible, it should be stated as:

The city limits of _____ as of _____.

Authorization Section

(Name of Signatory Association #1): _____
(Name of Association President) _____
(Signature of Association President) _____
Date: _____

(Name of Signatory Association #2): _____
(Name of Association President) _____
(Signature of Association President) _____
Date: _____

(Name of Signatory Association #3): _____
(Name of Association President) _____
(Signature of Association President) _____
Date: _____

(Name of Signatory Association #4): _____
(Name of Association President) _____



(Signature of Association President) _____
Date: _____

Appendix 3

PROCEDURE FOR APPROVING NAMES OF MEMBER BOARDS AND ASSOCIATIONS MEMBERSHIP POLICY AND BOARD JURISDICTION COMMITTEE

Associations are only authorized to use names approved by the NAR Board of Directors pursuant to these procedures. Names selected by new boards and associations, applications for change of name, and applications for alternative business names (i.e. DBA's) submitted by existing boards and associations will be considered based on the following criteria:

- (1) Ensure that the REALTOR® trademark is used properly and that the term REALTOR® or REALTORS® is used in the name. Any name (including non-geographic names) must convey the idea of an organization of members who have joined together to promote the professionalism of real estate practitioners in the community.
- (2) Ensure that the name does not reflect adversely on the REALTOR® organization (e.g., use of a name that implies that membership is somehow restricted by race or religious beliefs, etc.).
- (3) Consider objections raised by other associations that the name selected is deceptively similar to the objecting association's name. The term "deceptively similar", means that the name selected by a board or association is sufficiently similar to the name of an existing board or association so as to be misleading. For example, an association selecting the name "Greater Orange County Association of REALTORS®" when another association named Orange County Association of REALTORS® already exists might be considered "deceptively similar."
- (4) Consider objections raised by other Associations that the name selected may be misleading in that it does not describe the current actual service area of the association with a reasonable degree of accuracy.

The following is a list of factors that may be considered by hearing panels of the Membership Policy and Board Jurisdiction Committee convened to resolve disputes between associations based on criterion #4. This list is not all inclusive and is intended to guide panels as to facts, issues, questions and other considerations that may facilitate their reaching fair, equitable, and reasoned decisions. These factors should also be carefully considered by parties preparing written materials and oral presentations for hearing panels.

- 1. What is the association's "service area" (i.e., the geographical area encompassing a majority of members' offices, and the offices of other REALTOR® firms who purchase association services without holding membership locally under Board of Choice)? (An area shall not be deemed to be part of an association's service area unless applicant demonstrates that a reasonable number of member offices or other offices of REALTOR® firms who purchase services are located in that area.)**
- 2. Is the proposed name descriptive of the association's service area, or does it suggest or imply that the association serves a significantly larger geographic area than has been demonstrated?**
- 3. Will the proposed name potentially confuse the public and/or the real estate community with respect to the names/alternative names of other boards and associations.**

Note: Associations are strongly encouraged to discuss potential name change requests with neighboring associations prior to submitting an application to NAR. This may alert applicant associations to potential objections and help facilitate resolution of disputes prior to filing of an application.

A member board or association requesting a change of name or for use of an alternative name must submit the required documentation (i.e., application for Change of Name, Agreement to Use the Term REALTOR®, and a copy of the board/association minutes authorizing the proposed name) to the National Association's Member Policy Department. Copies shall also be provided simultaneously to the State Association. NAR's policy and legal staff will review the application to ensure compliance with #1 and #2 above. Regarding criteria #3 and #4, the National Association shall be responsible for noticing proposed names of new boards and associations and proposed name changes or alternative names to all boards and associations in the applicant association's state (and any boards and associations in adjoining states whose boundaries physically touch or abut the jurisdictional boundaries of the applicant association). Publication of such notice electronically to all boards and associations shall be deemed to be good and sufficient notice. If #1 and #2 are satisfied and there are no objections from other associations (including the State Association) based on #3 and/or #4 above, the application shall be administratively approved and the National Association's records will be updated accordingly. Written notice of approval shall be provided to the applicant association with a copy to the state association(s).

Objections based on criterion #3 and/or criterion #4 must be filed in writing with NAR's Member Policy Department. NAR staff shall provide a copy to the Chairman of the Membership Policy and Board Jurisdiction Committee. A copy shall also be provided simultaneously to the state association. Written objections must be filed within sixty

(60) days of the date the notice is mailed or transmitted by the National Association. The written statement shall set forth in reasonable detail the bases upon which the association alleges that the application is not consistent with criterion #3 and/or criterion #4 and shall include all documents or other evidence upon which the objecting association intends to rely in any hearing by the National Association. The written statement shall be reviewed by the Chairman of the Membership Policy and Board Jurisdiction Committee or the Chairman's designee for the purpose of determining whether the written statement establishes any legitimate basis for consideration by a hearing panel of the Committee.

If determined to be insufficient, it shall be returned to the objecting association accompanied by an explanation or request for additional detail. If the written statement is determined to be sufficient, a copy shall be provided to the applicant association and the association shall have at least thirty (30) days to respond. The response shall include all documents or other evidence upon which the applicant association intends to rely in any hearing by the National Association. Only those bases and issues raised in the written statement and response may be raised by the parties in any hearing before the Committee. In the event the applicant association requests a hearing a \$500 filing fee must be submitted with the association's response. The filing fee will be returned following the hearing or under the following circumstances:

- a) The applicant association participates in voluntary mediation or other similar dispute resolution process.
 - b) The applicant association withdraws its application no later than 30 days prior to a scheduled hearing.
- (Note: The filing fee will also be refunded if all parties agree to withdrawal of an application within 30 days of a scheduled hearing.)

Written objections and responses should contain only that information relevant to the National Association's consideration of the dispute, and shall be limited to no more than thirty (30) pages (including supporting documentation). The written materials should speak to the name criteria, as this is the criteria utilized by hearing panels in considering name disputes. Parties to the dispute should make every effort to avoid submitting information that is extraneous or irrelevant. Geographic maps may be submitted, but must be of a size that can be reproduced.

Mediation is strongly encouraged as a means of resolving disputes involving association names. Following receipt of all objections to a name application, the National Association shall provide the applicant association and objecting association(s) with notice and instructions on requesting NAR sponsored mediation. If mediation is utilized, a mediator shall be selected from a pool of former or current members of the Membership Policy & Board Jurisdiction Committee identified by the Chair who have completed NAR's Mediator/Mediation Training Seminar or similar mediation training. A mutually convenient time and location shall be established for the mediation. NAR will

cover the mediator's travel expenses consistent with NAR's Member Travel Policy. This does not preclude associations from continuing efforts locally or through their state association to resolve the dispute.

