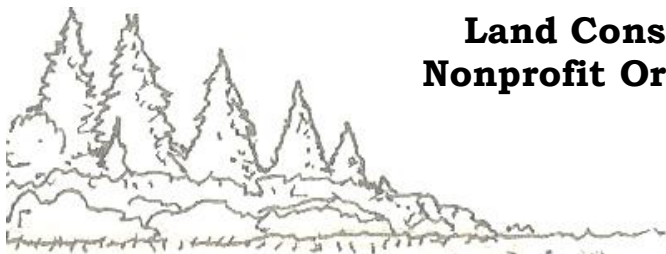


Robert H. Levin - Attorney at Law



**Land Conservation
Nonprofit Organizations**

**94 Beckett Street, 2nd Floor
Portland, Maine 04101
Phone and Fax: 207-774-8026
rob@roblevin.net
www.roblevin.net**

Due Diligence Report

TO: _____ Board of Directors
_____ Board of Directors

FROM: Robert H. Levin

DATE: _____

Background

I have been retained by LT1 and LT2 to represent both organizations jointly in connection with a possible unification. In preparation for such a transaction, I have been asked to conduct a legal due diligence review of both organizations. This Due Diligence Report summarizes the results of my review, and is based on interviews on _____ with _____, Executive Director of LT1, and _____, Executive Director of LT2, as well as a limited review of each organization's documents, appropriate to the scale of the proposed merger

1

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.

transaction. I have assumed and relied upon the accuracy and completeness of such information obtained from ____ and ____ for the purposes of rendering this Report.

Please note that I did not conduct any due diligence into the financial health of each organization, and this Report does not cover finances in any way. I recommend that each organization conduct an analysis of the other organization's financial health before consummating the proposed merger.

Please feel free to have ____ or ____ contact me with any questions you may have after reading this Report. Furthermore, please keep this Report confidential within your respective Boards.

Summary

I did not discover any matters of concern regarding LT1's and LT2's legal liabilities or noncompliance with any local, state, or federal laws. I see no legal obstacles to moving ahead with the proposed merger process.

As explained in more detail below, a few matters that I would suggest be attended to either as part of the merger process or shortly thereafter are as follows:

- LT2 should update its Bylaws and Articles of Incorporation.
- As of the merger closing date, LT2 should revise its insurance policies to ensure it covers the ____ program and the _____ building.
- After the merger, LT2 should revise the ____ release and waiver form, to ensure compliance with Maine law.
- After the merger, LT2 should continue to track the LT1 restricted funds through separate accounts or subaccounts.

2

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.

State Filing Requirements

Both LT1 and LT2 are in compliance with various state filing requirements, including:

- Good standing with the Maine Secretary of State
- Charitable Solicitation Registration – active licenses and no history of any disciplinary action

State and Federal Tax Matters

Both LT1 and LT2 are listed on IRS Publication 78 as tax-exempt 501(c)(3) public charities. Both are up to date on their IRS Form 990 filings. I briefly reviewed the most recent 990 filing for each organization, and they look to be prepared competently by accounting professionals and were filed on time.

Both organizations have unemployment insurance. Both use an outside firm to handle payroll, and I have assumed that payroll taxes are being withheld and paid in accordance with state and federal law.

Neither organization appears to have incurred any unrelated business income tax liability, as all income is mission-related.

In recent years both organizations have easily passed the public support test required for public charity eligibility, and combining the finances of the two organizations poses no problems for continued satisfaction of the public support test.

There are no evident 501(c)(3) compliance issues for either organization, including lobbying and campaigning restrictions, gift substantiation, excess benefit transactions, private benefit, and private inurement.

3

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.

Other Governance Matters

Although not a requirement of any federal or state law, both organizations have and appear to comply with conflict-of-interest policies, records retention policies, and whistleblower policies. There are no known Board-related disputes for either organization.

Both organizations have reasonably up-to-date Bylaws and Articles of Incorporation. That said, I have made a number of recommendations for improving LT2's Bylaws and Articles, and those suggestions are expected to be presented to the LT2 Board and membership as part of the merger process.

Potential Liabilities from Activities

There are no known legal liabilities stemming from programs or activities for either LT1 or LT2. I conducted a detailed interview with ____ and ____ as to the possibility of any potential claims from activities within the past six years.

Both organizations carry appropriate levels of insurance, including Commercial General Liability (also known as Third Party Liability) policies. LT1's coverage is \$1,000,000 per occurrence and \$2,000,000 aggregate, while LT2's is \$1,000,000 per occurrence and \$3,000,000 aggregate, and includes an umbrella policy. LT1 also has an accidental health and dismemberment and professional liability policies, an abusive conduct rider, and a "great outdoors" rider, all of which are useful and appropriate for its ____ program. LT1's third-party liability policy is occurrence-based, and thus there is no need for any tail policy once the merger is completed, but a tail policy is recommended for the D&O policy, which appears to be claims-based.

4

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.

As of the merger closing date, LT2 should revise its insurance policies to ensure it covers the _____ program, including adding the abusive conduct and great outdoors riders, accidental death and dismemberment, and professional liability coverage. Its property insurance will also need to add the _____ building, and this should become effective on the date the merger closes.

LT1's _____ building was built well after 1976, so there are no lead paint concerns. Furthermore, there are no mold or other health issues with the building, and there are no known construction problems. LT1 carries property insurance for the building and grounds. All of the same is true for LT2's buildings.

LT1's _____ program has been licensed by the Maine Department of Health and Human Services as a _____. I briefly reviewed a variety of _____ documents, and the _____ program appears to follow appropriate levels of employee training and appropriate protocols for health and safety, mandated reporting of child abuse, and prevention of sexual abuse. LT1 conducts background checks for all of its _____ employees, including the Maine sexual offender registry, as required for its _____ license.

LT1 requires all parents or guardians to sign an assumption of risk and waiver and release form. One issue for next year, which I can follow up with _____ and _____ about, is that the waiver and release aspect of the form is likely not enforceable against minors under an often-overlooked Maine Supreme Court ruling.

Potential Liabilities from Employment-Related Matters

Both organizations carry Directors and Officers include Employment-Practices Litigation (EPL) coverage, which

5

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.

protects the organization in the event of an employment-related claim.

There are no known liabilities from employment-related matters for either LT1 or LT2. Both organizations also carry Workers Compensation policies, as required by law. And both organizations have employee handbooks. LT1 does not offer benefits to its employees, so there are no issues with noncompliance or complications with closing out any benefits accounts. As with each organization's employees, there are no known disputes or outstanding liabilities with respect to any contractors.

LT1 Restricted Funds

There are two distinct funds that LT1 holds that are legally restricted:

- _____ Bequest – This bequest from _____, of which approximately \$21,000 remains, is restricted for the purpose of “efforts to develop programs and curricular development for educational programs.”
- _____ Fund – This fund contains approximately \$110,000 and is maintained in a pooled restricted account. The restriction stems from a capital campaign in _____. In particular, the Case Statement from the campaign states: “Our Development Team will build a professionally-managed permanent fund for supporting current and expanded LT1 programs.”

These restrictions will survive the merger, and LT2 should be sure to set up separate funds for to properly track them going forward. However, both of the restrictions are very broadly worded purposes, and allow for much flexibility with the use of these funds, as long as they support educational programs of some sort.

6

This memo is confidential to the LT1 and LT2 Board of Directors and staff and is not intended to be shared beyond that audience. It is also intended to be subject to the attorney-client and work-product privileges.