



Weathering Financial Storms: Navigating and Preparing for Financial Hardship

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**Lawyers Alliance
for New York**

Connecting lawyers, nonprofits, and communities



Disclaimer

Please note: Today's presentation is informational only and is not intended to constitute legal advice. This presentation references both federal and state laws and regulations but primarily focuses on New York law. Please consult with appropriate counsel for guidance pertinent to your organization or situation.



Lawyers Alliance for New York Services

- Review of **governance documents**
 - Bylaws
 - Conflict of Interest Policy
- Drafting **Board resolutions** to authorize transactions
- Drafting and negotiating **contracts** and **sublease agreements**
- Advising on **strategic alliances**
- Assisting with **corporate dissolutions**



Overview of Strategies

- Revenue Generation
 - Fundraisers and Charging Fees
 - Loans
 - Subleases and Licenses
- Reducing Expenses
 - Terminating Contracts and Leases
 - Reducing Workforce
- Debt Restructuring
 - Voluntary Workouts
 - Bankruptcy
- Strategic Alliances and Mergers
- Dissolution



In the News

- City cancelled multi-year contract for noncompliance with undisclosed agency deadline, forcing nonprofit to consider closing down
- Ongoing delays in contracts payments by New York City
- New York Council of Nonprofits: 62% of nonprofits in 2024 were concerned about funding basic operations, up from 50% in 2023
- Chronicle of Philanthropy, November 2024:
 - Bread for the City in Washington, D.C.
 - Few grant makers have responded to inflation
 - For a \$100,000 grant to go as far today as it did in 2019, it would need to be \$125,000



Hypothetical

- Good Works is a multiservice tax-exempt organization located in Brooklyn that has an annual budget of approximately \$2 million and employs approximately 25 full time employees.
- The organization has three government contracts having an aggregate value of \$1.5 million. The remaining \$500,000 is raised from foundation grants and individual giving. Recently, Good Works lost a government contract valued at \$500,000.
- Good Works' executive director is concerned with how the organization will continue to deliver services on this reduced budget.



Strategies for Managing Financial Crises



Pay Attention to Warning Signs

- History of operating with deficit
- Consistent inability to pay bills in timely manner
- Lack of accurate financial information
- Loss of large government contract

What's causing the financial difficulty?



Remain Calm

1. Analyze the organization's financial condition
 - Cash on Hand
 - Receivables
 - Liabilities
 - Fixed Expenses
 - Discretionary Expenses
 - Other Assets
2. Advise the Board of Directors of the situation
3. Make a plan: do not ignore the problem!



Vital Questions:

- Are programs paying for themselves, or are programs underfunded?
- Are the organization's difficulties the result of long-standing economic problems, or a one-time loss of a contract?
- How much time does the organization have to increase revenue?
- Do you have under-funded staff positions or programs that can be reduced?
- Does the organization have assets it can leverage to raise cash?
- Does the organization have sufficient unrestricted funds with which to service debt?
- Does the organization have support of funders?
- Does the organization have a good reputation?
- Is the organization willing to make difficult decisions?
- Are there reliable relationships with creditors?
- Does the organization provide vital services to your community?
- Is there strong leadership willing to commit time and effort?



Revenue Generation



Special Event Fundraising

- State and Local Compliance
 - Registration with NYS Attorney General’s Office
 - Public Solicitation License from NYC Human Resources Administration (HRA) and Other Requirements
- Federal Rules
 - Contemporaneous Written Acknowledgement
 - Special Event Journal “Ads” v. “Acknowledgments”
 - Corporate Sponsorship and UBIT
- Notes on Specific Events
 - Auctions
 - Raffles



Charging Fees for Program Services

- Nonprofits may engage in activities that generate revenue
- Example: this webinar!
- Consult counsel
- Avoid UBIT
- Review funding contracts and award letters, including public and private funding agreements, to ensure that they do not prohibit charging fees for services
- Consider sliding scale or voluntary donations



Loans

- Secured v. Unsecured Loans
- Fixed Loan v. Revolving Credit/Line of Credit
- Due Diligence



Restricted Assets

- Restricted asset is an asset that a donor directs be used for a specific purpose
- Restriction can be in gift instrument or implied in fundraising material
- A restricted asset may or may not be available to pay creditors
- An endowment fund is a fund that is not wholly expendable by the corporation on a current basis under the specific terms of all applicable gift instruments
- There are circumstances under which a Board can expend a portion of endowment funds to cover ongoing costs