State associations may, at their discretion, adopt hearing procedures to receive and consider objections received from local boards/associations to proposed name changes based on criterion #3 and/or criterion #4, and to make recommendations to the National Association. States must be consistent in their application of this policy. Due process must be provided to ensure that all parties receive a fair hearing and the criteria used by the state association in considering a name change shall be identical to the criteria applied by the National Association. Mediation is encouraged as a preliminary means of resolving potential disputes. All hearings must be conducted and NAR notified of the state association's recommendation within ninety (90) days following notification from NAR of the name change or alternative name request.

The applicant board/association and all objecting boards/associations shall have the opportunity to appear before a hearing panel of the National Association's Membership Policy and Board Jurisdiction Committee to present their respective positions.

The burden shall be on the applicant association to demonstrate that the name selected by the applicant association meets the criteria for approval. The duration, nature, scope and conduct of any hearing shall be within the discretion of the Chairman. Committee staff shall advise all parties in advance of the date, time and place of the hearing and the procedures to be followed at the hearing. In no event shall the Committee be required to conduct a hearing unless it has received the complete written file at least thirty (30) days prior to the next regularly scheduled meeting of the NAR Board of Directors. The applicant association is required to have representative at name hearings in person or through online meetings. Objecting parties are strongly encouraged, but not required, to have representatives at name hearings. Speakers shall be limited to current association members, association staff, and legal counsel.

The decision of the hearing panel will be final, except that any party may file a request for procedural review of the decision by the NAR Board of Directors based only on alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. Requests for procedural review shall be considered in accordance with the procedure established by the Board of Directors.

The parties to a name change dispute may settle the issue between them by agreement at any time. However, if the agreement involves a new name which is substantively different than the name which was originally submitted for approval, the new name must be renoticed and processed pursuant to these procedures.

Name change hearings are not "legal" proceedings or "trials" and are not subject to the customary rules applicable to judicial proceedings such as rules of evidence or cross examination of the other associations' presenters.

The Membership Policy and Board Jurisdiction Committee shall not consider a contested application for change of name if, within a period of two (2) years prior to the date the application is received, the Committee has denied an application from the same association for the same name or the applicant association has submitted and withdrawn the identical (or substantively similar) application provided, however, that the relevant criteria for considering the change of name has not been amended during that two (2) year period.

Notice of association names as provided in this procedure shall not be required in the following instances. Rather, staff shall have the authority to administratively approve such applications provided all required documentation has been submitted:

- where the only change is "Board" to "Association" (e.g. Bridgeport Board of REALTORS® to "Bridgeport Association of REALTORS®");
- where a commercial overlay board is deleting the term "Association/Board of REALTORS®" (or similar variation thereof) and replacing it with the term "REALTORS® Commercial Alliance", provided no other substantive change is being made (e.g. Bridgeport Commercial Association of REALTORS® to "REALTORS® Commercial Alliance of Bridgeport");
- where the only change is deletion of the term "Board" or "Association" or similar term (e.g. Bridgeport Association of REALTORS® to "Bridgeport REALTORS®").

Note: The following additional policies shall apply to name applications for associations that are parties to a merger:

- merging associations may submit name requests prior to approval of the merger by the respective associations.
- merging associations may submit up to three proposed names with their request.
- the comment period shall be reduced to 30-days (from the current 60-days) in instances where objections to a name application are filed and the applicant association withdraws its request and submits a new application.

DOCUMENTATION CHECKLIST

1. **APPLICATION FOR CHANGE OF NAME AND/OR CORPORATE STATUS OF A MEMBER BOARD:** This form must be completed in duplicate and signed by the Board's President and Secretary.

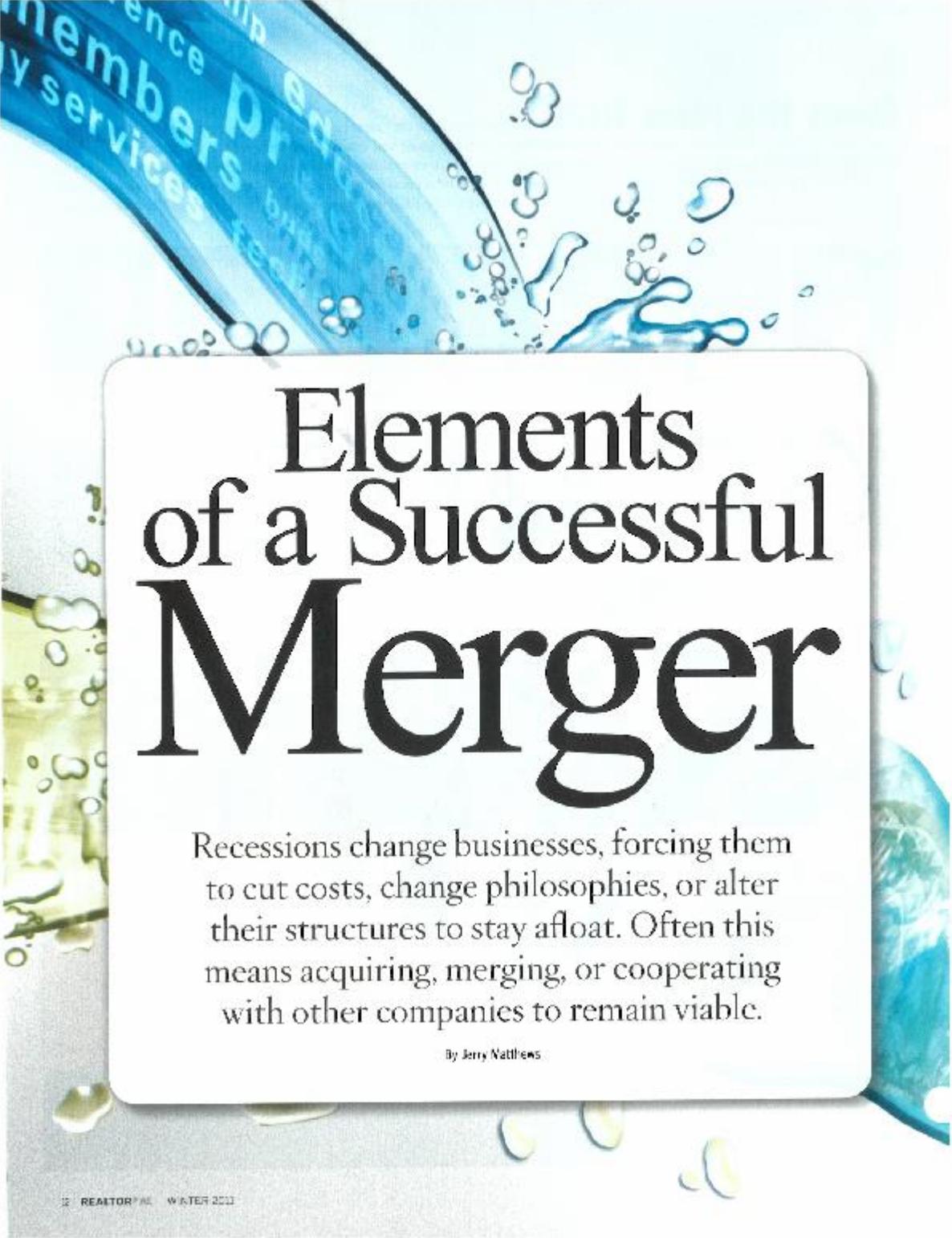
2. **AGREEMENT TO USE THE TERM REALTOR®:** This form must be completed in duplicate and signed by the Board's President and Secretary. When the name change is approved by the National Association, the President and Secretary of the National Association will sign the Agreement and a copy will be provided to the Board for its official records. (NOTE: Two (2) forms of the Agreement to use the Term REALTOR® in the name of the local board are enclosed, one for incorporated Boards and one for Boards which are unincorporated.

