
MAYBE IT'S TIME TO INCORPORATE:
*Various Issues for Community Groups to Consider
Before Consulting an Attorney*

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INTRODUCTION: SHOULD YOU INCORPORATE?

Whenever groups of people come together to perform community or social functions, there are a variety of structures by which such groups can organize themselves, including clubs, fraternal organizations, associations, partnerships, and corporations. This booklet is designed to explain to the non-lawyer one such organizational structure – the not-for-profit corporation.

When most people think of “corporations,” they think of large for-profit enterprises that produce our automobiles, refine our oil, manufacture our consumer goods, invest our money and provide our telecommunication services. They also think of large not-for-profit institutions, such as colleges, hospitals, museums and charitable organizations like the United Way, the Make-A-Wish Foundation and Amnesty International. Fewer people think of small or medium-size enterprises, especially those comprised of concerned citizens in a community who organize themselves to serve a worthwhile need in a particular neighborhood or a larger community. Such small or medium-size enterprises, however, may also take advantage of the corporate form in the same manner as the large enterprises described above. For example, a day-care center, a housing rehabilitation group, a cooperative school, a mentoring program or a job clearinghouse may all be organized as corporations and may all reap the benefits of the corporate form, including the benefit of a special kind of corporate form – the not-for-profit corporation.

The Illinois General Assembly has enacted a statute permitting the creation of not-for-profit corporations. Although certain procedures must be followed to form a not-for-profit corporation, such corporations are not difficult to form and may have certain tax and other advantages. Each not-for-profit corporation, however, must comply with certain requirements to preserve its corporate form and retain its other advantages.

Before making the decision to incorporate, it is advisable to read this booklet and consider the following questions:

Should your group organize on its own or become part of an established organization?

Before investing time, money and energy in starting a new organization, your group should carefully consider its response to this important question.

One option to consider is investing your time and energy in developing a new legal entity. Your group may determine that a new entity will offer a simpler structure and set of relationships and will enable your organization to focus more sharply on its mission. It may, however, take up to 12 to 18 months of hard work to complete the process of incorporating and securing a determination from the Internal Revenue Service (the “IRS”) of tax-exempt status, such status is normally required in order to submit funding applications to corporations, foundations or public agencies.

Another option to consider is whether your resources would be better invested in developing programs or projects in conjunction with an established organization. By developing such programs under the auspices of an established organization, you may avoid the potentially cumbersome management and administrative activities associated with running a separate organization. Alternatively, your organization may consider developing and funding a special project for an established organization with the understanding that such project might “spin off” as a separate organization in the future.

For more information regarding the above options, consult the various publications listed in Exhibit A, “Resources on Starting and Managing a Not-for-Profit Corporation,” of this booklet.

Is the corporate form the right form for your organization?

Upon deciding to organize on your own, your group will need to determine which legal form of organization will be most helpful in achieving your group’s objectives and goals. The various legal forms of organization include corporations, unincorporated associations, limited liability companies and trusts. It is important that your group evaluate the advantages and disadvantages of each of the various legal forms of organization. For more information regarding the advantages and disadvantages of a not-for-profit corporation, refer to pages 6-7.

Do the objectives and goals of your organization comply with the requirements for establishing a not-for-profit corporation?

Under Illinois law, not-for-profit corporations may be organized for any purpose specified under the General Not For Profit Act of 1986 (the “Act”), which became effective on January 1, 1987. Such purposes include charitable, educational, civic, religious, literary, scientific, agricultural and various other specified purposes. It is important to note, however, that even if your organization falls under one of the specified purposes under the Act, this does not automatically mean that your not-for-profit corporation will be exempt from federal tax under federal law. See pages 17-25.

What special documents or other formalities must be completed in order to incorporate?

In order to form a not-for-profit corporation, your group must complete Articles of Incorporation. See pages 7-11. Your group must also establish procedures for governing your not-for-profit corporation, which are referred to as Bylaws. See page 14.

Who will be responsible for running the corporation and what will be their responsibilities?

The board of directors, the members and the officers each have distinct roles in managing your not-for-profit corporation. For more information regarding each of their responsibilities, refer to pages 11-14.

What does it cost to incorporate and to become a tax-exempt organization?

When your organization files its Articles of Incorporation with the Illinois Secretary of State (see page 10), it will be required to pay some relatively small fees. At the time this booklet was published, the Illinois filing and recording fees amounted to less than \$75 and the IRS' application fee (see page 19) for a determination of tax-exempt status varied based on an organization's actual or anticipated gross revenue averaged over a four-year period. At the time of publication, if an organization had been in existence for more than four years and had during the preceding four years annual gross receipts averaging more than \$10,000 or if an organization was a new organization that expected to have in its first four years annual gross receipts averaging more than \$10,000, the fee for a determination of tax-exempt status amounted to \$750. If an organization had been in existence for more than four years and had during the preceding four years annual gross receipts averaging less than or equal to \$10,000 or if an organization was a new organization that expected to have in its first four years annual gross receipts averaging less than or equal to \$10,000, at the time of publication, such fee amounted to \$300. If your organization is a charitable organization, it must also register with the Illinois Attorney General (see page 15), which, at the time this booklet was published, required a registration fee of \$15. As these fees may change, it is important to ensure that your organization verifies with each regulatory agency the required filing fees prior to filing.

What is the duration of your not-for-profit corporation?

The life of your not-for-profit corporation is perpetual (lasting for an unlimited period) unless your corporation states a limited duration in its Articles of Incorporation. See page 7.

What are your not-for-profit corporation's ongoing reporting requirements?

All not-for-profit corporations must file an annual report of officers and directors with the Illinois Secretary of State. Failure to file such report may result in involuntary dissolution of the corporation. See page 15. If your corporation is not exempt from federal income taxes, it will have to file corporate income tax returns. If your corporation is tax-exempt, it will be required to file annual information returns with the IRS based on certain criteria. See pages 25-26. If your corporation is a charitable organization or a trust, your corporation must file with the Illinois Attorney General an annual financial report and pay an annual filing fee of \$15, unless your corporation is exempt from filing, in which case, your corporation may file only a portion of the annual financial report. See page 15.

How can your corporation obtain tax-exempt status?

It is important to note that simply becoming a not-for-profit corporation does not automatically exempt your corporation from federal income taxes nor make contributions to your corporation tax deductible. Your corporation must still meet strict guidelines established by the IRS and, in most cases, must obtain formal recognition of its tax-exempt status. See pages 17-25. In addition, if your corporation hires employees, it may be liable for collecting federal and state taxes. As this booklet does not discuss in detail this very important matter, your corporation should consult an attorney and/or an accountant prior to hiring its first employee.

