July 2014

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Leadership Message

Dear Fellow Members of the Community Economic Development Committee:

Welcome to the July 2014 edition of the Community Economic Development Committee's newsletter. This edition publishes several articles highlighting the diverse tools community economic development legal practitioners may use to effectively engage with their clients and the constantly evolving community economic development legal landscape. Amanda L. Kool, an attorney and Clinical Fellow with the Harvard Transactional Law Clinics and Brett Heeger, a 2014 graduate of Harvard Law School wrote an article titled "Many Advocates, One Goal: How Lawyers Can Use Community Partnerships to Foster Local Economic Development." Their article discusses how lawyers can use collaborative lawyering (lawyering by working with community partners on project-based legal matters) to promote economic development. Gowri J. Krishna, the Vice Chair of the CED Committee, wrote an article titled "Community Economic Development Lawyers and the New Democratic Economy." The article discusses the New Democratic Economy and the "growing movement of alternative economic structures" that seek to "democratize wealth, foster a culture of collaboration and create systemic change." Dana Malkus, an assistant clinical professor at St. Louis University School of Law, wrote an article titled "Collaboration in the Nonprofit Sector" discussing the benefits and risks of nonprofits collaborating with each other and the factors nonprofit organizations should consider when establishing a collaborative relationship. I hope these articles provide you with new insights on CED law.

The Business Law Section's first standalone Annual Meeting is in Chicago from September 11, 2014 through September 13, 2014. The Community Economic Development Committee is co-sponsoring a program with the Corporate Counsel Committee at the Annual Meeting on Friday, September 12, 2014 from 10:30 a.m. to 12:30 p.m. The program is entitled "How Inside and Outside Corporate Counsel Can Work Together to Maximize the Value of Corporate Legal Services" and will discuss how law firms and in-house counsel can enhance their corporate clients' bottom line while building strong client relationships. We hope you will be able to attend the Annual Meeting and this valuable program.

If you are interested in writing an article for the next newsletter, presenting a webinar, becoming a director of an administrative committee or otherwise becoming more involved in the Community Economic Development Committee, feel free to contact me.

I look forward to seeing you at the Annual Meeting!

Dana Thompson
Chair, Community Economic Development Committee
drthomp@umich.edu
How Inside and Outside Corporate Counsel Can Work Together to Maximize the Value of Corporate Legal Services

Friday, September 12, 2014
10:30 a.m. - 12:30 p.m.

Annual Meeting Website

Featured Articles

Many Advocates, One Goal: How Lawyers Can Use Community Partnerships to Foster Local Economic Development
By Amanda L. Kool and Brett Heeger

Community partnerships provide a promising mechanism through which lawyers can promote economic development. When lawyers serve to connect valuable resources rather than solely respond to the needs of individual clients, they can better contribute to the dismantling of legal barriers to economic development. This article will highlight the efforts of the Harvard Transactional Law Clinics, specifically the clinic's Community Enterprise Project, to use collaborative, project-based lawyering to address systemic legal barriers in the City of Boston. Though law school clinics are well-positioned to implement innovative models for the delivery of legal services, practitioners in other settings can leverage similar models for the benefit of their clients and local communities.

Read more

Community Economic Development Lawyers and the New Democratic Economy
By Gowri J. Krishna

Before "income inequality" became the latest political buzzword, Community Economic Development lawyers have recognized its effects on the communities we serve. Many of our clients have long been working to fight stagnating wages, diminished supplies of affordable housing, high under- and unemployment rates, piling debt with little savings, lack of access to affordable and quality education, and a political system that fails to represent the interests of the middle class and poor. The so-called recovery from the Great Recession amounts to the top one percent taking in 95 percent of total income growth. Overall, we see a middle class that is shrinking and a bottom whose numbers are increasing. These problems are deeply-rooted, systemic ones built into the way our political-economic world functions.

Read more

Collaboration in the Nonprofit Sector
By Dana M. Malkus

A practitioner who has had even casual contact with the nonprofit sector has undoubtedly noticed that both internal and external forces exert pressure on nonprofits to collaborate and to accomplish more with fewer resources. There are, of course, many factors driving this pressure, including the economic downturn, funder preferences, government policy changes, and the reality that many nonprofits focus on complicated issues that often require a multi-faceted approach.

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Many Advocates, One Goal: How Lawyers Can Use Community Partnerships to Foster Local Economic Development

By: Amanda L. Kool, Attorney and Clinical Fellow, Harvard Transactional Law Clinics, and Brett Heeger, JD Candidate May 2014, Harvard Law School

Introduction

Community partnerships provide a promising mechanism through which lawyers can promote economic development. When lawyers serve to connect valuable resources rather than solely respond to the needs of individual clients, they can better contribute to the dismantling of legal barriers to economic development. This article will highlight the efforts of the Harvard Transactional Law Clinics, specifically the clinic’s Community Enterprise Project, to use collaborative, project-based lawyering to address systemic legal barriers in the City of Boston. Though law school clinics are well-positioned to implement innovative models for the delivery of legal services, practitioners in other settings can leverage similar models for the benefit of their clients and local communities.