3. **MINUTES:** A copy of the minutes from the General Membership or Board of Directors meeting authorizing the name change must be submitted.

Articles

Elements of a Successful Merger

By Jerry Matthews



Elements of a Successful Merger

Recessions change businesses, forcing them to cut costs, change philosophies, or alter their structures to stay afloat. Often this means acquiring, merging, or cooperating with other companies to remain viable.

By Jerry Matthews

28 REALTOR MAG WINTER 2013

Associations face the same challenges: pressures of inconsistent revenue, changing member needs, growing consumer demands, and evolving technology. All of these factors are forcing them to consider options for better serving their members, including consolidation.

Consolidation does not just mean merger. There are several ways to combine structures and core competencies to increase effectiveness. In my experience, there are five major unification models—absorption, merger, overlay, alliance, and cooperation—any one of which can create synergy depending on local nuances (see chart, p. 15). But for the purpose of this article, I will focus on what elements make mergers successful.

What is a merger? Why merge?

A merger is more than the combining of separate associations to create a new entity. It's also a delicate dance of ideals, problems, fears, solutions, egos, visions, and hard facts.

The goal of a merger is to become larger and significantly better. Clearly, a larger membership base results in greater resources to provide professional and meaningful services (as most associations found when their membership ranks swelled during the most recent real estate boom).

The main benefits of unification are increased number and quality of services, lower direct and indirect costs, stabilized or lowered member dues, more external political and media clout, increased influence of professionalism, a regional presence, and better overall member value.

As a REALTOR® AE for 27 years, I had a lot of consolidation experience. Now, as an adviser with the NATIONAL ASSOCIATION OF REALTORS®' newest programs to assist associations in mergers and consolidations, I've worked with three associations in the Denver metro area that are unifying to create the largest association in Colorado, with 5,500 members. I also facilitated the consolidation of four associations in western North Carolina. From the beginning, both groups had a vision for creating a more robust organization with expanded benefits for members in every area. They are now in the final stages of due diligence.

Steps toward merging

Although a clear process and procedure for a merger is vital, successfully merging often hinges upon many intangible, and sometimes emotional, factors. Each merger has unique structures, governance protocols, documents, budgets, staff considerations, program priorities, and more to consider. An otherwise perfect process can be sunk at any time by a small emotional issue. As one AE said, "It is all about the members—officers, past leaders, and even I have to put personal feelings aside for what is best for the members."

There are six key issues that, if not resolved in the beginning, have the potential to destroy any merger effort. They are: REALTOR® leadership concerns, AE career concerns, facilities, financial disparities, MLS issues, and impartial facilitation. Sadly, I know of many unifications that came to a halt after months of effort because of just one of these issues.

Six elements in-depth

REALTOR® leadership disputes and challenges normally focus on loss of image, not becoming president of the current association, disagreement over the name of the new entity, cultural differences (sometimes ethnic makeup or socioeconomic disparity), community projects (i.e., pet projects), as well as a host of smaller issues we can simply call "politics."

AE concerns are more in the realm of job loss, career damage, compensation, employment agreements, and due process. (See "Your Career," page 20 for more.)

Facility issues typically center on keeping or liquidating buildings, deciding in which previous association's jurisdiction the new headquarters should be located, and determining whether a new building for the entity should be rented or constructed. These issues are laced with emotion and history that may not become apparent until the decision is actually on the table.

Financial challenges occur on budgeting philosophies, reserves, liabilities, and the current status. If the participating associations each have an MLS, then ownership structure must be resolved, including revenue distribution.

Finding merger help

With such sensitivity surrounding both small and large issues, keeping the merger process focused and balanced is a challenge. Some mergers can take mere months, others may take years, and then there are those that can fall apart after significant amounts of time and money are invested.

Obtaining the services of an impartial facilitator multiplies the odds of success, taking the pressure off of either association to lead the overall effort (and assume any bias in the process). As one president involved in a merger said, "With his vision and expertise, the facilitator assisted us to clarify our thought process and identify obstacles, which allowed us to focus on our goals."

In today's changed real estate industry, the diverse pressures for creative solutions make new structures an attractive answer for associations to better serve their members and ensure continued relevance.

Determining whether a merger is right for your organization starts with candid discussions about how to best serve your members and ensure the continued influence of the REALTOR® organization in your area. ■

See
more merger
data on pages
14–15.

Why We Merged *AE survey results*

Last June, Jerry Mathews sent a survey to every local REALTOR® association executive requesting a response if they had participated in a consolidation in the past seven years. Here are some AE responses.

What were the most positive results of your merger?