If your not-for-profit corporation's purpose is to lobby legislators or advocate legislative change may it still obtain tax-exempt status?

Whether your not-for-profit corporation may retain its tax-exempt status and engage in political and lobbying activities depends on the type of tax-exempt organization and the type, the scope or the amount of activity at issue. It is therefore important that your corporation consults an attorney prior to engaging in such activities.

Your corporation generally will not qualify as a Section 501(c)(3) organization under the Internal Revenue Code of 1954 (the "Code") if a substantial part of its activities is to engage in lobbying. As a Section 501(c)(3) organization (other than a church or a private foundation), however, your corporation may elect to fall under Section 501(h) of the Code, which allows your corporation to make a determinable annual amount of lobbying expenditures without losing its tax-exempt status. See pages 20-21.

Your corporation, as a Section 501(c)(3) organization, is absolutely prohibited from directly or indirectly engaging in political activities, which include participating in, or

intervening in, any political campaign, contributing funds to a political campaign or making written or verbal public statements on behalf of the organization in favor of or in opposition to a particular candidate or such candidate's policies. If your corporation violates this prohibition, the IRS may deny or revoke your corporation's tax-exempt status and may impose a certain excise tax. Whether an activity constitutes a "political activity" depends on the particular facts and circumstances. The IRS typically will not characterize as "political activity" voter education activities conducted in a non-partisan manner or activities encouraging individuals to participate in the electoral process, such as voter registration or voter outreach drives, so long as such activities do not exhibit any bias toward a particular candidate or political party.

This booklet provides you with only general information about the not-for-profit corporate form. For more specific assistance pertaining to your particular group, you should consult an attorney. If you are unable to afford to hire an attorney, you may be able to obtain free legal assistance through organizations in your area providing legal assistance, such as the Community Economic Development Law Project (the "CEDLP"), a project of the Chicago Lawyers Committee for Civil Rights Under Law, Inc. (the "Chicago Lawyers Committee"). The contact information for such organizations are as follows:

Community Economic Development Law Project of the Chicago Lawyers' Committee for
Civil Rights Under Law, Inc.
100 North LaSalle Street, Suite 600 Chicago
Chicago, Illinois 60602
Telephone: (312) 939-3638
Facsimile: (312) 630-1127
Email: cedlp@cedlp.org
http://www.clccrul.org/projects/community_economic_development_law_project.html

NOT-FOR-PROFIT CORPORATIONS

I. ORGANIZING A NOT-FOR-PROFIT CORPORATION

A not-for-profit corporation is a formal legal organizational structure created by the legislature. All aspects of a not-for-profit corporation's formation and existence are governed by statute. In Illinois, the Illinois General Assembly enacted the Act to establish criteria for the creation of not-for-profit corporations. Because the Illinois General Assembly may amend, supplement, or repeal all or any portion of the Act at any time, it is important to consult the most recent version of the Act prior to incorporating.

A. Is the Corporate Form the Right Organizational Structure for Your Organization?

Before determining whether the corporate form is the best organizational structure for your organization, it is strongly recommended that you consider the advantages and disadvantages of the legal forms of organization, including the not-for-profit corporation.

1. Advantages of the Not-For-Profit Corporate Form.

a. Limited Liability. If a corporation has been organized and operated correctly, only the assets of the corporation, not the personal assets of the corporation's officers, members or directors, may be used to satisfy the debts and other financial obligations of the corporation. This differs from non-corporate forms of organization such as sole proprietorships, general partnerships and associations, in which the personal assets of the operators may be claimed by creditors and others in order to meet the obligations of the enterprise.¹

b. Structure. The Act requires that a not-for-profit corporation establish a board of directors or trustees, designate officers, hold meetings and record such meetings, maintain books and records and file annual reports. Such statutory requirements for forming and managing a not-for-profit corporation provide structure for the corporation to function and

¹ While officers, members and directors of corporations are subject to personal liability for breaches of their fiduciary duty, if such individuals act with reasonable care and prudence, their personal assets generally are not subject to the debt and liabilities of the corporation. Furthermore, the Act affords specific protection from liability to officers, directors and members of tax-exempt corporations who serve without compensation. (See Act, Sec. 108.70).

conduct its business. The statutory requirements for other legal forms of organization do not establish such formal procedures or structure for managing such organizations.

2. Disadvantages of the Not-For-Profit Corporate Form.

a. No Profit Motive. By its very nature, a not-for-profit corporation is prohibited from distributing any part of its income to its members, directors or officers. (See Act, Sec. 106.05). While this does not preclude the corporation from paying reasonable compensation to its members, directors and officers and other employees, it does preclude the distribution of profits or net income to such individuals.

b. Formalities. While the requirements of the corporate form may provide a needed structure for an organization, these formalities may also cause inconvenience and unnecessary expenditures. Formal meetings, annual reports and other formalities may impede, rather than enable, the organization to function efficiently. If this is the case, the fees for filing Articles of Incorporation and for applying for tax-exempt status may be better invested elsewhere.

For additional information regarding the advantages and disadvantages of the legal forms of organization, consult the CEDLP's brochure *Is a Not for Profit the Way to Go?*, which is listed on Exhibit A.

In addition to evaluating the advantages and disadvantages of the not-for-profit corporate form, your organization should also evaluate its goals. If one of your organization's goals is to seek exemption from federal tax under federal law, it is important to note that most organizations seeking such exemption determine that the not-for-profit corporate form is the best organizational structure to permit it to accomplish such goal.

B. Articles of Incorporation.

The Articles of Incorporation (the "Articles") is the formal document filed with the Illinois Secretary of State to create the corporation. To execute the Articles, your organization will need to state the name of the corporation, its intended duration only if not perpetual, the purposes of the corporation, the name of the corporation's "registered agent" and the names of the corporation's original directors. Forms of Articles of Incorporation and instructions for completing such form may be obtained from the Illinois Secretary of State on its website at <http://www.cyberdriveillinois.com> or at its officers in Springfield or Chicago, which are located at:

Secretary of State
Department of Business Services
Corporate Division
350 Howlett Building
Springfield, Illinois 62756
Telephone: (217) 782-6961

Secretary of State
Department of Business Services
Corporate Division
69 W. Washington, Suite 1240
Chicago, Illinois 60602
Telephone: (312) 793-3380

1. Name.

The not-for-profit corporation's name must be in letters of the English alphabet and/or Arabic or Roman numerals and cannot contain the words Democratic or Republican. The name must not imply a for-profit venture nor a purpose other than the actual purpose of the corporation. Further, the name cannot be the same as the name for any other corporation in Illinois. In order to verify that your corporation's name does not conflict with another corporation's name, your corporation may request a name check from the Illinois Secretary of State or search for your corporation's name on the Illinois Secretary of State's website at <http://www.cyberdriveillinois.com>.