The Traditional Clinical Legal Services Model

Law school clinical programs have risen in popularity as a means to provide law students with an experiential education while delivering valuable legal services to the communities to which the schools belong. In recent years, many law schools have expanded their clinical offerings beyond the traditional model that paired a law student (under the supervision of a practicing attorney) with a low-income individual facing a court appearance or other litigation-related matters. These law schools now offer a range of clinical programs tailored to the interests of the student body, the expertise of faculty, and the particular needs of clients in the area. In addition to expanded litigation-based offerings and policy clinics, some schools have instituted transactional clinical programs. These programs often assist individuals, small businesses, and nonprofit organizations of limited means with some combination of entity formation, contract negotiation and preparation, advice on protecting intellectual property, and (less often) real estate transactions. By participating in these clinics, law students gain not only the substantive legal skills necessary to complete such transactions, but also develop valuable “soft” skills, including experience with client interviewing, issue identification, and case management; in turn, clients of transactional clinics enjoy access to types of legal services not typically offered by other low-cost or pro bono legal services providers.

Although access to affordable legal services is an integral component of community economic development, the traditional “one lawyer, one client” implementation of such services has certain limitations. The primary limitation of the traditional model stems from the lawyer’s passive role as a service provider to individual clients (who presumably engaged the lawyer for personal and direct legal representation) rather than as a collaborative partner in a community-driven effort. Under the traditional model, a lawyer’s effect on the economic development of a particular community or geographic area is limited to the success reaped by her clients’ respective enterprises as a result of the lawyer’s assistance. Furthermore, the lawyer gains only the knowledge and experience generated by the issues raised by her clients’ cases, and only the lawyer’s future clients benefit from that gained
knowledge and experience. In this way, a lawyer’s long-term involvement with and benefit to the community is funneled through individual interactions rather than intentional community engagement.

A New Clinical Model: Collaborative Transactional Lawyering at Harvard Law School

Much like its counterparts across the country, the Transactional Law Clinics of Harvard Law School provides direct legal services to low- to moderate-income clients who live in the community in which the law school is located (in this case, Greater Boston) with real estate, small business, non-profit, and entertainment law matters. In the clinic, second- and third-year law students work an average of fifteen hours per week under the supervision of full-time staff attorneys. Student advocates serve as the direct line of contact for each of their clients, from intake to final meetings. Over the course of the semester, each student will have an opportunity to handle approximately four to eight cases and engage in a wide range of substantive transactional legal matters.

In 2013, the Transactional Law Clinics expanded its clinical offerings beyond the Business and Nonprofit Clinic, Entertainment Law Clinic, and Real Estate Clinic to include the Community Enterprise Project, a division that adopted the former moniker of the Transactional Law Clinics. The revived Community Enterprise Project combines direct legal representation of individuals and small businesses in targeted communities of Boston with community partnership projects aimed at delivering legal guidance to larger sectors of the population. With regard to the latter, teams of students are paired with community organizations and government offices to identify organizational and community needs and develop comprehensive (legal and non-legal) strategies to address those needs.

The project component of the Community Enterprise Project arguably overcomes many of the impediments to effective community economic development mentioned in the preceding section. Local community organizations serve as project partners, informing the clinic of particular legal barriers commonly faced by individuals or organizations who utilize their services. The clinic can then tailor its services to a population of individuals who are united in some way, whether by the nature of their business (such as food trucks), by geographic location (such as a particular neighborhood), or by demographics (such as military veterans). During the development stage of a project, project partners often assist by networking with other stakeholders, notifying intended beneficiaries of upcoming workshops, providing feedback on informational materials, and disseminating those informational materials to the intended beneficiaries. Individuals may choose to seek direct legal representation after attending a training event or, going forward, based on referrals from project partners.

Proof of Concept: The Condo Project

One current project of the Community Enterprise Project emerged from a partnership with a nonprofit organization that works in the area of affordable housing and now involves the City of Boston’s Home Center and advisors from the private bar. The organization has deep connections within the low-income housing and first-time homebuyer communities in the Boston neighborhoods of Jamaica Plain, Roxbury, and Dorchester, but does not itself employ a lawyer. The “Condo Project” aims to address a recurring problem in Greater Boston, which is that many condo associations, particularly those residing in Boston’s ubiquitous triple-deckers and other small condo buildings, do not operate in compliance with federal, state, and local law, secondary market requirements, and their own governing documents. This
lack of compliance can inhibit access to financing for potential buyers, further stifling economic
development in vulnerable communities.