- "Critical mass, greater political influence, larger pool of leaders."
- "Services increased and costs decreased for the members."
- "Dues stability—dues have not increased since merger."
- "Bringing two groups together in a single region for the good of the industry and a stronger REALTOR® voice."
- "More programs, communications, and membership benefits."

- "Increased numbers and combined staff talent pool has allowed greater advances in member services, especially education, training, and help desk."
- "Economies of scale allowing two of the smaller association participants to maintain community presence under the larger umbrella."
- "A professional staff."
- "Many of the firms that were most outspokenly negative toward the merger are now the most outspokenly positive."

The six most common reasons for consolidating associations:

1. Cost savings in combined internal administration.
2. Elimination of duplications of processes for members in multiple associations.
3. Better communications capabilities, methods, and platforms.
4. Perceived increase in value of the larger association to the member.
5. Increase in the quality of programs, products, and services.
6. Ability to move quickly on new ideas and concepts.

REALTOR® Association Mergers: 2000-2010

Total mergers per year:

2010	.....	8
2009	.....	12
2008	.....	3
2007	.....	1
2006	.....	2
2005	.....	3
2004	.....	6
2003	.....	10
2002	.....	7
2001	.....	12
2000	.....	16

2010 mergers:

REALTOR® Association of the Fox Valley, Ill. Merger of the REALTOR® Association of the Fox Valley and Aurora Tri-County Association of REALTORS®.

Buffalo Niagara Association of REALTORS®, N.Y. Merger of the Buffalo Niagara Association of REALTORS® and Niagara Frontier Association of REALTORS®.

Miami Association of REALTORS®. Merger of the REALTOR® Association of Greater Miami and the Beaches and the REALTOR® Association of Miami-Dade County, and later also merged with the Northwestern Dade Association of REALTORS®.

MetroTex Association of REALTORS®, Texas. Merger of the MetroTex Association of REALTORS® and Grand Prairie Board of REALTORS®.

Crawford County Board of REALTORS®, Ohio. Merger of the Bucyrus Board of REALTORS® and Galion Board of REALTORS®.

Chicago Association of REALTORS®. Merger of the Chicago Association of REALTORS® and West Towns Board of REALTORS®.

Tuolumne County Association of REALTORS®, Calif. Merger of the Tuolumne County Association of REALTORS® and Hetch Hetchy Board of REALTORS®.



"Synergy: Merger and Alternatives" is a presentation by former REALTOR® AE, Jerry Mathews for associations and their leadership addressing different approaches to combine strengths of separate associations. Today, Mathews specializes in making presentations on future trends, facilitating strategic thinking, providing executive coaching, and recruiting. Contact him at jerry@jerrymathews.com, 407-876-1495, or visit www.jerrymathews.com.

NAR program enables mergers

Unify is a program to facilitate consolidation of local associations in an objective and confidential manner. It is for associations considering or committed to merger or other unification alternatives. Unify enables associations to know what opportunities exist to merge (or not) and to engage in the process. The NATIONAL ASSOCIATION OF REALTORS® sponsors the Unify program; Jerry Mathews provides the professional services. For more information, e-mail: jerry@jerrymathews.com.

Marketing: Never Hide a Merger

By Melynn Sicht

Marketing

Never Hide a Merger



Melynn Sight is president of nSight Marketing. Contact her at 913-261-9100 or melynn@nsightmarketing.com.

Associations considering a merger—or any other type of complex and lengthy decision-making process—face the question: How and when do we tell the members?

For many AEs and leaders, the instinct is to wait until “just the right time” during the process. It’s natural to reason that merger discussions will constantly shift and change, with ideas falling by the wayside and the possibility that the whole merger proposal will never even see the light of day. Plus—the reasoning continues—this type of internal process is more information than most members want, or need. Besides, you tell yourself, the fluid nature of the information will likely just confuse them.

Beware, however, that this impulse to play your cards close to the vest and not reveal merger plans until they are “solid” can turn into a disaster. As many organizations have learned through painful experience, a board that does not communicate early and often with members may finally reach the decision to merge only to see their months of hard work rejected by members as dishonest or, worse yet, sabotaged. Remember, your membership votes on your merger.

Communications plan for a merger process

Rather than waiting until a firm merger plan is in place, it’s vital to start communicating with mem-

bers at the beginning of the process and maintain a dialogue throughout. For one thing, board members and leaders build trust around the process through open and transparent discussion with members. In addition, member concerns that could derail a merger should be understood and addressed at the beginning of merger talks, not when it’s too late. Finally, robust two-way communication between leaders and members develops the communication muscles needed to launch a successful merged organization, jump-starting the communications of the future.

Some key strategies for communicating during a merger include:

Survey interest in merger updates

Start the process of honest and frank discussion by asking members how they want to be kept informed about merger discussions. Your association leadership can initiate monthly face-to-face or online town-hall meetings to share the latest information, take questions, and gather feedback from members. You can use focus groups or polling tools to regularly check the pulse of your members and the latest merger scenarios. You could also start a merger

Merger Web sites keep members informed

three locations, two associations, one home
NMA | SPAAR MERGER

Welcome to your information source for the merger plans between the North Metro and Saint Paul Area REALTORS® Associations.

Here we'll provide our members with details on the process.

[PRESS RELEASE](#)

DOCUMENTS **MEDIA** **Members Approve Merger**

[Agreement & Plan of Merger](#) [Press Release](#)
[Resigned Articles of Incorporation](#) [NMA Letter to Members](#)

Members of both the North Metro REALTOR® Association and the St. Paul Area Association of REALTORS® voted to merge the two associations in two separate meetings held on December 8, 2010. The merger will take effect April 1, 2011.

When the St. Paul Area Association of REALTORS® set out to merge with the neighboring Southern Twin Cities Association of REALTORS® in 2009, it didn't wait for members to call with questions. Association leaders preemptively launched a Web site developed specifically to communicate merger facts and goals.

Aptly named *BuildingABetterAssociation.com*, the site featured merger news in text and video format, along with FAQs, graphics, and maps of the proposed new jurisdiction. The site was updated regularly throughout the process and used again in 2010 to communicate St. Paul's latest merger with the North Metro REALTOR® Association, which will take effect in April.

The recently merged

It's essential that you not let your overall marketing goals and messages screech to a halt when a merger is on the horizon.

Web site or blog to keep members constantly updated (*see sidebar*). How do you know which technique will work best for your organization? Consider asking your members at the beginning of the process which communications method(s) they prefer.