Real Estate Considerations

- Reclaiming Office and Program Space Rent
- Renting Office Space
- Subletting
- Desk Licensing



Don't Abandon A Commercial Leased Premises

- This is a bad idea!
 - In a commercial lease, a tenant is obligated to pay the rent for the entire lease term
 - Landlord can seek a judgment against the corporation for the full amount of the rent
 - Landlord has no obligation to mitigate damages (*unlike residential property*), but pending NY legislation will change the law so that Landlords will have to mitigate damages.
 - If there is a guarantor, guarantor would be liable
- When you cannot pay rent, call a lawyer to confirm the best course of action and negotiate with landlord, if necessary
- Check lease for right to terminate if funding is lost and right to assign/sublet



Reclaiming Rent

- Terminating your lease
 - Commencement Date
 - Termination Date
 - Term
 - Termination Provisions
 - Guarantees
- Renegotiating Lease Terms with the Landlord
 - Reduce Rent
 - Landlord consent to assignment or subletting
 - Tie lease term to end of major funding



Space for Rent!

- Underutilized space may be sublet or licensed
- Parties
 - Sublandlord/Licensor = Tenant under the Lease
 - Subtenant/Licensee = Third party you identify
 - Landlord on your Lease (a/k/a the “Overlease” or “Prime Lease”)
- Assignment/Subletting Clause
- Termination Clause
- Use Clause
- What to charge?



Sublease: The Business Deal

- Sublease should include:
 - Description of premises
 - Floorplan, if available
 - Term
 - Commencement date
 - End date (contiguous with your overlease)
 - Special rights or obligations
 - Rent and pass-throughs
 - Insurance
 - Excluded Lease provisions
- Sublandlord representations
 - Status of the “overlease”



Desk License: The Business Deal

- Desk License Agreement should include:
 - Description of premises/what is licensed
 - Term
 - Commencement date
 - End date
 - Special rights or obligations
 - Rent and pass-through costs
 - Insurance
- Licensors representations
 - Status of the “overlease”



Sublease v. Desk Rental or License Agreement

- How much available/excess space do you have?
- Would you like a long- or short-term commitment?
- Sublease
 - Subtenant *generally* has more rights
 - Typically more permanent, designated space
- Desk License
 - Can be short- or long-term
 - Usually terminable on 30 days' notice
 - May be allowed without Landlord approval
 - Generally, licensee has fewer rights



Legal Issues for Space Sharing

- Protection of confidential information
 - Employee records
 - Client Files
 - Physical files and electronically stored files
 - Financial records and information
- Indemnification
 - Should indemnify you except for liabilities caused by your negligence or willful misconduct
- Insurance
 - Other party should conform to requirements under your Lease
 - Should carry workers' comp, commercial general liability, and personal property insurance
 - Provide copies of their insurance
- Individuals v. Organizations
- Termination Clause



Lease Modifications

- Lease modifications must state which provisions are being modified
- Must state that anything not explicitly amended in the modification shall remain the same
- Modifications may cover any amendment to the terms of the Lease including renewals or expansions



Hypothetical

Good Works' Board has encouraged them to generate revenue. Good Works has a large office space with a conference room. The organization has a hybrid work policy so staff is only in the office twice a week. The conference room is often unused and it has a couple of empty offices. Good Works often collaborates with DoGooders, who has expressed interest in leasing space from Good Works.

What kinds of things should Good Works consider?

- a. Check to see if the landlord's written consent is required to sublet its space
- b. Check to see if DoGooder's use is compatible with its conference or office use
- c. Figure out a payment schedule for conference room use
- d. All of the above



Reducing Personnel Expenses



Overview

- Legal Framework
- Methods for Reducing Personnel Expenses
 - Reduction in Pay
 - Reduction in Hours
 - Furloughs
 - Reduction of Employee Benefits
 - Reduction in Force
- Best Practices



Legal Framework: Employment Laws for New York State

- **At-will doctrine**
- **Anti-discrimination laws**
 - NYC Human Rights Act
 - NYS Human Rights Act
 - Federal Laws (ADEA, ADA, Title VII)
 - Protects employees from discrimination based on being in a protected class
- **Anti-retaliation laws**
 - NY Whistleblower laws



Reduction in Pay

- Freezing or reducing pay is a direct way to cut costs but is challenging in the nonprofit sector.
- Legally permissible for at-will employees if no employment contracts or CBAs exist.
- Must ensure compliance with minimum wage laws and avoid discrimination.
- Any pay reductions must be **prospective**—earned wages must be paid in full.