The goal of the Condo Project is to provide condo owners in Greater Boston with an easy-to-read
manual that explains condo associations, condo governing documents, applicable laws, and the types of
problems commonly faced by small condo associations, as well as provides tips on how to maintain a
strong condo association and resolve issues as they arise. Through the network of community partners
developed through the project, the clinic will conduct trainings, distribute hard copies of this manual to
organizations that assist condo owners, and provide a digital version for these organizations and
agencies to include on their websites. The materials and trainings will also highlight a range of legal and
non-legal resources available to assist condo owners. Workshop attendees and others who receive the
materials and desire direct legal representation may become clients of the clinic.

While Community Enterprise Project students are tasked with summarizing the legal issues, drafting the
Condo Project Manual, and delivering the information, the project’s partners are integral to its success.
During the development stage of this project, the nonprofit serving as the main partner organization
summarized for students issues its constituents had faced with their respective condo associations.
Specific examples included a lack of adherence to corporate formalities and other shortcomings that had
often led to illiquidity of the properties. The partner organization also connected the clinic to individual
tenants who were willing to share their experiences, one of which was retained as a direct client of the
clinic. As the Condo Project continues, partner organizations and agencies will remain involved as
valuable allies, referring potential clients and receiving referred clients based on each partner
organization’s knowledge of the services offered by the others.

A Long-Term Partnership: The Food Truck Project

As exciting as the creation of a new resource manual can be, community partnerships that include
lawyers suggest opportunities for even further synergies and long-term impact in support of community
economic development. By the time written materials are produced and the first training has occurred,
the lawyers and other community partners have established a functional network of allies that can
continue to provide specific means of support for a targeted group on an ongoing basis. The Community
Enterprise Project recently reached this phase in its “Food Truck Project,” and now the meaningful
benefits of a long-term partnership have become evident.

The Food Truck Project arose when the Community Enterprise Project teamed up with the Harvard Food
Law and Policy Clinic and the City of Boston Mayor’s Office of Food Initiatives to create the Food Truck
Legal Toolkit and an accompanying training presentation. The Toolkit provides comprehensive
information about starting a food truck in Boston, including permitting and licensing requirements,
general business considerations, and an appendix of city forms and template agreements. Through the
project, a tight network of food truck owners, city offices, legal resources, business advisors, small
business lenders, and other food-related businesses has rallied around those seeking to enter the food
truck market in the city. Law students regularly present the material at events hosted by the Office of
Food Initiatives as well as other organizations that seek to support the local food industry. Now, when
an aspiring food truck entrepreneur contacts one community partner, that partner can refer the entrepreneur to the appropriate member of the network to address a particular need. Each community partner keeps the others apprised of developments in the industry and law students utilize the toolkit as they represent clients found through the network and presentations. All of these activities inform updates to the toolkit and additional trainings throughout the city. Each entrant to the food truck market benefits exponentially from the network created by the project, as do the members of the network itself and the neighborhoods in which the food trucks operate.

**Professional Challenges for Lawyers to Community Partnerships**

Despite the many benefits of community partnerships, engaging with community partners presents a host of novel professional issues for lawyers. For example, lawyers must be careful to appropriately distinguish project partners from clients. Though community organizations make valuable project partners, these organizations may themselves enter into contractual relationships with the individuals and businesses at whom the project is targeted. Thus, lawyers must maintain clear practice boundaries between its project partners and clients – especially when a project partner may at some point be an opposing party in a client’s transaction – to avoid future conflicts of interests. Though there are exceptions to every rule, the Community Enterprise Project does not typically treat its project partners as clients, but rather as colleagues with a shared goal of collaboratively addressing a common legal barrier to economic development in a particular community. Beyond framing the project as a collaboration rather than an attorney-client relationship, attorneys must treat the relationship as such, drawing upon resources and developing materials that are intended to serve a population other than the partner organization itself. Other duties to which lawyers are bound, including issues of client confidentiality and what constitutes the initiation of an attorney-client relationship, must also be carefully considered when working closely with both project partners and potential clients. These issues are especially important to consider when working with law students, who often have little to no previous experience in matters of professional responsibility.

**A New Model for Better Practice**

From an educational standpoint, community partnership projects provide law students with unique and valuable business development and project management skills pertinent to an increasingly entrepreneurial-minded legal industry. In addition to the substantive and “soft” skills gained by students enrolled in any clinical program, project-based work stretches students even further from their classroom (or cubicle) comfort zones, encouraging them to think proactively, network with non-lawyers, and work strategically and collaboratively with one another towards an identified goal. As one Community Enterprise Project student noted, “what makes the Community Enterprise Project so exciting is the chance we have to think about community needs from multiple angles. Many law students are interested in doing public interest work after graduation, whether through fellowships, full-time work in legal services, or by building pro bono practices within law firms. Project development skills learned through the Community Enterprise Project offer direct experience that can be applied to designing or helping to expand public service-oriented practices.” Even beyond the pro bono or public interest realm, students planning to enter private practice who engage in community partnerships in law school enrich future employers with their ability to connect with others, identify unmet legal needs in
targeted populations, and strategize to meet those needs – skills integral to business development in any context.