Participate in and monitor social media

Create an environment for examining the positive opportunities in the merger and allowing potential barriers to surface. The world of association communications is changing rapidly, as new social media tools allow for more interactive discussions between organizations and their members. If you haven't started actively using Facebook, Twitter, or blogs yet, give your members a chance to hear changing merger ideas and offer their feedback, both positive and negative.

Posting videos by leaders explaining the how and why of a merger are also very effective because they deliver the personal side of this organizational process.

React to rumors

Rumors flourish in a vacuum, so make sure your members are getting regular and timely information from you as quickly as possible. Although a weekly e-newsletter may be your traditional communication method, it will most likely not be enough during a period when information is changing rapidly. You need a plan to ensure new information will get to your members first from you, whether through a special e-mail message, a weekly communiqué directly to brokers, or a Twitter alert.

Assign someone to monitor social media channels, and make sure you respond to any rumors or misinformation circulating about your association.

Don't abandon business as usual

It is essential that you not let your overall marketing goals and messages screech to a halt when a merger is on the horizon. Make sure you continue to communicate value, keep members posted on market trends, keep members abreast of association news and events, and continue explaining what all this information means to them.

Build new communication objectives

Start building your new association through strengthened relationships with members. Merger discussions may be the impetus for stepping up your communications and moving beyond one-way speeches, newsletters, and static Web sites to more engaging tools like video messages from your leaders, a blog that encourages members to interact with board members, or a series of webinars that both educate members about merger options and allow them to give you valuable ideas.

The goal of your communication is not only to educate members and send out information, but also to build a dialogue, which shows transparency and honesty.

Merger talks actually present your association leadership with a chance to develop new communication skills and share a new level of conversation with your members that can lead to stronger support as the merger talks solidify. ■

Miami Association of REALTORS® complemented its merger e-mails with videos on both merging associations' Web sites featuring the board chairmen and association presidents. Miami also created a merger information page with FAQs.



sent out mass messages through Twitter, and posted information on its Facebook page and blog.

Members kept out of the loop revolt against merger

As an example of just how forcefully members can rally against an association merger, take the group of California REALTORS® that

created a Web site (<http://savensdcar.com/mergerhuh.html>), blog, and petition against the proposed merger of the North San Diego County Association of REALTORS® and the San Diego Association of REALTORS® in July. In an open letter to association directors posted on the group's Web site the merger challengers posed 25 questions about the merger and said "all North San

Diego County members are entitled to an explanation of why their board of directors is exploring a merger with SDAR without first consulting their members." The merger was rejected by members in a July vote.



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Your Career: Curb Merger Job Stress

By Leonard Pfeiffer

Your Career

Curb Merger Job Stress



Leonard Pfeiffer heads Leonard Pfeiffer & Co., a national executive search firm. He can be reached at 202-737-6327 or BD@pfeiffercompany.com.

In his 25 years of executive recruiting for associations, Leonard Pfeiffer has placed CEOs into the top spots at dozens of new associations and MLSs created out of mergers. Here, he offers his advice to AEs facing the career uncertainty of a merger.

Q. One of the biggest (and often unspoken) hurdles to association mergers is the fear AEs have of losing their jobs. Would you agree?

Yes, but it is also an opportunity. A merger may be a chance for the AE to run an even larger group (and be paid more), to learn a lot about mergers (which will continue to be popular in today's economy), or to negotiate a lucrative severance plan before moving on to a bigger, better, and more challenging job.

Q. What's the most common scenario: one AE stays and the other is let go, or both stay on but assume different roles?

There really isn't any common scenario, but what you're most likely to see is that both AEs leave—maybe not immediately, but it's important to keep in mind that a newly merged organization might need a new kind of leadership.

It is uncommon for both AEs to stay under different roles. Having two former CEOs in the same organization rarely works. You end up with two bosses, even if one is designated as the senior, "new" CEO. This scenario is confusing for both staff and leadership and it slows down the evolution of the two old associations becoming one. The buck needs to stop at one desk, and one desk only.

Two former CEOs in the same organization rarely works. You end up with two bosses, even if one is designated as the senior, "new" CEO.

Q. When should an AE gain assurances regarding his or her future role?

As in life, upfront communication and clarification of expectations saves many problems later on. The AE should seek a definition of his role and assurances of his future near the outset of merger talks. Only once the AE's position has been defined can

he work to establish the merger and do whatever the directors deem necessary.

Even if there will be no position for the AE in the new organization, there is still important work to be done. For example, if the merger requires a restructuring of staff and one board feels strongly that its government relations SVP is the stronger one in the two associations, the AE will need to carefully negotiate that on behalf of his board. Of course, the same may need to happen in negotiating the disposition of various assets, such as office buildings, receivables, excess staff, reserves, etc.

