

# NONPROFIT JOINT VENTURES



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BROADLY DEFINED, A JOINT VENTURE IS A RELATIONSHIP WHICH ARISES FROM AN EXPRESS OR IMPLIED AGREEMENT BETWEEN TWO OR MORE PARTIES TO UNDERTAKE SOME COMMON OBJECTIVE FOR THEIR MUTUAL BENEFIT. MORE NARROWLY DEFINED, A JOINT VENTURE IS A SEPARATE LEGAL ENTITY FORMED BY TWO OR MORE PARTIES TO UNDERTAKE ECONOMIC ACTIVITY TOGETHER.

THE SEPARATE ENTITY MAY BE PURPOSEFULLY CREATED AS A PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION (EITHER FOR-PROFIT OR NONPROFIT).

TEXT GENE TAKAGI, OF THE NONPROFIT LAW BLOG

A separate entity may also be unintentionally created by the participating parties. An unincorporated organization with two or more members may be classified as a partnership if its members carry on a trade, business, financial operation or venture and divide its profits. Accordingly, the joint venture may be deemed a partnership regardless of the intent of the parties or whether the parties entered into a partnership agreement. Lack of careful planning may therefore result in each party being liable for the sole action of the other if such action was carried out in the name of the partnership.

## CAN NONPROFITS ENGAGE IN JOINT VENTURES?

Nonprofit organizations may engage in joint ventures with other organizations, whether nonprofit or for-profit, with certain limitations. The primary limitations for a charitable nonprofit: (1) the operation of the joint venture must be consistent with the charity's operation primarily for exempt (e.g., charitable and educational) purposes; and (2) the operation of the joint venture must not result in any prohibited private benefit. The law with respect to these limitations has evolved with several seminal cases and IRS revenue rulings.

## WHY DO NONPROFITS AND FOR-PROFITS ENTER INTO CROSS-SECTOR JOINT VENTURES?

Nonprofits may enter into joint ventures with for-profits to raise capital, to access the expertise possessed by their for-profit co-venturers, and to take advantage of opportunities otherwise unavailable to them. For-profits may enter into joint ventures with nonprofits to access new sources of capital, to exploit specific assets owned by the nonprofit (such as intellectual property rights), to take advantage of available tax credits, and to acquire greater community or political support. In addition, for-profit social enterprises may be motivated to enter into joint ventures with nonprofits to further the philanthropic goals of their owners.

## WHAT ARE THE TYPES OF JOINT VENTURES BETWEEN NONPROFITS AND FOR-PROFITS?

For tax purposes, one major distinction in the types of joint ventures between nonprofits and for-profits is with respect to the nonprofit's contribution of its assets to the joint venture.

1. **Whole joint ventures** (also, in the context of hospitals, commonly referred to as whole hospital joint ventures). The nonprofit contributes all or substantially all of

its assets to the joint venture and receives a partnership or membership interest in the joint venture entity.

2. **Ancillary joint ventures.** The nonprofit contributes only part of its assets to the joint venture, and the nonprofit's participation in the joint venture is not its only activity.

Another important distinction among cross-sector joint ventures is the legal form of the joint venture entity:

1. **General Partnership.** Pass-through entity for federal tax purposes. Typically, partners share management responsibilities and each is jointly and severally liable for the debts of the partnership.
2. **Limited Partnership.** Pass-through entity for federal tax purposes. General partners are liable for the debts of the partnership; limited partners (those that do not participate in the management of the entity) are generally liable only to the extent of their investments in the partnership.
3. **Limited liability company (LLC).** Typically, a pass-through entity for federal tax purposes. Owners (members) have limited liability protection and are generally liable only to the extent of their investments in the LLC (even if they participate in management of the entity).
4. **Corporation.** May or may not be a pass-through entity for federal tax purposes. Owners (shareholders) have limited liability protection and are generally liable only to the extent of their investments in the corporation (even if they participate in management of the entity).

## WHAT ARE SOME OF THE INTERESTING HYBRIDS INVOLVING NONPROFITS AND FOR-PROFITS?

1. **Venture philanthropy.** This often involves individuals and for-profit organizations

funding and providing other support (e.g. management and consulting services) to beneficiary organizations through a nonprofit corporation (the venture philanthropy entity). Under this arrangement, there are two separate relationships: (1) the individuals and for-profit organizations have a relationship with the venture philanthropy entity as donors and volunteers; (2) the venture philanthropy entity has a relationship to its beneficiary organizations. The second relationship is more than the relationship between a grantor and grantee. According to **Venture Philanthropy Partners**, such relationships are often *'more of an active, involved partnership'*.

While technically, the second relationship is among two or more nonprofits, it is the individual and for-profit donors/volunteers that are typically referred to as the venture philanthropists. As they are the ultimate source of the funding, and direct source of the services, received by the beneficiaries, they may see themselves as the joint venturers. However, the venture philanthropy entity provides a prudent vehicle for protecting the donors/volunteers from unwanted exposure to liability.

2. **Divisions of for-profit organizations devoted to philanthropy.** While it is not uncommon for very large business corporations to form corporate foundations that fund philanthropic causes consistent with promoting the business of their affiliated corporations, the business corporation and the foundation may never formally engage in a joint venture. However, there has been a recent trend of for-profit organizations informally devoting resources to a division of the business which will administer the for-profit's philanthropic activities, possibly including those engaged in by its corporate foundation.

The most notable example is Google and Google.org, the umbrella under which Google is putting its philanthropic efforts, including the work of the Google Foundation. It will be interesting to see whether operation of a for-profit corporation's philanthropic activities through a division or subsidiary of the for-profit entity will change the relationship between the for-profit umbrella and the nonprofit corporate foundation and whether coordination between the two will result in new joint ventures.

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