While law school clinics are well-suited to undertake project-based work, traditional law firms and other legal services providers can also engage in successful collaborative legal work. Boston law firm Goodwin Procter LLP established the Neighborhood Business Initiative, a community outreach program that provides pro bono legal services to low-income entrepreneurs in Greater Boston. In addition to providing direct legal representation, the Neighborhood Business Initiative facilitates neighborhood-based legal workshops, often hosted by community-based organizations. These activities provide valuable training ground for young associates who may not otherwise receive ample opportunities for direct client interaction and public speaking experience. Other law school clinics, law firms, and legal services providers in Boston and across the country are undoubtedly engaged in similar efforts, though opportunities for collaboration far surpass such initiatives. By collaborating with other lawyers and community partners, lawyers can build valuable skills while ensuring their expertise is efficiently utilized to garner the greatest impact in a particular community.

**Conclusion**
Community partnerships by transactional lawyers require careful attention to both the lawyer’s role as a community partner as well as her ethical obligations as a lawyer. Yet when undertaken strategically and thoughtfully, community partnerships can generate informed economic development in a community, connecting valuable resources in a way that addresses a barrier to economic development rather than battling the piecemeal effect of that barrier one person at a time. With respect to food trucks in Boston, the network of resources generated from the project actively provides assistance with virtually any food truck-related need. Hopefully, condo owners in the city will have a similar network of support in the near future. When legal expertise is injected into these networks through collaborations between lawyers and non-lawyers on behalf of a community’s particular unmet needs, the resulting synergies bring forth the promise of positive and systemic change.

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Community Economic Development Lawyers and the New Democratic Economy
By Gowri J. Krishna

“What’s under way is an ownership revolution. It’s about broadening economic power from the few to the many and about changing the mindset from social indifference to social benefit.” – Marjorie Kelly

Before “income inequality” became the latest political buzzword, Community Economic Development lawyers have recognized its effects on the communities we serve. Many of our clients have long been working to fight stagnating wages, diminished supplies of affordable housing, high under- and unemployment rates, piling debt with little savings, lack of access to affordable and quality education, and a political system that fails to represent the interests of the middle class and poor. The so-called recovery from the Great Recession amounts to the top one percent taking in 95 percent of total income growth. Overall, we see a middle class that is shrinking and a bottom whose numbers are increasing. These problems are deeply-rooted, systemic ones built into the way our political-economic world functions.

A growing movement of alternative economic structures seeks to democratize wealth, foster a culture of collaboration, and create systemic change. Some attempts to label it are the New, Generative, Solidarity, Cooperative, and Sharing Economy. Many of these structures are not new, yet their resurgence is largely a concerted response to a perceived failure of capitalism and neoliberal policies. For many within the movement, the structures and practices start from the premise that capitalism necessarily brings a high degree of inequality. A key goal, then, is to democratize ownership and governance within workplaces and other fora that affect one’s life, to “end[] the capitalist division of producers from appropriators of the surplus, and replac[e] it with democratic cooperative decisions governing production and the social use of its fruits.” In some places, governments are giving serious consideration to these initiatives and looking for ways to foster them. This February, the Community Development Committee of New York City’s City Council held a hearing on worker cooperatives as a model to lift families out of poverty. A coalition of worker cooperative owners, incubators, workforce development organizations and academics presented joint testimony recommending policies such as issuing a proclamation in support of worker cooperatives in order to bring attention to coops as a tool to assist marginalized populations, adding a worker cooperative sector or subsector of the New York City Economic Development Corporation, and making worker cooperatives a preferred contractor for city agencies.

As CED lawyers, we are uniquely positioned to support this growing movement, which I will refer to here as the new democratic economy. It presents exciting opportunities for us to expand our practice, work on novel questions of law, advance an equitable and sustainable model for CED, and be at the forefront of finding solutions to economic inequality. This piece provides a brief introduction to the new democratic economy, touching on its characteristics, goals, and types of issues and opportunities it presents for CED lawyers. It highlights in particular the work of two scholar/practitioners who are shaping the field, Marjorie Kelly and Janelle Orsi.

I. Features of the New Democratic Economy

Some of the phenomena and practices that are beginning to form the new democratic economy are cohousing communities, community gardens, social enterprise, community-owned enterprises, shared commercial kitchens, car-sharing groups, ecovillages, local currencies, barter networks, time banks, gift economies, community land trusts, grocery cooperatives, worker cooperatives, community-supported
agriculture, community-supported kitchens, credit unions, creative commons licensing, housing cooperatives, childcare cooperatives, renewable energy cooperatives, tool lending libraries, coworking spaces and collaborative consumption.9