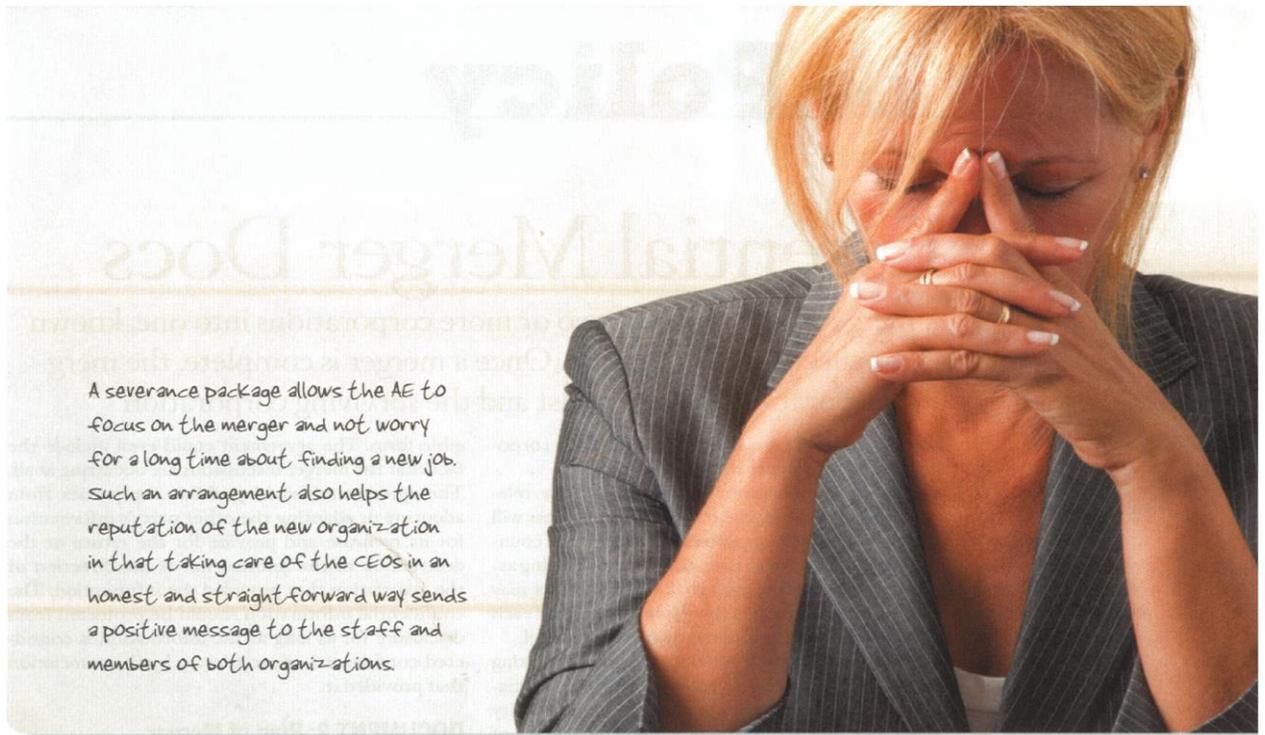
Q. Two AEs pitted against each other to lobby for the executive office sounds unpleasant. What would you recommend the board or AEs do to avoid ugly conflict?

In an ideal situation, all four parties (the two AEs and their respective boards of directors) should put personal aspirations aside and focus on what is best for the final, merged association. However, if the AEs do not know where they stand, you're more likely to see them lobbying behind the scenes.

Keep in mind that this is, and always has been, a board of directors' decision. If the directors want to avoid the backstage drama, they need to be very sympathetic to both AEs' financial and career situations. Providing very attractive severance packages is a typical cost of merging that makes the process go smoothly.

If one board of directors insists on keeping its AE as the final executive, they owe it to everyone to make that a clear condition of the merger at the outset. The ugly conflicts erupt when directors make that a requirement at the eleventh hour.

Q. Sometimes working out who will be the CEO of a merged organization becomes the job of an outside consultant. What has been your strategy for choosing the best fit whether between the two



A severance package allows the AE to focus on the merger and not worry for a long time about finding a new job. Such an arrangement also helps the reputation of the new organization in that taking care of the CEOs in an honest and straight forward way sends a positive message to the staff and members of both organizations.

current AEs or from outside?

Our strategy is focused on the goals and needs of the combined, new association. The position specification (job description) we develop may be radically different from the job descriptions of the two present AEs. We then move forward with a search, seeking qualified candidates who meet that new specification. Of course, we will look carefully at both of the sitting AEs as potential candidates, unless our client, the new board of directors, suggests otherwise. Frankly, there have been times when we have been more supportive of a sitting AE than the directors were, and we had to convince them to see some of the AE's strengths that they had previously overlooked.

Q. What should an AE expect if he or she is not chosen to head the merged association?

If the AE will not stay on board and serve as the final CEO, she should establish a severance package to take effect after the merger is complete for anywhere between six and 24 months.

A severance package allows the AE to focus on the merger and not worry for a long time about finding a new job. Such an arrangement also helps the reputation of the new organization in that taking care of the CEOs in an honest and straightforward

way sends a positive message to the staff and members of both organizations.

It is important to keep in mind that a merger may lead nowhere. You don't want a situation where an AE quickly finds a new job and quits.

If one or both of the AEs is nearing retirement, it could be opportune for the AE to negotiate a lucrative early-out package.

Q. What's the worst thing you've seen an AE do in a merger situation?

Mergers can bring out the best and worst in people. Sadly, we've seen a few AEs revert to tantrums and other childish behavior, making themselves seem foolish and embarrassing their board of directors. Other AEs have, immediately upon learning of a merger, aggressively searched for a new job. The result is that one, or possibly both, associations lack an AE to negotiate the merger and it ends up falling through or is very one-sided. This is probably the worst-case scenario for both sets of leadership.

As we said above, the boards and sitting AEs need to speak frankly the moment a potential merger scenario appears. Once the AE is taken care of and protected fairly, he or she can be a tremendously positive influence on whether "to merge or not to merge" the association. ■

If the AE will not stay on board and serve as the final CEO, he or she should establish a severance package to take effect after the merger is complete for anywhere between six and 24 months.

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Law & Policy: Essential Merger Docs

by Laurie Janik

Law & Policy

Essential Merger Docs



Laurie Janik is General Counsel of the NATIONAL ASSOCIATION OF REALTORS®. Contact her at 312-329-6400 or ljanik@realtors.org.

A merger is the union of two or more corporations into one, known as the surviving corporation. Once a merger is complete, the merging corporations cease to exist and the surviving corporation

assumes the assets and liabilities of all of the corporations that are parties to the merger.

Mergers are a statutory procedure, so the relevant state statute must be followed. The process will vary by state, so it is important to involve legal counsel early in the process. Even though the merging associations have a common goal, their interests may at times diverge and it is therefore prudent for each association to be represented by its own counsel.

A number of legal documents are needed to bring about a merger of two or more REALTOR® associations. Three of the most common: a confidentiality agreement, the plan of merger, and the articles of merger.

DOCUMENT 1: Confidentiality agreement

The purpose of this agreement is to address the fact that merger discussions will be taking place and that those talks will involve sharing sensitive information, such as financials, strategic plans, budgets, membership records, and staffing needs. The agreement should be drafted and executed once the parties to a potential merger achieve conceptual buy-in to proceed with merger discussions from each association's board of directors.

Even though the merging associations have a common goal, their interests may at times diverge and it is therefore prudent for each association to be represented by its own counsel.

Naturally, confidentiality agreements must specify what information needs to be kept confidential and should identify by name those individuals who are permitted to see the confidential information (limited to those involved in the evaluation and negotiation process) and prohibit disclosure to anyone else. Confidentiality should cover all of the information disclosed by the associations to each other in the course of the merger negotiations, whether that disclosure is oral, written, or in some other tan-

gible form. The agreement could even include the fact that the merger discussions are occurring at all. The agreement should prohibit the parties from adopting or adapting the other party's information for its own use and provide for the return or the destruction of the information at the direction of the association that provided the information. The confidential information should be protected from disclosure for as long as the information is considered confidential or proprietary by the association that provided it.