Reduction in Hours and Furloughs

- Adjust work schedules, shift employees from full-time to part-time, or shorten the workweek.
- Furloughs (temporary, unpaid leave) help save costs while retaining employees.
- Employees cannot work at all during a furlough to avoid triggering pay obligations.
- Consider impact on benefits (health insurance, retirement, PTO eligibility).
- Ensure business justification to mitigate legal risks.



Reduction of Employee Benefits

- Benefits are often the largest expense after salaries.
- **Key cost-saving measures:**
 - Adjust eligibility criteria (e.g., hours worked, waiting period).
 - Ensure only eligible dependents receive health benefits.
 - Reduce or suspend employer contributions to retirement plans (must comply with ERISA & avoid discrimination claims).
 - Cut nonessential perks (e.g., travel, parking, meals, discretionary bonuses).
- Employers must align benefit changes with **personnel policies** and **legal obligations** to avoid compliance risks (e.g., NYS DOL enforcement).



Reductions in Force



Poll

Have you conducted a RIF?

A) Yes

B) No



Conducting RIFs: Objective

- Avoid Lawsuits
- Maintain Operations
- Maintain Existing Employees' Morale



Conducting RIFs: Employee Selection

Goal: Insulate the organization from risk.

- Make the selection process as objective as possible.
 - Sound business reason
 - Develop objective, quantifiable metrics
 - Tenure
 - Performance
 - Redundancies
 - Check for disparate impact
 - Create an impact chart that includes employees' demographic information
 - Be mindful of high risk employees (i.e. recently returned from PFL or is currently out on leave)



Conducting RIFs: Messaging & Separating

- Nonprofits generally want to have a soft touch which is advisable, avoid creating risk
 - Be direct about reason for employee's selection.
 - i.e. do not blame loss of funding if selection was due to poor performance.
- Provide as much **notice** as possible/transparency is key
 - Employees are more likely to file a claim when they feel surprised, mistreated or not valued
 - Anticipate that this could impact operations as employees may leave prior to end of employment
 - consider offering retention payments
 - can be staggered
- Consider Separation Pay
 - Make sure to have agreement fully executed prior to any payments being made.



Additional Legal Considerations: WARN

NYS Worker Adjustment and Retraining Notification (WARN)

- Employers with 50+ full-time employees
- 25+ employees laid off
 - Requires 90 days notice to employees, DOL, and Local Workforce Development Board



Additional Legal Considerations: ADEA/OWBPA

- Employers with 20+ employees
- Conducting a RIF (2+ employees)

For a valid waiver of claims employees over 40 must receive:

- 45 day consideration period for separation agreements, 7 day rescission period
- Information with the job titles and ages of any other workers in the employee's unit or department who:
 - are also being laid off;
 - are being retained; and
 - the eligibility factors used to determine who was laid off and who was retained.



Hypothetical

Good Works RIF Proposal

IMPACTED

Employee	Age	Sex	Other Protected Class	Reason	Department
A	66	F	Y	Redundancy	Programming
B	23	M	Y	Tenure (1 yr)	Marketing
C	40	F	Y	Funding	Outreach
D	57	M	Y	Redundancy	Operations
E	55	F	N	Redundancy	Programming
F	49	F	N	Performance	Programming
G	67	F	Y	Redundancy	Operations

NOT IMPACTED

Employee	Age	Sex	Other Protected Class	Department
H	22	M	Y	Operations
I	31	M	Y	Operations
J	44	M	N	Programming
K	24	M	N	Programming
L	27	F	N	Programming
M	33	M	N	Programming
N	42	M	N	Outreach
O	37	F	N	Outreach
P	28	F	N	Outreach



Poll

Based on the Impact Chart, does Good Works' proposed RIF create any substantial legal risk?