A central feature of many of these practices that differs from traditional economic structures is democratized ownership, where governance follows a one person, one vote scheme. Governance is one of five components of ownership that Marjorie Kelly describes in her book, *Owning Our Future: The Emerging Ownership Revolution: Journeys to a Generative Economy.*10 Kelly, who is a journalist, corporate reformer and co-founder of *Business Ethics* magazine, sees ownership as the underlying architecture of our economy.11 How ownership is framed, she posits, applies more to our daily lives than the shape of democracy; “[q]uestions about who owns the wealth-producing infrastructure of an economy, who controls it, whose interests it serves, are among the largest issues any society can face.”12 She breaks down ownership into the following components: purpose, membership, governance, capital and networks.13 Kelly describes the dominant design of our economy today as one that is extractive—its focus is maximum physical and financial extraction.14 In the context of the five ownership components, an extractive economy has financial purpose (maximizing profits), absentee ownership (owners disconnected from the life of the enterprise), governance by markets (control by capital markets on autopilot), casino finance (placing bets, extracting wealth and getting rid of ownership over and over again), and commodity networks (goods are traded based solely on price).15

In contrast, the design of a generative economy is one that creates beneficial rather than harmful outcomes—its tendency is to be socially fair and ecologically sustainable.16 It has living purpose (creating the conditions for life), rooted membership (ownership held in human hands), mission-controlled governance (control by those focused on a social mission), stakeholder finance (capital becomes a friend rather than master), and ethical networks (offer collective support for social and ecological norms).17 Its relationships are primarily horizontal rather than vertical.18 Though Kelly claims that her ideas “are nothing like a blueprint for the redesign of capitalism…which will take many minds,” they capture the foundation of the new democratic economy.19

II. Legal Issues and Opportunities for CED Lawyers in the New Democratic Economy

Lawyers play a critical role in aiding this “epic reinvention of our economic system.”20 One of the most visionary leaders in the field today is Janelle Orsi, lawyer and co-founder of the Sustainable Economies Law Center in the Bay Area.21 She is the author of *Practicing Law in the Sharing Economy: Helping People Build Cooperatives, Social Enterprise, and Local Sustainable Economies.* Orsi points out that “[t]he relationships, transactions, and organizations of the new economy are sometimes so unique that they cannot be classified within existing legal frameworks.”22 The main reason being, she says, is that “our laws were designed to regulate relationships in a competitive economy, not a collaborative economy.”23

Creating entities or practices in the new democratic economy requires thinking outside the box of existing legal frameworks. Orsi comments that many current laws developed in order to manage economic relationships that were becoming polarized or exploitative.24 These include employer/employee, landlord/tenant, developer/homebuyer, business/investor, and producer/consumer relationships.25 An economy based on collaboration blurs these distinctions. In a worker cooperative where a worker is also an owner, does an employer/employee relationship exist? In a housing cooperative where tenants own the building, does a landlord/tenant relationship exist? Orsi identifies and discusses in detail nine areas where lawyers can help people set up and operate in the new democratic economy: designing and drafting agreements; choosing, forming and structuring
entities; advising on the legalities and taxation of exchange; navigating securities regulation; navigating employment regulations; navigating regulations on production and commerce; managing relationships with and use of land; managing intellectual property; and managing risk. I touch on two of these areas—entities and capital.

A. Creating Entities in the New Democratic Economy

Conventional organizations typically fall into one of three categories—commercial (businesses carrying on commercial activities), public and charitable (providing a benefit to the public), and mutual and cooperative (providing benefits to members and patrons). Organizations in the new democratic economy challenge these conventional legal categories. They share decision-making, information, capitalization, profits/benefits, equity, risk and work in ways that differ from the norm. What otherwise might be routine matters for CED lawyers, such as helping a client with choosing a type of entity, working out tax issues, structuring their governance, operations and finances, creating new democratic entities especially requires careful consideration. As Orsi and Jenny Kassan, co-founder of the Sustainable Economies Law Center and CEO of Cutting Edge Capital succinctly put it, “[t]he choices we make in structuring organizations are critical; the architecture of organizations will, essentially, be the architecture of a new economy.”

To form organizations that have rooted membership and mission-controlled governance, we must think about entity options and mechanisms that embed these values within the entity. Kassan and Orsi discuss a few ways that one can adapt a traditional entity to meet the goals of rooted membership and mission-controlled governance such as giving super-majority voting stock to the founders, regardless of the number of shares they own; incorporating provisions into a company’s charter that make mission drift more difficult; and creating voting structures that give greater control to employees and directors over outside investors. The number of states adopting new legal entities such as the low-profit limited liability company (L3C) and the benefit corporation is growing. These entities attempt to capture the gray area between profit-driven businesses and charitable non-commercial organizations. While the L3C and the benefit corporation build in mission-controlled governance, they do not mandate democratic governance. Cooperatives, on the other hand, are a type of structure designed to institutionalize governance by the workers and/or members, with voting rights not tied to the amount of one’s investment but instead limited to one vote per person. Cooperatives take many different forms and commonly refer to the way an entity operates rather than its specific legal choice of entity. Not all states have cooperative corporation laws, and even in states that do have a cooperative statute, many cooperatives choose more conventional forms of entity structure but operate based on cooperative principles.

