

Board Basics

What is a Memorandum of Understanding, and Why Should Friends Groups Have One?

By Clare Membiela, MLS, J.D., Library of Michigan Library Law Consultant

Editor's Note: This information is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

A Memorandum of Understanding, or an “MOU,” is a document negotiated and signed between parties that lays out the understandings, expectations, responsibilities, etc., of a project, relationship, partnership, etc. An MOU often looks like an agreement, or a contract, but does not generally legally bind the parties to perform the agreed-upon actions. MOUs are often used as initial understandings in a larger contracting situation (to gather preliminary goals and interests that will be part of a later, legally binding contract) or as mechanisms for more informal arrangements between parties.

What is the benefit of an MOU?

An MOU can be useful in a situation where there is not a desire to form a legally binding contract, where the parties have determined that a legally binding formal contract is not needed, or where the parties are moving towards a legally binding contract, but wish to have details of their proposed arrangement stated in a preliminary, less formal document to work within while a more detailed binding contract is developed. An MOU is often described as a written version of a “handshake” agreement. MOUs can be more easily amended than a formal contract, and parties generally can more easily walk away from or terminate the agreement.

A well-drafted MOU can also provide some institutional consistency and contribute to any succession plan adopted by each organization. A valid MOU would remain the same no matter which individuals represent each organization. In other words, an MOU inspires stability. As library board members change, and library directors change, and friends groups change members, the provisions of the MOU remain the same until amended and resigned. This can be attractive to potential donors who are considering a way to donate

funds that will provide a lasting impact. Reasonable and stated policies and expectations can provide an image of reliability and help foster trust with potential donors.

What are the Risks of an MOU?

MOUs typically resemble contracts and the formation of them requires negotiation, time and careful drafting. The time and effort involved in creating an MOU between parties can be comparable to that of a formal contract, without the assurance of a legally binding and enforceable arrangement. In addition, the benefit of being able to easily amend and /or terminate an MOU can also be a risk.

Also, although an MOU in general is not considered a legally binding contract, there are terms and language that an MOU could include that, depending on the exact nature of the agreement, could be considered legally binding by a court. These would include situations where an offer was made and accepted, where the agreement involved an exchange of funds or payment, or language that indicates a desire between the parties to be legally bound by the terms of the agreement.

Why Should Friends Groups Have One?

Friends Groups are legally separate organizations from the libraries they support. Public libraries in Michigan are government entities, which must adhere to the laws and regulations applicable to public entities and officers and employees. Friends groups are private nonprofit corporations and often have Tax-Exempt organization status under Section 501(c)(3) of the Internal Revenue (IRS) Code. Friends groups must adhere to the laws applicable to charities, nonprofit organizations and corporations. In other words, although the library and the friends group may have comparable values and goals, their organizational priorities and methods of governance and operation are legally different. Even the requirements each organization must follow for managing finances are different, as are each entity's responsibility for data privacy and transparency to the public.

Even though a friends group may operate very closely with the library they support, the two organizations are each separately accountable for their individual operations, finances, policies, etc. A written agreement between the two entities can help each entity identify elements of their partnership that must be tailored to meet the responsibilities, duties and accountability requirements of each organization. In short, a properly drafted MOU can protect the legal and operational interests of the library and the friends group, clarify their authorities and relationship to each other, and help limit various types of liability.

What Types of Information is Included in an MOU?

Typically, an MOU between a public library and a friends group clarifies the duties, expectations and responsibilities each entity has towards the other. It also could stipulate any specific actions or events that each entity is expected to provide or complete for the other, as well as explain how the entities would manage activities that overlap (such as library initiated fundraising activities vs friends groups fundraising activities). Content is dependent on the activities and relationships of the organizations involved. MOUs can be as simple or as detailed as determined necessary by the organizations and their attorneys. The types of information that could be considered for inclusion in an MOU include:

- The full names and organizational establishment of the library and the friends Group
- The dates the MOU is effective (when the agreement is in effect and when it ends)
- Expectations for the types of activities or services the friends will provide for the library, For example:
 - Fundraising
 - Used Book Sales
 - Other Fundraising
 - Types of fundraising projects and/or activities
 - “Annual Gala,” “Capital Campaign,” or other repeat or larger scale events.
 - Advocacy
 - Millage campaign support and assistance
 - Volunteering
 - If volunteering on library property or as part of library programming or services, any background check requirements and/or insurance requirements for those volunteers.
 - Training requirements and/or expectations
- The limits and /or guidelines for the friends’ use of library facilities
 - is there a Friends’ “store,” or “office,” or area in the library that the friends use as a storage area for donated books or supplies used by the friends?
 - Security for items stored.
 - Expectations or limitations for library staff/board access to these items or areas while the friends are occupying.
 - Do the friends have off-hours access to the library?
 - Do they have keys or access codes, etc.?

- Do the friends have access to the use of library staff workspaces, or workspace equipment such as computers, printers, phones, etc.?
 - If so, is there a cost to the friends for this access (for printing, for example).
- What (if any) insurance requirements does the library expect the friends to have as part of the utilization of library facilities and/or equipment?
- Expectations for ownership and authority over donated books
 - Which organization has authority over donated materials
 - Donation policies
 - Disposition/ sale policies
 - Online vs in-person sales
 - Requirements for storage of donations
 - Timelines for inspection/review, disposition or sale of donated materials.