2. Registered Agent and Registered Office.

Since no individual person is actually "the corporation," the Act provides that your not-for-profit corporation appoint an individual or a domestic or foreign corporation, but not the corporation itself, to act as its registered agent and must maintain a registered office in Illinois. The registered agent's responsibilities include accepting notices as well as service of process on your corporation's behalf and immediately informing your corporation upon receipt of any such communication. It is recommended that the registered agent is reliable and, if possible, acts as an officer of your corporation. The registered agent's address must be the same as your corporation's registered office, which must be listed in your corporation's Articles. The registered office may be, but need not be, the same as the principal office. If, however, your corporation changes its designated registered agent or its registered office, it must notify the Illinois Secretary of State on an official form.

3. Board of Directors.

Your not-for-profit corporation must appoint in its Articles at least three original directors to serve on your corporation's board of directors. The original directors will sign the Articles and will control and manage the corporation until your corporation alters the membership of the board. It is important to note that the directors are not required to be

residents of Illinois or members of your corporation. For more information regarding the role of the board, see pages 11-12.

4. Purpose.

Your not-for-profit corporation must designate in its Articles the purpose of the corporation, which is the most important section of the Articles. It is important that the description of your corporation's purpose reflects the actual purpose of the organization. In particular, if your corporation intends to seek tax-exempt status, the description of its purpose must meet the test established by the IRS for obtaining such status. See pages 17-25. The Articles are designed to provide your corporation as much latitude for action as possible so long as the stated purpose is consistent with federal and state provisions for tax exemption. In order to qualify your corporation for federal and state tax exemption, your corporation's purpose must include statements regarding the following:

a. Primary Purpose. Your corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the corporation.

b. Lobbying and Political Campaigning. No substantial part of the activities of your corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and your corporation shall not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

c. Exempt Purpose. Your corporation dedicates assets to charitable, educational, religious, scientific, or other exempt purposes, and ensures that no part of your corporation's profits or net income shall inure to the benefit of any director, member, officer, or other private individual.

d. Dissolution. Depending upon the law of the state in which your corporation is organized, upon the dissolution of your corporation, the remaining assets shall be distributed either (i) to an organization and used to accomplish one or more of the primary charitable, educational, scientific or other exempt purposes within the meaning of Section 501(c)(3) of the Code, or a corresponding section of any future federal tax code, or (ii) to the federal government, or a state or local government, for a public purpose.

Your not-for-profit corporation must also disclose whether the corporation is a condominium association as established under the Condominium Property Act, a cooperative housing corporation as defined in Section 216 of the Code or a homeowner's

association, which administers a common interest community as defined in subsection (c) of Section 9-102 of the Code of Civil Procedure.

For additional information regarding the dissolution of not-for-profit corporations, contact the CEDLP or refer to the publications listed on Exhibit A.

5. Additional Provisions.

Your not-for-profit corporation must include in its Articles other provisions regarding the internal affairs of the corporation. For instance, the Act provides that the duration of your corporation will be perpetual unless otherwise stated in the Articles.

6. Incorporators.

One or more corporations or one or more individuals that are at least eighteen years old must be designated as the incorporators of your not-for-profit corporation. The incorporators will sign your corporation's Articles declaring under penalty of perjury that the statements in the Articles are true, but your incorporators are not required to be members, directors or officers of your corporation.

7. Filing.

Your not-for-profit corporation must file its Articles of Incorporation with the Illinois Secretary of State in duplicate as well as pay the required filing fees (see page 3). Your corporation will be officially incorporated upon issuance by the Illinois Secretary of State of a letter attaching the Articles, acknowledging the receipt of the required filing fee and providing additional information for retaining your corporation's status as a corporation (the "Letter of Incorporation"). As of February 15, 2002, the Letter of Incorporation has replaced the "certificate of incorporation" previously issued by the Illinois Secretary of State. Your corporation must file a copy of the Letter of Incorporation along with the Articles in the office of the Recorder of Deeds of the county in which the registered office of your corporation is located as well as pay a filing fee of typically less than \$50, depending on the number of pages included in the filing. The Recorder of Deeds in Cook County is located at:

118 N. Clark Street, Room 120
Chicago, Illinois 60602
Telephone: (312) 603-5050
<http://www.ccrd.info>

8. Amendment.

If your not-for-profit corporation amends its Articles of Incorporation, it must obtain the requisite approval from its board of directors and its members, if necessary. It must also file a formal Amendment with the Illinois Secretary of State and pay a filing fee of \$25. Your not-for-profit corporation may obtain a copy of the form of Amendment from the Illinois Secretary of State. Upon filing such Amendment, a copy of the Amendment must also be filed with the appropriate office of the Recorder of Deeds.

C. Board of Directors.

1. Number of Directors.

Your not-for-profit corporation must designate in its Articles of Incorporation the number of original directors, which must be at least three, as well as the contact information for each director. Although there is no statutory limitation on the maximum number of directors, it is recommended that, in order to operate efficiently, your corporation should not select too many directors. Your corporation may specify with its Bylaws the exact number of directors or a minimum or maximum number of directors for the duration of your corporation. It is important to note, however, that if your corporation decides to specify a minimum and a maximum number of directors in its Bylaws, the span between the two numbers cannot exceed five. Unless otherwise specified in your corporation's Articles, a majority of individuals serving as directors will constitute a quorum, which will permit the board of directors to transact business.

2. Meetings.

Your not-for-profit corporation's board of directors must meet at least annually to elect the corporation's directors and officers and to transact any necessary business. It is also recommended that the board of directors meet more regularly to conduct any necessary business and to better manage the corporation. The board of directors may also hold special meetings for any emergency or important matters that arise. Your corporation should specify in its Bylaws the required number of meetings, the proper notice procedures and any other procedures with respect to holding such meetings.