B. Accessing Capital in the New Democratic Economy

Economist and lawyer Michael Shuman argues that “America’s investment system is broken.” He states that less than one percent of the $30 trillion invested by households and nonprofits in stocks, bonds, mutual funds, pension funds, and life insurance funds, goes to small businesses. Put another way, “if Americans shifted just 1% of the $30 trillion they hold in long-term investments to small businesses, it would amount to more than 10 times the venture capital invested in all of 2011.” Because local businesses are more profitable than corporations, Shuman says, this investment gap represents a huge market failure.
Nearly all of the new democratic economy structures are rooted in communities in which their owners, workers and/or members live—they are primarily local in nature. Yet, Kassan asserts, “there is virtually no investment vehicle that allows you to invest in your own community.”38 She states that this is largely due to securities laws that make it prohibitively expensive for small businesses to offer securities to members of the community and to create local investment funds open to the general public.39 Due in large part to the initiative of Shuman, and the Sustainable Economies Law Center, the CROWDFUND Act (Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act), passed in April 2012, will allow organizations to raise capital from the public using an SEC-registered crowdfunding intermediary.40 The Act will make it easier for businesses in the new democratic economy to raise capital within their communities.

Securities may not be an area that CED lawyers immediately identify as prevalent in their current practices. Nonetheless, helping clients access capital from a broad section of the community will require CED lawyers to become familiar with state and federal securities laws. Kassan outlines some basic inquiries—what is the definition of a security; when does securities law apply; what has to be done before offering a security; what are the consequences of failing to comply; is it possible to create a community investment fund open to local residents; what are models for creative capital raising.41

III. Conclusion

As CED lawyers, we often prioritize projects that will effect positive systemic change. The work of Kelly, Orsi, Kassan, Shuman and others help us think about how we can create new structures and processes for our clients and facilitate local investment in order to create a generative, democratic economy that benefits all. As the recently deceased mayor of Jackson, Mississippi, Chokwe Lumumba, an advocate for cooperatives, said, “[t]he economic fate of everybody is in the hands of everybody…. The role of solidarity economics is central because it is the economic transition from what is to what must be.”42

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1 Gowri J. Krishna is the Director of the Community Economic Development Clinic at Roger Williams University School of Law and an Associate Clinical Professor of Law.
8 My colleague Sushil Jacob, founder of the Green-Collar Communities Clinic at the East Bay Community Law Center, puts forth the term “new democratic economy” in a work in progress. He says that using the term “democratic” emphasizes that a main goal of this movement is to democratize businesses. Professors Richard D. Wolff and Gar Alperovitz use the term economic democracy and new economy.
9 JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY 2-3 (2012).
See generally Kelly, supra note 2.
11 See id. 4.
12 See id. at 4.
13 See id. at 4, 14.
14 See id. at 11.
15 See id. at 14, 62.
16 See id. at 11.
17 See id. at 14.
18 See Orsi, supra note 9, at 14.
19 See Kelly, supra note 2, at 214.
20 Orsi, supra note 9, at 1.
21 See www.theselc.org/staff.
22 Orsi, supra note 9, at 13.
23 Id.
24 See id.
25 See id.
26 See id. at 16-20.
27 See Jenny Kassan & Janelle Orsi, New Kinds of Organizations, in Orsi, supra note 9, at 155.
28 See id. at 156.
29 See id. at 153-54.
30 Id. at 152.
31 See id. at 169-72.
32 See id. at 175.
33 These principles are: (1) voluntary and open membership; (2) democratic member control; (3) member economic participation; (4) autonomy and independence; (5) education, training and information; (6) cooperation among cooperatives; and (7) concern for community. See International Cooperative Alliance, Co-operative Identity, Values and Principles, http://ica.coop/en/whats-co-op/co-operative-identity-values-principles.
34 Michael Shuman, Local Dollars, Local Sense xix (2012).
35 See id. at xix-xx.
37 See Shuman, supra note 34, at xx.
38 See Jenny Kassan, New Kinds of Capital, in Orsi, supra note 9, at 300.
39 See id.
40 See id. at 332.
41 See id. at 301-02.
42 http://www.yesmagazine.org/commonomics/remembering-lumumba
Collaboration in the Nonprofit Sector
By Dana M. Malkus

A practitioner who has had even casual contact with the nonprofit sector has undoubtedly noticed that both internal and external forces exert pressure on nonprofits to collaborate and to accomplish more with fewer resources. There are, of course, many factors driving this pressure, including the economic downturn, funder preferences, government policy changes, and the reality that many nonprofits focus on complicated issues that often require a multi-faceted approach.

In my work with the St. Louis nonprofit community, I see nonprofits grappling with this reality in a variety of ways. As practitioners, we can provide real value to our nonprofit clients by helping them identify, evaluate, and appropriately document collaborative arrangements.