A) Yes

B) No

C) Sorry, I missed it, I was eating lunch



RIFs: Best Practices

- Get Legal Counsel
- Documentation
 - Employee Evaluations
 - Email Correspondence
 - Impact Chart
- Remember: Notice Requirements, check for disparate impact, etc.
- Effective Execution



Debt Restructuring



Debt Restructuring Options

- Voluntary Workout
- Chapter 7 Liquidation
- Chapter 11 Reorganization



Most Popular Process: Voluntary Workout

- Determine scope of liabilities
- Are any creditors entitled to priority payment by law?
- What free cash is available to pay creditors?
- Formulate plan for repayment to creditors
- Systematically approach creditors and negotiate settlements
 - IRS
 - Global repayment strategy or individual plans
 - Personal relationships
- Document negotiated agreements
- May have to bring funders into the loop



Consider Contracts

- A contract is a voluntary agreement between two or more parties, which creates an obligation to do, or not to do, a particular thing
- Contractual terms can usually be modified with both parties' consent
- Examples:
 - Employment Contracts and Employee Benefits
 - Government Contracts
 - Grant Agreements
 - Leases
 - Vendor / Service Agreements



Bankruptcy: General Concepts

- Automatic stay: snapshot of the debts of the corporation on the day it files
 - All debts that arise on or before the petition date are “pre-petition” debts
 - Debts that arise after the petition date are “post-petition” debts
- Tax-exempt organizations can file for bankruptcy protection



Chapter 7 Liquidation

- No discharge of debts for corporations
- Liquidation
- Trustee appointed
- Distribution of assets: secured creditors have priority
- Advantages
 - Automatic stay
 - Opportunity to challenge claims
 - Creditors paid pro rata share
 - Orderly liquidation
- Disadvantages
 - Loss of financial control
 - Lack of flexibility
 - Fees for trustee's services
 - Subject to court scrutiny



Chapter 11 Reorganization

- Notice to creditors, who have opportunity to file claim
- Plan of reorganization: orderly payment of debts to creditors
 - All classes of creditors must accept for plan to be confirmed
 - Test for confirmation of plan: whether creditors get more than they would in Chapter 7 liquidation
- Advantages
 - Automatic stay
 - Assume or reject unfavorable executory contracts and leases on non-residential real property
 - Control
- Disadvantages
 - Time (several years)
 - Requires legal representation
 - Subject to court scrutiny
 - Cannot give better deals to some creditors over others



Strategic Alliances and Mergers



Other Available Structures

Collaboration Agreement

- Contractual relationship
- Both corporate structures preserved

Joint Venture

- Two or more nonprofit entities choose to collaborate on a project, but remain independent of each other

Asset Transfer

- One entity transfers all or substantially all of its assets to another entity
- Transferring entity may dissolve
- May require [AG approval](#)

Mergers and Consolidations

- One corporation fully absorbs another
- Due diligence will involve revealing financial health and all debts
- AG is a statutory party



Key Takeaways

Planning / Due Diligence

Identify goals of strategic alliance

Unearth material issues in diligence

Negotiate terms

Consider timing

Structuring

Know your options:

- Merger or Consolidation
- Asset Transfer
- Joint Venture
- Collaboration Agreement

Effecting a Transaction

Merger and asset transfer require AG approval

Subject to scrutiny

Lengthy process



Corporate Dissolution



Dissolution

- Two provisions Under N-PCL:
 - Article 10: Nonjudicial Dissolution
 - Article 11: Judicial Dissolution*
- Necessary Documents for Either Process:
 - Contact Information for Attorney or Individual Submitting the Petition
 - Certificate of Incorporation and Amendments
 - Bylaws
 - Latest Financial Reports
 - Resolutions of the Board (and Members, if any)
 - Any Required Governmental Body and Officer Approvals
 - Plan of Dissolution (Petition to Attorney General for Approval of Certificate of Dissolution)
 - Certificate of Dissolution

**Lawyers Alliance does not co-counsel judicial dissolutions*



When is dissolution appropriate?

- Does the organization provide vital services to your community?
- Is there strong leadership willing to commit time and effort?
- Does the organization have support of funders?
- Does the organization have a good reputation?
- Is there an understanding of the organization's finances?
- Are there reliable relationships with creditors?
- Are the organization's difficulties the result of a one-time loss of a contract?
- Does the organization have assets it can leverage to raise cash?
- Does the organization have sufficient unrestricted funds with which to service debt?



Thank You!

Upcoming Webinars and Workshops

- Bolstering Board Governance Webinar Series, Part I: The Role of the Nonprofit Board of Directors (February 5, 2025)
- Intellectual Property Basics for Nonprofits (March 11, 2025)

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