3. Committees.

Your not-for-profit corporation's board of directors may appoint various committees of two or more directors and other individuals, if desired, to divide the responsibilities of the board of directors and to efficiently conduct the corporation's business. For instance, your corporation's board of directors may decide to appoint a

finance committee to assume responsibility for the financial aspects of the corporation, a fundraising committee to assume responsibility for the solicitation and collection of contributions or an audit committee to assume responsibility for overseeing the financial reporting process, monitoring the internal controls process and the choice of accounting policies, and ensuring open communication among management, the committee and internal and external auditors. If, however, such committee is set up to act on behalf of your corporation, a majority of the members of the committee must be directors of the board. All requirements and procedures with respect to forming and operating through committees should be specified in your corporation's Bylaws.

4. Responsibilities.

Under the Act, the affairs of your not-for-profit corporation must be managed by or under the direction of its board of directors. As described above, the board must hold meetings to conduct business and make major policy decisions affecting the corporation. While the day-to-day functioning of the corporation is the responsibility of the officers and other employees, the board must be kept informed of the corporation's activities and must exert enough control to ensure that the corporation is operating within its policies and goals. Each director of the board has a legal obligation or a "fiduciary duty" to the corporation to act in the best interests of the corporation, to use reasonable care in performing its duties and to be loyal to the corporation.

5. Liabilities.

While one of the advantages of the corporate form is limited liability for the members, directors and officers of your not-for-profit corporation, each director of your corporation's board of directors may be personally liable for the breach of his or her own "fiduciary duty". If the directors of the board act in an unreasonable manner causing damage to your corporation or any person involved with the organization, each director may be legally liable for the amount of loss caused by the director's breach.

It is important that the possibility of this liability is neither overestimated or underestimated by your corporation's board of directors. The responsibilities of the directors of the board must be carried out with due care, but if the board of directors acts reasonably and in the best interest of your corporation and devotes the amount of time and effort necessary to serve your corporation, the board of directors will meet its fiduciary obligations. As stated in the Act, "[d]irectors and officers of a tax-exempt corporation who serve without compensation are not liable for damages resulting from their exercise of judgment unless they acted in a willful or wanton manner." (See Act, Sec. 108.70).

D. Members.

Similar to a for-profit corporation that may have shareholders who own and control the corporation, your not-for-profit corporation may have members who assume many of the same functions.² Although there are no shares in not-for-profit corporations, your not-for-profit corporation may issue certificates as evidence of membership. Your corporation may also, however, establish its organization without members. Your corporation should specify all matters concerning members, including qualifications, method of selection and expulsion, dues and fees and the absence of such members, in its Articles or, more commonly, in its Bylaws.

If your corporation establishes members, it is possible to divide the membership into sub-groups or classes, such as voting and non-voting members. Unless there is a special reason to the contrary, each voting member should be granted one vote. Your corporation's members must hold an annual meeting at which the board of directors will present a report on the past year's activities of the corporation as well as any resolutions for the members' approval and the members will submit their own resolutions for approval and will elect the board of directors. Your corporation's members will generally have no personal liability for the debts or obligations of the corporation.

E. Officers.

While the board of directors will be responsible for the overall direction of the corporation, your not-for-profit corporation's officers will be responsible for specific tasks, often identified in your corporation's Articles or Bylaws. Your corporation's officers will be elected by the board of directors usually for one-year terms.

Your not-for-profit corporation may designate in either its Articles or Bylaws the number, titles, and specific responsibilities of the officers. As provided by the Act and as customary for most corporations, your corporation may appoint a president, one or more vice presidents, a secretary, a treasurer or any other officer as deemed necessary to carry out the functions of your corporation. One individual may perform more than one office; however, the roles of president and secretary should not be performed by the same individual. Your corporation may also appoint one or more of its officers, such as the executive director, as a member or members of the board of directors while he or she holds

² Most not-for-profit corporations are organized without members. In such circumstances, the board of directors has a responsibility to elect its successor board members. Such corporation, however, may have "members," participants or supporters who participate in many ways, but do not vote or otherwise govern the corporation.

that particular office. Such individual may serve on the board of directors without the right to vote. Your corporation's officers shall have (i) such express authority to perform the duties of managing your corporation as provided for in either its Articles or its Bylaws or as may be determined by resolution of the board of directors (so long as such determination is not inconsistent with your corporation's Bylaws) and (ii) such implied authority as recognized under common law.

F. Bylaws.

Your not-for-profit corporation's Bylaws must contain the regulations and rules governing the internal operations of your corporation. The Act defines Bylaws as rules adopted for the regulation or management of the affairs of the corporation. The Bylaws must be adopted by the board of directors at the board's first meeting. While neither the Act nor your corporation's Articles can be altered by the Bylaws, the most important provisions to be considered in drafting your corporation's Bylaws include:

1. Provisions for Membership – Will your corporation have members, will such members be voting members and who can act as a member?

2. Provisions for Governance – How many directors and officers shall your corporation appoint, how will such individuals be elected and removed, and what will be the directors and officers specific duties and terms of office?

3. Provisions for Conducting Business – When and where must the board of directors hold meetings, how much notice is required for such meetings, how many members and/or directors are required to constitute a quorum to conduct your corporation's business and what proportion of votes is required to take action on a particular matter?

4. Provisions for Amending Bylaws – When and how can your corporation amend its Bylaws?

G. Organizational Meeting.

After your not-for-profit corporation receives its Letter of Incorporation, the incorporators must call an organizational meeting of the original board of directors designated in the Articles. At this meeting, the board of directors should adopt your corporation's Bylaws and should conduct any other necessary business, such as establishing your organization's fiscal year or authorizing your organization to open a bank account. This organizational meeting will be the first time that your organization has assembled as a corporation. It is therefore recommended that your corporation adopt rules of order for conducting business to ensure that your corporation gets off to the right start.

II. RUNNING YOUR NOT-FOR-PROFIT CORPORATION

Your not-for-profit corporation must file an annual report with the Illinois Secretary of State before the first day of the month in which your corporation received its Letter of Incorporation. Blank forms of the annual report will be mailed by the Illinois Secretary of State to your registered agent approximately 60 days before its due date. Failure to file such report may result in involuntary dissolution of the corporation. Your corporation may obtain forms of the annual report from the Illinois Secretary of State.