Collaboration: What, Why, and Why Not

Simply put, collaboration refers to two or more organizations coming together to accomplish a specific goal. It is helpful to think of collaboration as a spectrum: Collaborations range from informal arrangements (e.g., a committee, a task force, a joint initiative, information sharing, joint purchasing arrangements, co-locating arrangements, or program coordination) to more formal arrangements (e.g., the creation of a new entity).

Common reasons for collaborations include
- greater access to certain funding or grant streams;
- access to the expertise of the collaborating organization;
- an ability to increase the human resources that can be devoted to an event or cause;
- access to an established infrastructure or positive reputation; and
- an ability to accomplish more than the organization would otherwise be able to accomplish.

Collaborations tend to work best among participating organizations that understand and trust each other and that have closely aligned missions, goals, and core values.

While there may be benefits to collaborating, it is essential to recognize that collaboration is rarely cost-free. For example, logistical and relational issues in the collaboration can eat up significant time and other resources (including money and reputation). Or, the potential collaborative partner may be one who does not “play well” with others, frustrating the effort at every major step along the way. Additionally, the collaborating organization may turn out to have less expertise or fewer resources than originally perceived. Moreover, if the potential benefit of the collaboration is unclear—or if the collaboration is simply an end in itself (and not a means to an end)—these downsides are likely to be magnified.

Collaboration: Two Examples

Examining example collaborative relationships can help both practitioners and their clients think more strategically about collaboration and envision creative responses to community needs. The following two examples are intended to illustrate some ways in which small nonprofit organizations can use collaboration as a tool to positively impact disadvantaged communities.
Example 1: Neighborhood X

In St. Louis, a nonprofit called the Community Builders Network of Metro St. Louis (CBN)\textsuperscript{3} is engaged in a variety of activities, including attempts to facilitate collaborative relationships among community development nonprofits. CBN recognizes that logistical, relational, and resource barriers can sometimes be insurmountable for a small nonprofit, even if the nonprofit does have a desire to collaborate with others. CBN also recognizes that successful collaborations require that the participants know and understand one another so that there is some basis upon which to build trusting and productive relationships.

Among other activities, CBN provides logistical support for potential collaborations. Such support includes arranging and facilitating meetings, generating problem-solving options when a collaborative group gets “stuck,” and compiling and distributing meeting minutes. CBN also makes mini-grants available to help collaborative groups pay for professional assistance (e.g., technical support, funding identification support) related to the group’s common goals.

CBN currently is working to facilitate relationships among three small nonprofits (Organizations A, B, and C) who work in a particular disadvantaged neighborhood in St. Louis city (Neighborhood X). Organization A primarily rehabilitates housing stock within Neighborhood X and maintains it as affordable rental housing. Organization B engages in a variety of community-based initiatives (in Neighborhood X and in other area neighborhoods) such as housing development, crime prevention, leadership training, citizen empowerment, and neighborhood organizing. Organization C seeks to advance the health, safety, vibrancy, and interconnectivity of the neighborhoods along a bicycle and walking path running through several St. Louis neighborhoods, including Neighborhood X.

Organizations A, B, and C have very small staffs and find it difficult to devote any time to thinking about or otherwise exploring potential collaborative opportunities. At the same time, the organizations’ missions have some degree of overlap, and they believe that they might share similar desires and goals for Neighborhood X. After some preliminary discussions facilitated by CBN, it is clear that all three organizations recognize Neighborhood X’s need for

- strategic commercial development and increased employment opportunities;
- increased and coordinated residential real estate development;
- greater attention to neighborhood clean-up and beautification projects; and
- more coordination among nonprofits serving Neighborhood X to take advantage of opportunities for coordinated programming.

Each organization recognizes that its limited resources do not allow it to respond to these needs on its own on the kind of scale needed to make a lasting impact in Neighborhood X. Organizations A, B, and C have decided that the next logical step is to explore whether there may be ways of working together to address these commonly shared concerns. With logistical support from CBN, these organizations are now meeting on a regular basis for just this purpose. The logistical support from CBN has been a crucial component of this potential collaboration.

The early stage planning meetings among Organizations A, B, and C might or might not lead to on-the-ground-collaboration. In these early stage meetings, Organizations A, B, and C have simply committed to exploring collaboration possibilities in a strategic and organized way to determine whether collaboration is feasible. Each organization intends to remain a separately incorporated entity under the control of its own board of directors. If the organizations determine that some
level of collaboration makes sense, they will memorialize their agreement in a memorandum of understanding to set out the roles and responsibilities of each organization.

This potential collaboration brings with it the possibility of Organizations A, B, and C making a much larger total community impact than what any of the organizations could accomplish on its own. In addition, the collaboration could give the organizations access to new funding streams. Importantly, this example illustrates that, while collaboration is not cost-free, collaboration can sometimes be less “costly” when some of the logistical and relational costs are borne by another person or entity (e.g., an organization such as CBN).

