

Re: Memorandum on Merging and Closing RC&D Council Offices

Since the Congressional cut in funding for the RC&D Program, many RC&D Councils have been asking if they should close-up shop or if there is something else RC&D Councils could do? This memorandum is designed to give you some basic information on two options that RC&D Councils may want to investigate. Please note that this is a very complicated situation and no one answer is the correct answer. The material in this memo is designed as general information and it is advised that you seek local legal counsel before taking any action.

The first question you must ask yourself and your entire Board of Directors is “Do we really want to close?” Many local RC&D Councils have called the National Office asking how to properly close an RC&D Council. My first question is does everyone involved in this RC&D Council wish to close down or are there other individuals in the community who would like to carry the RC&D torch! Nine out of ten times there are folks waiting in the wings,; waiting for their chance to do something wonderful for their community and they see RC&D as the way to do it. All these people need is the opportunity, and most times the opportunity presents itself when the current leaders ask if there is anyone else who wishes to be involved,

The next question to ask is if a merger is a better option than permanent closure. Don't forget the old adage....you cannot unscramble the eggs...once you close-up the RC&D Council, the closure could be forever. If one wishes to re-start an RC&D Council, they will need to form a new non-profit and file for tax exempt status as a brand new entity. Some states will not let you use the old name of a previously existing organization for many years.

Mergers:

A merger is a great way to keep the operations of multiple RC&D Councils going while picking the best resources and activities from each organization. Basically, there are two types of mergers.

Merger type 1: The first type of merger is when two organizations come together to further their combined mission. In this case two RC&D Councils becomes one RC&D Council and a new RC&D Council is essentially formed. The assets of the two RC&D Councils are merged; meaning that all of their financial statements are combined.

Merger type 2: The other type of merger is an acquisition. An acquisition is when one RC&D Council takes over the financial assets and liabilities of another RC&D Council based upon fair market value of the assets and liabilities. In this case one RC&D essentially ceases to exist and is taken over by the other RC&D Council.

One thing to keep in mind is to let your donors, grantors, partners, etc. know exactly what you are doing and communicate with them early.

Dissolution (Closing an RC&D Council):

If your RC&D Council's Board of Directors properly votes as per your Council's bylaws to dissolve then the RC&D Council can cease to exist and can close down. The rules for properly closing a non-profit organization vary in each state. Since, every state is different; you should check your individual state laws for the proper process in your specific state. However, there is a basic process that most states follow. That basic process is outlined below:

- 1) The Board will need to formally meet and pass a resolution or motion to dissolve the RC&D Councils; there must be a clear documented paper trail of the deliberate intention to dissolve.
- 2) The RC&D Council should let your community, donors, etc. know your plans.
- 3) Someone files the proper paperwork with the Secretary of State\Corporations or other state entity. Most states require that an RC&D Council who is closing file two forms. The first form is a notice of the intent to dissolve which puts notice out to the world of your RC&D Councils intentions...the next filing is the Article of Dissolution. The Article of dissolution tells the state entity that all legal obligations are met and that there are no outstanding legal obligations left; or if any are left there are provisions for taking care of those obligations.
- 4) Your Board ensures the organization has dealt with all creditors.
- 5) The Board ensures leftover or restricted funds are dealt with properly. Much of your leftover funds may be restricted. Your RC&D Council must properly disperse or relinquish any funds from grants, agreements, contracts, donation, etc. You must follow any previous restrictions placed on funds by your grantors, donors or Board of Directors. Distribution of funds must be done as close to the original restrictive intent as possible. You can distribute funds to like-minded organizations in order for the original intent of the funds to be carried out. You may not disburse the funds among your board members, council staff or volunteers!
- 6) The RC&D Council must end any employment relations. Remember if you have contractors you must give them notice and look at each contract on how to properly end the contract.
- 7) Outstanding taxes have been paid – This includes payroll taxes.
- 8) A Notice of Dissolution must be sent to the IRS and the final IRS 990 form has been submitted indicating "Termination" of the RC&D Council. The notice must include a final list of the last set of officers and their telephone numbers.
- 9) You have a plan for retention of records – Some records must be kept pursuant to IRS rules, your states statues of limitations or the grantors request. Assign a person (usually the last President or Secretary) to hold the records for the RC&D Council in case there are specific requests to review those records.

The above is a very basic summary of Mergers, Acquisitions and Dissolution. Please remember to consult with local legal counsel as each situation is different and there are other options available beyond what has been presented in this memorandum. In addition, each state's law are different, so things in this document may not pertain or be different in your state. Should you have more questions on this process, please do not hesitate to contact your National Association!