If your corporation is a tax exempt charitable organization or a trust, your corporation must register and file annual financial reports, which are similar to annual federal information returns, with the Illinois Attorney General under the Charitable Trust Act or the Solicitation for Charity Act. Organizations registered under the Charitable Trust Act are required to file an annual financial report and pay an annual filing fee of \$15. Organizations, which solicit charitable contributions, registered under the Solicitation for Charity Act are required to file an annual financial report and pay an annual filing fee of \$15. If your not-for-profit corporation fails to file the annual financial report with the Illinois Attorney General in a timely manner, your organization will be removed from the public database maintained by the Illinois Attorney General. Such removal will prevent a potential funder or contributor from locating your organization through such database. Your corporation may obtain information regarding the Illinois Attorney General's registration and filing requirements as well as copies of all necessary forms from the Illinois Attorney General, which is located at:

Office of the Attorney General
Charitable Trust Bureau
Attention: Annual Report Section
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601-3175
Telephone: (312) 814-2595
<http://www.ag.state.il.us/charities/index.html>

Information regarding the Illinois Attorney General's registration and filing requirements is also available at the CEDLP.

As a means of preserving its corporate form and any tax advantages, your not-for-profit corporation should conduct its affairs in an orderly, efficient and professional manner. Such practices should at a minimum include the following: hold annual meetings of your corporation's members, if any, and regular meetings of your corporation's board of directors, ensure one officer develops minutes or summaries of such meetings and file such

minutes in a corporate minute book, clearly state the responsibilities of all of your corporation's officers and employees and maintain on a regular basis your corporation's financial information and reports.

FEDERAL INCOME TAX

Another primary consideration in your group's organizational planning concerns the effects of the federal income tax system on your organization. Income from both for-profit and not-for-profit corporations is subject to federal income tax, which is computed in a similar manner as your individual income tax. The United States Congress, however, has recognized that certain organizations deserve exemption from federal income tax; in particular, those organizations that do not pursue certain activities for profit. Your not-for-profit corporation may be one of these exempt organizations.

The complexity of the federal income tax laws is well known, and certain aspects of the laws governing exempt organizations are especially complex. This booklet is not intended to be a comprehensive review of the federal tax laws and therefore it cannot be the only, or even the primary, guide for your group to use in planning your organization. Other important sources of information include the IRS' website at <http://www.irs.gov> and the IRS Publication 557 entitled Tax-Exempt Status for Your Organization, available on the IRS' website or at your local IRS office. In Chicago, the local IRS office is located at:

230 South Dearborn Street
Chicago, Illinois 60604
Telephone: (312) 566-4912

It is still important to contact an attorney, an accountant or an otherwise qualified person to assist your organization in establishing tax-exempt status.

Section 501 of the Code, as amended, enumerates several types of organizations that are exempt from federal income tax. While other Code sections exempt certain other organizations from federal income tax, most local community or social organizations will be exempt, if at all, under Section 501 of the Code; in particular, under Section 501(c)(3) as a charitable, educational, religious, scientific or similar organization, Section 501(c)(4) as a civic league, Section 501(c)(6) as a chamber of commerce or a business development group or Section 501(c)(7) as a social or recreational club.

Regardless of your organization's tax-exempt status, it is strongly recommended that your organization apply with the IRS as soon as possible for a taxpayer identification number. Your organization may obtain the IRS' Form SS-4, the application for taxpayers identification numbers, from the IRS' website or your local IRS office.

I. SECTION 501(c)(3) ORGANIZATIONS: CHARITABLE ORGANIZATIONS AND THE LIKE

Section 501(c)(3) of the Code exempts from federal income tax organizations, including not-for-profit corporations, that are organized and operated exclusively for one or more of the following purposes:

- (i) Religious
- (ii) Charitable
- (iii) Scientific
- (iv) Testing for public safety
- (v) Literary
- (vi) Educational
- (vii) To foster national or international amateur sports competition (but not to provide athletic facilities or equipment)
- (viii) To prevent cruelty to children or animals.

Qualifying as an exempt organization under Section 501(c)(3) of the Code grants your not-for-profit corporation several advantages, including exemption from federal income tax, except to the extent your corporation has income from an unrelated trade or business and deductibility by contributors of contributions to your corporation. Most contributions to other exempt organizations are not deductible unless such contributions are “business expenses” incurred by private businesses.

Even if your not-for-profit corporation is organized and operated exclusively for one or more of the above purposes, it will not qualify as a Section 501(c)(3) organization if any part of its net earnings benefit a specific individual or a small set of individuals, such as one family or certain family members. Nor will your corporation qualify as a Section 501(c)(3) organization if it attempts to influence legislation through lobbying as a substantial part of its activities or if it participates or intervenes in any political campaign, including the publication or distribution of statements with respect to a candidate, and/or the contribution of any money or organizational effort to a political candidate. Your corporation may seek, however, approval for a limited lobbying expenditures without threatening its tax-exempt status. See pages 20-21.

All exempt organizations, including Section 501(c)(3) organizations, are subject to federal income tax on taxable income from trades or businesses which are not substantially related to carrying out the purposes for which the organizations were exempted from tax (“unrelated trades or businesses”). For example, if a senior citizens center, which is a Section 501(c)(3) organization, operates a beauty and barber shop for patronage by the general public, the senior citizens center will be required to pay federal income tax on the

beauty and barber shop's profits. If the beauty and barber shop, however, is only accessible to the senior citizens associated with the center, the center will not be required to pay federal income tax on the shop's profits. Your corporation may obtain additional information on this issue by consulting the IRS' Publication 598 entitled Tax on Unrelated Business Income of Exempt Organizations, which your corporation may obtain a copy of from the IRS's website or your local IRS office and/or by consulting an attorney or an accountant.

Even if your not-for-profit corporation meets the requirements for a Section 501(c)(3) organization, it will not qualify for tax-exempt status unless it obtains formal recognition of such status from the IRS. To obtain such recognition, your corporation should file the IRS' Form 1023 as well as pay the required filing fees (see page 3). If your corporation desires to be tax-exempt from the first day of its incorporation, your corporation must file Form 1023 within 27 months of the end of the month in which your organization received its Letter of Incorporation. If your corporation fails to file Form 1023 within 27 months of receiving its Letter of Incorporation, your corporation's tax-exempt status will be recognized by the IRS beginning only on the date that your corporation filed Form 1023. If, however, your corporation is able to provide justifiable reasons for the delay in filing and the length of such delay, the IRS may recognize your corporation as being tax-exempt from the first day of its incorporation. Your corporation may obtain a copy of Form 1023 from the IRS's website or your local IRS office.