Example 2: Aging-in-Place

In St. Louis, a small nonprofit organization (Organization D) has a mission focused on helping St. Louis seniors who live in a certain area of the city (Area Y) connect with a variety of services to allow them to “age-in-place.” This kind of help benefits both the seniors themselves and the local community of which the seniors have been a part. Organization D continually looks for ways to increase its impact by collaborating with others. Area Y has a diverse population that includes seniors of all income levels and crosses traditional race and class geographic boundaries, all of which is important to Organization D’s mission.

Through a collaboration with a local hospital, another local nonprofit organization (Organization E) provides a service that aims to help seniors and their family caregivers find ways for seniors to remain safely in their homes.

After some initial discussions initiated by Organization D, it became clear to Organization D and Organization E that a collaboration would potentially benefit both organizations and Area Y. In addition to programmatic collaboration, Organization E has some excess office space in Area Y that it could make available to Organization D. The organizations are currently working on a memorandum of understanding to define their collaboration in writing, and they are exploring the possibility of a lease for the excess office space.

This collaboration allows Organization D to access Organization E’s established infrastructure, while also providing Organization E with access to Organization D’s expertise. Moreover, the collaboration allows both organizations to accomplish more together than either could accomplish alone.

Collaboration: A Lawyer’s Checklist

Most potential collaborative relationships (whether simple or complex) share common issues. The following checklist is intended to be a tool for practitioners to use when interviewing, counseling, and drafting for nonprofit clients considering collaborative arrangements. The checklist can be used to (1) organize the information-gathering process, and (2) bring issues to the surface that the client has not yet considered, but which should be considered before moving forward with the collaboration.

I created this checklist as a result of conversations with clients on the topic of collaboration and use it as a framework for helping clients decide whether to move forward with potential collaborative arrangements.
## Client Counseling

| **Need** | • What is the unmet need this collaboration will address? |
| **Mission Fit** | • How does the collaboration fit into the client’s strategic or business plan?  
  • Is there a compatible corporate purpose?  
  • Does this activity further the tax-exempt purpose of the client? |
| **Benefits** | • What does the client bring to the table? What does the potential collaborative organization bring?  
  • What specific organizational and collective benefits will be gained from the collaboration? |
| **Resources** | • Can the client invest the up-front time and resources needed for the collaboration?  
  • Will the collaboration have adequate resources (e.g., skilled leadership, funds, staff, materials, and time)? |
| **Assessment of Potential Collaborative Organization** | • Are there shared values and goals?  
  • Is the potential collaborative organization reliable?  
  • What is the potential collaborative organization’s reputation?  
  • Is the potential collaborative organization invested in the outcome and willing to sacrifice time and resources to achieve the joint goal? |
| **Client Characteristics** | • What is the client’s bargaining strength?  
  • What is the client’s tolerance for risk? |
| **Costs/Risks** | • What are the monetary and non-monetary costs associated with this collaboration?  
  • What kinds of things could go wrong?  
  • What is this collaboration specifically not intended to do, guarantee, or create? |

## Written Agreement

| **Purpose and Form** | • What is the legal structure of the collaboration?  
  • Will the collaborators remain as separate entities? Will there be a new entity created?  
  • What is the purpose of the written agreement (e.g., reduce the possibility of misunderstanding, provide legal protections, allocate risk, create greater certainty, provide a mechanism for working together and settling disputes)?  
  • What type of agreement will be used (e.g., informal letter agreement, memorandum of understanding, traditional contract)? |
  • What are the collaboration start and end dates?  
  • What are the specific responsibilities of each party? Are these sole responsibilities, or are they shared in some way?  
  • Who pays what?  
  • What procedure will the parties follow if conflicts arise?  
  • Can one party bind the other? |
| **Employment Law** | • Are any employment law issues implicated in this arrangement? |
| **Consents** | • Are any third-party consents needed (e.g., lenders, landlords, government agencies, funding sources)? |
| **Risk Management** | • Is either party required to carry certain types of insurance?  
  • Is either party providing an indemnity?  
  • What other tools can be used to manage identified risks? |
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1 The following resources provide more in-depth explanations of the information presented in this section and may be useful to both practitioners and their clients:

- Foundation Center’s Nonprofit Collaboration Resources: http://foundationcenter.org/gainknowledge/collaboration/jsessionid=KRV5FZ4ZYEYVWZL
  AQBQ4CGXD5AAAACI2F
- Cautions: http://www.ssireview.org/articles/entry/the_reality_underneath_the_buzz_of_partnerships/
- Collaborative Checklist of Questions to Consider: http://dongriesmannsnonprofitblog.blogspot.com/2009/05/nonprofit-collaborative-or-partnership.html

2 These examples are based on (1) work done by students (under my supervision) in the Community & Economic Development Clinic at Saint Louis University School of Law in St. Louis, Missouri; (2) personal knowledge gained as a result of being a board member of one of the nonprofits discussed in this section; and (3) an informational interview with Karl Gunther, Community Builders Network of Metro St. Louis (January 16, 2014).

3 See www.communitybuildersstl.org.