DOCUMENT 2: Plan of Merger

This document sets forth the terms of the proposed merger. It is drafted after the preliminary negotiations have taken place. It should identify each association involved and specify which of those associations will be the surviving association. The name selected for the surviving association could be its original name, the name of another of the merging associations, or an entirely new name.*The document should address governance matters, such as the identity of the officers and directors of the surviving association. Any changes to the articles of incorporation and/or bylaws of the surviving associations should be spelled out. Other terms and conditions of the merger should be included.

The draft plan of merger is then submitted to the board of directors of each merging association for approval. The board of directors should adopt a resolution approving the plan and directing that it be submitted to the members for a vote at the annual meeting or at a special meeting called for this purpose.

DOCUMENT 3: Articles of Merger

This document attests to the approval of the merger plan. It is executed by each of the merging associations once the boards of directors and members of the merging associations have approved the plan.

Typically, articles of merger must set forth the names of each corporation, the plan of merger, and a statement as to how the plan was adopted. Your



state's secretary of state may provide a form of the articles of merger to be completed.

Articles of merger are then filed with the secretary of state's office. If the paperwork is all in order, a certificate of merger is issued by the secretary of state to the surviving corporation. Once this process is complete, the associations that were parties to the plan of merger become one single corporation and

the separate existence of the corporations, except for the surviving corporation, ceases.

The final step for newly merged associations is notifying the NATIONAL ASSOCIATION OF REALTORS® of the merger. This is accomplished by completing and submitting the Application for Merger, available on *REALTOR.org* (search "application for merger"). ■

** If a new name is selected, the name change must be approved by the NATIONAL ASSOCIATION OF REALTORS®.*

Risk Mitigation

Mergers & Antitrust

If merging associations have or appear to have anticompetitive motivations, such as wanting to limit the choices of where prospective members can join, they may violate state and federal antitrust laws.

In fact, you should always be alert to antitrust concerns when the merger or consolidation results in an increase in dues or service fees. These concerns, however, can be mitigated if the association can demonstrate that

- A nearby association charges lower prices for similar services.
- An independent association can still enter the market.
- The association would have had to raise its fees anyway.
- One of the associations would be forced to dissolve unless the merger occurred.
- A large majority of members are in favor of the increased fees.

Reasons that don't raise antitrust concerns include the associations' desire to deliver services more efficiently, be more effective in such activities as lobbying, reduce overhead and other costs, make more services available to members, and provide new services together that neither party had been able to provide.

Documents & Resources

Expanded Document Checklist

In addition to the three key documents detailed above, check the following materials to see whether they place any limitations on a proposed merger or consolidation or whether they'll need to be amended to reflect the new status.

- Employment and other contracts
- Pension and profit-sharing plans, deferred compensation such as 401(k) and 125 plans
- Leases
- Loans, notes, mortgages
- Insurance policies
- Federal tax-exemption letter
- MLS bylaws, rules

Merger Resources on REALTOR.org

Merger Procedure by Local Boards and Associations.

Administrative instructions and an application developed to assist local associations in processing a request for merger.

Merger Kit.

This PDF contains valuable information on the benefits of merging, financial considerations, legal considerations, a sample plan of merger, and more.

Field Guide to Association Mergers & Partnerships.

Here you'll find an assortment of Web sites and information geared specifically toward REALTOR® associations along with a collection of eBooks offered free from NAR's collection. REALTOR.org/library_secured/library/tg608

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HR Connection: Who Stays, Who Goes?

by Donna Garcia

HR Connection

Who Stays, Who Goes?



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One of the toughest decisions to make in an association merger is how to merge staff. You—and your employees—know there's no room for two education managers or two professional standards

administrators. So, how can you blend, balance, and build the staff your new organization needs with the least amount of stress?

First and foremost, define the goals and initiatives of the merged association. It is only after you determine your long-term goals that you can select the staff with the skills you'll need to accomplish them.

Although the decision makers in any merger (such as a merger leadership team, joint leadership team, or outside facilitator) will hammer out the new organization's programs and services, the chief executive officer of the new organization should make staff decisions. This EO may be from one of the merging associations or hired from outside.

Keep everyone informed

Certainly, at the initial stages of merger talks, all staff—AEs included—are anxious about their jobs. Your only weapon against rumors and low morale is communication.

Hold staff meetings (with both individuals and groups) to explain the reason for the merger as well as the goals of the new organization. Also, inform staff as soon as possible about the process and time-

line for making staffing decisions.

To keep your most talented staff from jumping ship the moment merger talks are announced, use your internal communications to focus on the projected strength and stability of the merged organization, as well as any increased ability to offer more benefits to employees.

Your staff will need to support you and your initiatives to keep the association operating effectively during the transition. Plus, they are your best form of marketing during change. If your people don't feel good about the change, your members will know it quickly.

Matching skills with need

To build your new association staff, start by documenting every employee's skill set, including his or her level of proficiency with the software and systems you plan to use in the new organization—financial systems, association management software, and MLS software, to name a few. Assess who has key organizational knowledge and experience in critical areas, such as event planning, public relations, education, and government affairs. Finally,

REORGANIZING STAFF BENEFITS

Along with merging staff comes merging your staff benefits, such as health and retirement plans. Although offering your employees the best plan options from both plans sounds ideal, it may not be practical. Not only will you need to compare the plan provisions, but you'll need to consider the costs as well. Even if you can afford to offer the

best benefits of all plans, economic conditions may change and those benefits may have to be adjusted accordingly in the future. Whether you can keep one of the association's plans may depend upon factors such as: 1) whether the new association will be under a new tax ID number; 2) what state the association is located in; and 3) when

the benefit contracts expire. You'll need to check your benefit agreements to determine the contract's renewal date and the amount of notice that is required to terminate the contracts, if necessary.