A. Tax-Exempt Guidelines.

Upon filing Form 1023, your not-for-profit corporation must still meet certain IRS guidelines, including the following:

1. The Organizational Test.

To meet the organizational test, your not-for-profit corporation's Articles must (i) expressly limit your corporation's purposes to one or more of the exempt purposes listed above and (ii) not expressly empower your corporation to engage in activities which are not in furtherance of one or more of the exempt purposes for which your corporation was formed. Your corporation may obtain appropriate boilerplate language in the IRS' Publication 557 to meet the requirement under clause (i) and should consult an attorney or the CEDLP to comply with clause (ii). With respect to clause (i), your corporation will not meet the organizational test if your corporation's Articles empower it to devote more than an insubstantial part of its activities to lobbying or to participate or intervene in any political campaign. With respect to clause (ii), your corporation will also not meet the organizational test unless its Articles explicitly state that, upon dissolution of the corporation, the remaining assets shall be distributed to another organization and used

exclusively to accomplish the primary charitable, educational, scientific or other exempt purpose for which the corporation was organized or to a governmental body within the United States for a public purpose.

2. The Operational Test.

Under the operational test, your not-for-profit corporation must be exclusively operated for one or more of the exempt purposes listed above. Your corporation will not meet the operational test (i) if a substantial part of its activities is devoted to an unrelated trade or business or for any other non-exempt purpose, such as lobbying or participating in a political campaign or (ii) if its activities primarily benefit private individuals rather than the public. If, however, your corporation operates a trade or business as a substantial part of its activities, it may still qualify as a Section 501(c)(3) organization, so long as the trade or business furthers one or more of your corporation's exempt purposes.

The IRS designed the organizational and operational tests to ensure that an organization that qualifies as a Section 501(c)(3) organization (i) has one or more exempt purposes, (ii) has only exempt purposes and (iii) operates only in accordance with and to further those purposes. The IRS also requires that if your corporation racially discriminates in membership or in purpose by, for example, operating an educational center but refusing to educate minority children and adults, your corporation cannot qualify as a Section 501(c)(3) organization. It is important to note that a Section 501(c)(3) organization must continue to comply with the organizational and operational tests and refrain from discrimination or it may lose its tax-exempt status.

B. Special Rules and Restrictions.

Although qualifying as a Section 501(c)(3) organization offers your not-for-profit corporation several advantages, it also requires that your corporation comply with special rules and restrictions, including those governing lobbying and private foundations.

1. Elective Limitations on Lobbying.

Your not-for-profit corporation, generally, will not qualify as a Section 501(c)(3) organization if a substantial part of its activities consists of lobbying (the "substantial part test"). In determining whether such activity is "substantial", the IRS considers a variety of factors, including the extent of your corporation's efforts in such activity and the amount of expenditures devoted to such activity. Engaging in excessive lobbying in any taxable year will expose your corporation to the possibility of losing its tax-exempt status and of being subject to taxation on all of its income. In addition, your corporation's members, directors and officers may be subject, jointly and severally, to a tax equal to five percent of

your corporation's annual lobbying expenditures if such individuals approved the lobbying expenditures knowing that such expenditures would likely result in the loss of your corporation's tax-exempt status.

As a Section 501(c)(3) organization (other than a church or a private foundation), however, your corporation may elect, as an alternative method to the substantial part test for measuring lobbying activity, to fall under Section 501(h) of the Code (the "expenditure test"). Under the expenditure test, your corporation may make a determinable annual amount of lobbying expenditures as determined under Section 4911 of the Code not exceeding \$1,000,000 and still retain its status as a Section 501(c)(3) organization. Your corporation's determinable annual amount will be computed in proportion to your corporation's expenditures to accomplish its exempt purposes, and your corporation will be subject to a 25% penalty tax on any political or lobbying expenses that exceed its determinable annual amount. If your corporation's lobbying expenses regularly exceed 50% of its determinable annual amount over a four-year period, your corporation may lose its status as a Section 501(c)(3) organization, which will make all of its income during that period subject to tax.

If your corporation elects to fall under Section 501(h), it must file the IRS' Form 5768 and it will be subject to additional financial and program record keeping responsibilities, including reporting the actual and permitted amounts of its lobbying and grass roots expenditures. It is important to note that a Section 501(h) election does not permit a Section 501(c)(3) organization to participate or intervene in any political campaign. Your corporation may obtain a copy of Form 5768 or more information regarding the Section 501(h) election from the CEDLP, the Chicago Lawyers Committee, the IRS's website or your local IRS office.

2. Private Foundations.

Private foundations are Section 501(c)(3) organizations that are not:

- (i) Churches, regular schools, hospitals and medical research organizations;
- (ii) Broadly supported;
- (iii) Supporting organizations of organizations described in clauses (i) and (ii), above; or
- (iv) Organized and operated exclusively for testing for the public safety.

Your organization is "broadly supported", and hence not a private foundation, if it meets either the one-third support test or the acts and circumstances test. To meet the one-third support test, your corporation must, during a normal support period generally

determined by looking at the four preceding years, receive one-third or more of its total support from the general public and/or government units. Total support includes investment income, membership fees, contributions and certain amounts received from government units, but excludes income generated by performance of the function forming the basis of your corporation's tax-exempt status and non-deductible contributions of services. Support from the general public includes, among other things, most contributions by individuals, trusts or corporations, but only to the extent the total contributions of each individual, trust or corporation during the normal support period do not exceed two percent of your corporation's total support during such period. Under the alternative facts and circumstances test, your corporation may be "publicly supported" if, during the normal support period, it receives at least ten percent of its total support from the general public and government units and satisfies certain other criteria.

Your organization is further "broadly supported", and hence not a private foundation, if it normally (generally determined by looking at the four preceding years) receives more than one-third of its support from gifts, grants, contributions, membership fees, or certain receipts from a trade or business which is related to your corporation's exempt purposes, and if it normally receives not more than one-third of its support from its investment income (without reduction for expenses) and any taxable income from an unrelated business (reduced by the federal income tax paid on such income). For purposes of the one-third support test, if an individual directly or indirectly contributes more than \$5,000 to your corporation and such contribution equals more than one percent of the total contributions to the organization (a "substantial contributor") or if your corporation directly or indirectly receives a contribution from an officer, director or responsible employee of your corporation, a family member of any of these individuals, or a business in which any of these individuals or their family members have a significant ownership interest, such contribution is not considered in the calculation of the one-third support test.

Qualifying as a private foundation exposes your corporation to several tax obligations. Such classification exposes your corporation to a federal excise tax on its annual net investment income, and if your corporation is a foreign private foundation, it will also be subject to a tax on its gross investment income derived from domestic sources. Upon its termination, a private foundation may also be subject to a confiscatory tax, which may be avoided only if all of the private foundation's assets are donated without any material restrictions on the use of such assets to a public charity.