Expectations for Raised Funds

- Extent to which library board and director have input into fundraising goals
 - The amount of money the friends are going to attempt to raise each year.
 - Types of funds the library and/or friends group will accept, such as:
 - Cryptocurrency
 - Stock
 - Donated tangible goods (buildings, land, art, etc.)
 - If certain donations are accepted, which organization is responsible for the decision making and costs relating to the appraisal and/or sale of goods for cash value.
 - Are costs related to a donation deducted from the revenue ultimately given to the library, or do the Friends Group pay the costs from separate funds?
- Extent to which the library board and director have input into the percentage of raised funds paid to the library each year.
- Extent to which the library board and director have input into how any raised or donated funds will be spent.
- The expectation for reporting on funds raised and/or the expenditure of donated funds.
- The policy and process for existing funds if the Friends' group were to be disbanded.
- The policy and expectation for existing funds if the library were to be dissolved.

Relationship Expectations

- Friends use of on-duty (on the clock) library staff for assistance on friends Group projects.
 - Expectation of use of staff during fundraising events (Consult the attorney about this).
 - On-the-clock staff vs off duty staff
 - Whether library will require director/staff participation in fundraising events
 - Expectation for reimbursement of costs associated with use of staff
 - Insurance, wages, etc.
- Official communication procedures for the library and friends group.
 - Liaisons to Boards
 - Space on the regular meeting agenda for each organization to provide a report or update to the other.

Other matters to be Included:

- Process by which the organizations can terminate the MOU before the expiration date.
- Process by which the MOU can be amended.
- Process for resolving disputes involving the requirements/expectations of the MOU.
 - Allegations of violation or breach
 - Interpretation of MOU language as it may apply to a specific situation

(Editor's Note: This list of information is not exhaustive. Friends groups and libraries should consult their respective attorneys to determine the MOU language applicable to each organization's needs and goals.)

How Would a Friends Group Obtain an MOU

One method:

- Start by communicating with the library director and board about the friends desire to have an MOU.
- The board of the friends will want to pass a motion or resolution indicating their desire for an agreement.
- The library board will also want to vote on a resolution or motion on forming an MOU.

- Consult with the friends attorney (who should be separate from the library’s attorney) to discuss elements that the friends want to see in the MOU and possibly draft an initial version of an MOU.
 - Often the library will initiate the formation of an MOU or use the library’s attorney to draft an initial version. This is fine. It doesn’t matter which attorney drafts the agreement. What matters is that each organization will want to recognize that the attorney of the other organization legally must act in the best interests of the organization that attorney represents. Both the Friends Group and the library will each want to review any draft carefully AND consult with their own attorney on draft versions and on negotiations.
- Once there is a document agreeable to both organizations, the document should be signed by authorized representatives of each organization – most likely a board officer from each organization. Although an MOU is not generally legally binding, if there is a later dispute, the outcome of a dispute could be affected if the document was signed by people unable to legally represent the organization (or legally bind the organization into a contract or agreement), especially if the MOU contains language that could later be considered legally binding. Any questions regarding what makes a person an “authorized representative” should be discussed with the organization’s attorney.
- Once a document is signed, each organization will want to design and implement applicable policies to assist in compliance with the agreement.
- Staff and friends members who will be involved in complying with the agreement will need to be informed and trained on the agreement and the applicable policies and procedures.

Approaching a Library or Friends Group About Forming an MOU

Depending on the nature of the relationship and the history between the library and the friends group, this can be a sticky conversation. Although an MOU is beneficial to each organization, sometimes one of the entities views the suggestion as a negative commentary on the relationship between the two entities.

One response to this could be that the governing boards of each entity have a Fiduciary Duty (a legal responsibility to act in the best interests of their organization) and, arguably, an MOU that clarifies expectations and duties and stipulates things like how fundraising proceeds will be distributed is in the best interests of each for a variety of reasons listed in this article.

The desire or proposal for an MOU is a component of each organization managing their business in a responsible manner. Another argument or persuasion is that an MOU is

protection for both entities and not “personal.” Having the requirements and expectations spelled out and agreed to can save time, money and limit liability and conflict (conflict between the library and friends group is rarely good for the library – or for donations). It also means that the members of each group are now free to spend less time worrying about policies and details and more time on collaboration and fundraising, which is good for everyone!

Resources on MOUs

<https://www.contractscounsel.com/t/us/memorandum-of-understanding>

<https://www.docuSign.com/blog/memorandum-understanding>

<https://www.sfyLaw.com/blog/2023/07/when-to-use-an-mou-and-how-it-differs-from-an-moa/>

United for Libraries- Resources for Friends Groups, [Organizational Tools](#) – Includes links to the ALA recommended MOU sample, which is a basic MOU intended as a starting point for Friends groups and libraries.

Sample MOU - this is an [example from the Fox Grove Library in Illinois](#), so it does not reflect Michigan law. However, it is an example of an MOU that includes more information from a Friends Group perspective.

Legal Assistance Resources

[Michigan Community Resources](#) – Provides Pro Bono legal assistance to nonprofit community organizations that serve primarily low-income communities.

Michigan Bar Association – [Lawyer Directory by Specialty](#) (Enter “nonprofit” in search box for a list of lawyers in Michigan who practice nonprofit law).