Be sure to also assess the following plans to determine which benefits will be continued or modified:

- Health insurance

- Dental insurance
- Vision insurance
- Short-term disability
- Long-term disability
- Life insurance
- Employee assistance programs
- Flexible benefits/ Section 125 Plan
- Pre-tax transportation benefit
- Sick or personal days
- Vacation and holidays

You may be able to reduce health and dental insurance costs by increasing copays, deductibles, and out-of-pocket maximums. If you have a retirement plan, I strongly recommend that you seek legal counsel, as these plans are highly regulated. Some may require plan amendments and specific timely notifications to plan participants if

During a merger, focus on the goals of the new organization you're building and find the staff that can best help you deliver your promise of greater benefits for your members.

compile performance reviews, and ask employees where they see themselves in the new organization.

Now, compare these skills to the long-term goals of the new organization to create job descriptions for these positions (see sidebar). List the job's responsibilities, but also define the level of decision making required for the job and the amount of time allocated to each task.

Legal consideration

Be sure that when you're assessing who you'll keep and who you'll terminate, you can justify a business reason for your actions. You don't want your decisions to be perceived as discriminatory.

What if you have two stellar employees with the skills you need but only one position available? Have both employees "apply" for the position as you would a new hire, interviewing both with the same questions. After the interview, consider whether the person who isn't getting the job could be utilized elsewhere. If not, notify the employee of his or her termination date and any benefits he or she is eligible for. As tempting as it may be, do not make any promises about rehiring. You never know what the future holds.

During the hiring and firing process, it is useful to review all current employment contracts to determine whether additional compensation will be due and/or whether benefits will need to be delivered for early termination.

Dignity and respect

When meeting with the terminated employees, always treat them with the dignity and respect they deserve. Remember, these are employees who served your association well, and you never know whether they may prove to be allies in the future. In addition to being common decency, this is common sense. Employees who remain will be watching very closely to see how the terminated employees are being treated. A negative tone could sour morale from the start.

Moving forward

In addition to your staff needs, determine whether you'll need some "transitional staff" in the short term to see you through the merger. Do you need full-time positions? Or can some of the work be completed on a part-time basis?

While building your new staff, communicate the planned organizational chart so that everyone is clear about their roles and to whom they report. You may have new levels of staff, such as a director level between the managers, in addition to the CEO position that didn't exist previously.

In an ideal world, you'd be able to retain or find jobs for all of your employees, but that's rarely possible. During a merger, focus on the goals of the new organization you're building and find the staff that can best help you deliver your promise of greater benefits for your members. ■



Search [REALTOR.org](https://www.realtor.org) for more information on merger best practices, and sample employee manuals, along with hiring and firing advice.

SOME MERGERS MEAN HIRING, NOT FIRING

changes need to be made or if the plan needs to be terminated. You'll want to assess each plan's design, provisions, investments, administration, contribution amounts, and costs. Also, be sure to compare employee manuals to determine which policies you will want to continue under your new association.

The blending of staffs from the REALTOR® Association of Greater Miami and the Beaches and the REALTOR® Association of Miami-Dade County was surprisingly easy, says Teresa King Kinney, RCE, CAE, CIPS, CEO of the newly formed Miami Association of REALTORS®. "Duplicate positions for member services gave us almost enough positions

to cover our 25,000 members, 1,000 seminars and events, and six offices," she says. "It's pretty surprising, but there were no other duplicate positions."

In fact, Miami hired an additional education executive, accounting professional, and graphic designer. The other CEO is pursuing opportunities elsewhere and only one of

that CEO's staff elected not to remain. To facilitate the blending, staff participated in a two-day retreat to get to know one another and learn their new roles in the organizational structure.

"The merger has already given everyone a chance to grow, learn, try new things, and also do what they each do best," says Kinney.



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Making Merger History

By: Teresa King Kinney, RCE, CAE, CIPS, CEO

AE Profile

Making Merger History



Teresa King Kinney, RCE, CAE, CIPS, CEO, Miami Association of REALTORS®. She can be reached at 305-468-7010 or tkinney@miamire.com.

It took only one meeting for the leaders of the REALTOR® Association of Greater Miami and the Beaches and the REALTOR® Association of Miami-Dade County to decide to merge. Then, in

August 2010 (a mere five weeks later), members voted to approve the largest merger in NAR history, creating the largest local REALTOR® association in the country. Since then, the leaders, brokers, managers, and agents have remained “pumped,” says Teresa King Kinney, CEO of the merged association, called the Miami Association of REALTORS®, which includes 23,000 REALTORS® in south Florida. “It has been an amazing time and we’re all still excited.”

The merger brought together two large associations with very different philosophies and different services in an effort to provide members with the best, most comprehensive programs, products, education, and resources, says Kinney, who shares more merger tips and details below.

Why was 2010 the time to merge, as opposed to 5 or 15 years ago?

Our merger was not market oriented or financial—both associations had strong revenues, reserves, and member counts. But we had been in a very difficult board-of-choice environment for many years. During a meeting of the leaders on opposite sides of an issue on exclusive services, one of the leaders commented that the dispute would be a moot point if the

associations were merged into one. Surprisingly, leaders on both sides agreed and decided to hold a merger committee meeting the next week. One merger meeting later, every decision needed to complete the merger had been agreed upon, including name, leadership, process, and timetable.

Did you explore alternatives to merging associations, such as sharing services and partnering?

Over many years, offers to share services or partner had not been productive, so a merger was attempted 12 years ago and was abandoned by one association as unsuccessful after months of meet-

ings. Each association then went its own separate way and developed and marketed its own unique services.

The merger of two large associations happened in a very short period of time. What do you attribute this to?

The right leaders at the right time made the right decisions to get the members what they needed as quickly as possible.

Before the merger, both associations had allowed member offices to split their MLS participation between the boards, which offered them a common database but a different set of services and benefits. Because agents in the same office had access to different services, it began to create a compelling desire on behalf of the agents and brokers to have a collective package of services. The latest dispute over exclusive services, coupled with the members’ growing desire for all the services, created the right environment for a merger.

When members asked, “why merge?” what did you communicate as the best advantages and benefits for them? How did you convey this information?

Members never asked, “why merge?” because the benefits were clear. The comments were more about why it took so long for someone to suggest it. We did a Q&A on both association Web sites and linked it to the frequent e-mail announcements about the merger. We began to implement and expand the combined services immediately after the directors’ approval, which brought a new service announcement every week—the excitement was amazing.

If you had to do it again, what might you do differently?

From our side, the merger was absolutely perfect. But my advice to others would be to decide only what needs to be decided in order to merge. Don’t complicate things; focus on what’s important and never forget, it’s all about the members. ■

“The right leaders at the right time made the right decisions to get the members what they needed as quickly as possible.”



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