Private foundations are also subject to several restrictions and requirements, including: (i) restrictions on self-dealing between a private foundation and its substantial contributor, an officer, director or responsible employee, a family member of any of these individuals, a business in which any of these individuals or their family members have a

significant interest, a government official or any other disqualified persons; (ii) requirements that the private foundation distribute annually its income for charitable purposes; (iii) restrictions on a private foundation's investments in private businesses; (iv) requirements that the private foundation's investments refrain from jeopardizing the foundation's exempt purposes; and (v) requirements that a private foundation's expenditures further its exempt purposes. Failure to comply with these regulations will expose your corporation, as a private foundation, to taxes and penalties and, in some cases, will expose your members, directors, officers, substantial contributors and related persons to taxes and penalties.

As discussed below, all exempt organizations (with minor exceptions) must file annual information returns. Because private foundations are subject to additional restrictions and requirements, it must provide more information than other exempt organizations. Your corporation may obtain more information regarding private foundations in the IRS' Publication 557 and in its instructions for Form 990-PF and/or from the IRS's website or your local IRS office.

II. SECTION 501(c)(4) ORGANIZATIONS: CIVIC LEAGUES

Section 501(c)(4) of the Code exempts a civic league from federal income tax if: (i) it is not organized or operated for profit; (ii) it is operated exclusively for the promotion of social welfare and (iii) no part of its net earnings inures to the benefit of any private shareholder or individual. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and the general welfare of people in a community.

Unlike a Section 501(c)(3) organization, a Section 501(c)(4) organization does not require formal recognition by the IRS of tax-exempt status. Formal recognition, however, is desirable, and can be requested by your corporation by filing the IRS' Form 1024. Unlike Form 1023, Form 1024 does not include a 15-month application deadline. Your corporation may obtain a copy of Form 1024 and instructions for its completion from the IRS's website or your local IRS office. Instructions for completing Form 1024 are also available at the CEDLP.

Although unclear, a Section 501(c)(4) organization should expect the IRS to require that such organization comply with particular guidelines, including the organizational and operational tests similar to those applied to Section 501(c)(3) organizations, in order for such organization to maintain its status as a Section 501(c)(4) organization. Your corporation, therefore, should expressly limit in its Articles your corporation's purposes to the promotion of social welfare and should not empower your corporation to engage in activities that would not further your corporation's exempt

purposes. It is important to note that the promotion of social welfare does not include participation or intervention in any political campaign nor an unrelated trade or business as a substantial activity.

While qualifying as a Section 501(c)(4) organization may not be as desirable as qualifying as a Section 501(c)(3) organization, in part because contributions to a civic league generally are not deductible, Section 501(c)(4)'s special rules and restrictions are more lenient. A Section 501(c)(4) organization is not a private foundation and therefore is not subject to the detailed rules and taxes applicable to private foundations (see pages 21-23). A Section 501(c)(4) organization also has far greater ability to engage in lobbying without endangering its tax-exempt status. The mere fact that a Section 501(c)(4) organization "contacts, or urges the public to contact, legislators for the purpose of proposing, supporting, or offering legislation, . . . advocates the adoption or rejection of legislation, or has primary objectives that can only be obtained by legislative action and advocates for those objectives" will not prevent such organization from qualifying as exempt under Section 501(c)(4), even though such activities would prevent it from qualifying as exempt under Section 501(c)(3). For example, a not-for-profit corporation formed to educate the public on abortions, promote either a woman's right to choose or the rights of the unborn and support legislative and constitutional changes to either retain a woman's right to choose or restrict access to abortions may be exempt under Section 501(c)(4). Even so, a Section 501(c)(4) organization cannot participate or intervene in a political campaign without endangering its tax-exempt status. If such organization's members wish to support certain political candidates, such members can establish a separate political action committee or organization with its own finances, fundraising and activities. For assistance in establishing such an organization, it is important to consult an attorney knowledgeable in the field.

Similar to a Section 501(c)(3) organization, a Section 501(c)(4) organization is also subject to federal income tax on income derived from an unrelated trade or business.

III. SECTION 501(c)(6) ORGANIZATIONS: BUSINESS LEAGUES, CHAMBERS OF COMMERCE, BOARDS OF TRADE OR BUSINESS DEVELOPMENT GROUPS

Section 501(c)(6) of the Code exempts a business league, a chamber of commerce, a board of trade or a professional football league from federal income tax if: (i) it is not organized or operated for profit; (ii) it is operated exclusively for the promotion of social welfare and (iii) no part of its net earnings inures to the benefit of any private shareholder or individual. To qualify as a Section 501(c)(6) organization, your not-for-profit corporation must also demonstrate that it is operated by members bound together by a common business interest and that it is devoted to the improvement of business conditions

of one or more lines of business and not the performance of particular services for private individuals. Examples of activities that promote a “common business interest” include: (i) operation of a trade publication primarily intended to benefit an entire industry; (ii) operation of an organization of business and professional women that promotes the acceptance of women in business and professional activities; (iii) education of the public regarding the use and importance of credit; and (iv) establishment of uniform casualty rates and compilation of statistical information by an insurance rating bureau operated by casualty insurance companies. Examples of activities directed at the “improvement of business conditions” rather than for the benefit of private individuals include: (i) influencing legislation germane to the common business interests of the organization’s members; (ii) promoting the organization’s member’s line of business by publishing statistics on business conditions in the particular industry; and (iii) maintaining a not-for-profit attorney referral service aimed at improving the image and functioning of the legal profession. Such requirement is not met if your organization simply provides a convenience or economy to private individual members in the organization’s line of business, such as advertising such member’s business, providing interest-free loans, assigning exclusive franchise areas or operating of a credit reporting agency.

Similar to a Section 501(c)(4) organization, contributions to a Section 501(c)(6) organization are not deductible as charitable contributions and Section 501(c)(6) organizations are subject to federal income tax on income derived from an unrelated trade or business. Section 501(c)(6)’s special rules and restrictions are, however, more lenient than the rules and restrictions governing Section 501(c)(3) organizations. For assistance in establishing such an organization, your organization should consult an attorney knowledgeable in the field.

IV. REPORTING TO THE IRS

All exempt organizations must generally file annual information returns, which are due on the fifteenth day of the fifth month after the end of such organization’s fiscal year. For example, if your corporation’s fiscal year ends on December 31, your annual information return would be due on May 15.

If your corporation is tax-exempt and its annual gross receipts are equal to or exceed \$25,000, your not-for-profit corporation must file an annual tax-exempt organization return with the IRS on Form 990. It is important note though that, beginning in 2008, organizations with annual gross receipts of less than \$25,000 will also be required to file an annual information return with the IRS. If your not-for-profit corporation is a private foundation, your corporation must file its annual information return on Form 990-PF, rather than on Form 990. If your corporation is subject to federal income tax on income from an unrelated trade or business, it must file, in addition to Form 990 or Form

990-PF, Form 990-T, which is also due on the fifteenth day of the fifth month after the end of your corporation's fiscal year. Your corporation may obtain these forms and instructions for their completion from the IRS's website or your local IRS office. It is recommended that your organization obtains these forms while your organization is contemplating the possibility of forming a tax-exempt organization to better assess the IRS' reporting requirements and to begin collecting and maintaining the required information.

Failure to file the required annual information return on time or failure to provide the correct, complete or required information on the return carries a penalty \$20.00 per day or, if your corporation has gross receipts in excess of \$1,000,000, \$100 per day. The maximum penalty for a single return is the lesser of \$10,000 or five percent of the corporation's annual gross receipts or, if your corporation has gross receipt in excess of \$1,000,000, \$50,000. Further penalties may result for your corporation's failure to also submit Form 990-T when such filing is required. If your corporation is able to show reasonable cause for its failure to timely file, it may help your corporation avoid such penalties.

V. MISCELLANEOUS

A. Additional Taxes.

Although exempt organizations may obtain exemption from federal income tax, exempt organizations may still be subject to a variety of additional taxes. Most exempt organizations that have employees are subject to federal and state employment taxes, including social security tax and withholding taxes, with respect to wages paid to such employees. Such exempt organizations may also be subject to state income taxes, state sales and use taxes and real or personal property taxes. An organization that is exempt from federal income tax is generally not liable for state income tax under Illinois law, except on any taxable income such organization may obtain from an unrelated trade or business. Under Illinois law, however, such organization must undergo a separate application process with the Department of Revenue to obtain exemption from state sales tax and from real estate tax. Illinois law also imposes strict standards and requirements on exempt organizations that seek to obtain exemption from real estate taxes.

Whether an organization that is exempt from federal income tax must pay other taxes depends on the nature of the organization and its activities. It is therefore important that your corporation discuss such matters in detail with an attorney.

For additional information regarding exemption from state sales tax, consult the CEDLP's brochure *Sales Tax Exemption for Illinois Not for Profit Organizations*, contact

the CEDLP or refer to the publications listed on Exhibit A.

B. Intermediate Sanctions.

Section 4958 of the Code imposes sanctions on any person who was in a position to exercise substantial influence over the affairs of a Section 501(c)(3) or Section 501(c)(4) organization during a particular timeframe (“disqualified person”) and who received excessive economic benefit from such exempt organization (“excess benefit transaction”). An excess benefit transaction includes, for example, a transaction in which a Section 501(c)(3) or Section 501(c)(4) organization provides one of its executive officers with a compensation package far in excess of packages received by other individuals performing comparable services in comparable organizations that are located in the same geographical area. The IRS may view such a compensation package as unreasonable or excessive, which may trigger liability under Section 4958. An excess benefit transaction may also include a transaction in which (i) a Section 501(c)(3) or Section 501(c)(4) organization provides one of its executive officers with a certain amount of additional compensation and fails to pay or withhold additional federal income taxes and employment taxes from such compensation and to report such compensation or such transaction on the relevant IRS forms and (ii) the relevant executive officer fails to report such compensation on his or her Form 1040 for the applicable timeframe. Such transaction will likely trigger liability under Section 4958.

A disqualified person who engages in an excess benefit transaction is subject to an excise tax equal to 25% of the excess benefit of each excess benefit transaction, and if such transaction is not corrected within the taxable period, the IRS will assess an additional excise tax equal to 200% of the excess benefit. If such disqualified person fails to pay the full amount of the 25% excise tax, the 200% excise tax will be assessed on only the unpaid portion of the correction amount. If more than one disqualified person received an excess benefit from a particular excess benefit transaction, all such disqualified persons will be jointly and severally liable to the IRS for excise tax amount.

As a result of an excess benefit transaction, a director, an officer, a trustee or any other individual having powers or responsibilities similar to a director, an officer or a trustee (an “organization manager”) may also be liable to the IRS for an excise tax if such organizational manager knowingly approved or participated in such transaction. Such organization manager may be subject to an excise tax equal to 10% of the excess benefit of each excess benefit transaction, which may not exceed \$10,000 per transaction. Such excise tax will only be assessed against an organization manager if the 25% tax is assessed against the disqualified person or persons, if the organization manager knowingly participated in the excess benefit transaction and if the organization manager’s participation was willful (i.e., voluntary, conscious and intentional) and not as a result of

reasonable cause, such as when the organizational manager exercises his or her responsibilities on behalf of the corporation with ordinary care and prudence.

C. Conflict of Interest.

As a means of regulating exempt organizations, the IRS strongly recommends that exempt organizations adopt a conflict of interest policy. Such a policy helps protect against charges of impropriety involving any officers, directors or trustees and helps develop procedures that the exempt organization and the affected individual must follow when conflicts of interest arise. A conflict of interest occurs when an individual's private interests conflicts with such individual's duty and obligation to the exempt organization. Examples of such conflicts include excessive compensation for an officer, director or trustee or the approval by an officer, director or trustee of a contract between the exempt organization and an organization partially or wholly owned by such officer, director or trustee. Continually engaging in transactions that exhibit conflicts of interest will subject your not-for-profit corporation to the possibility of revocation of its tax-exempt status.

In Form 1023, the IRS requests that your not-for-profit corporation disclose: (i) whether the individuals that approve compensation follow a conflict of interest policy; (ii) whether your organization has adopted a conflict of interest policy consistent with the same policy attached as Appendix A to the instructions for Form 1023; and (iii) if your organization responds in the negative to clause (ii), what procedures your organization will follow to assure that persons who have conflicts of interest will not have influence over your organization for setting their own compensation or regarding business deals with themselves. Your organization may obtain Form 1023 and its instructions, including Appendix A, from the IRS' website or your local IRS office.

EXHIBIT A

RESOURCES ON STARTING AND MANAGING A NOT-FOR-PROFIT CORPORATION

1. Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc., Bylaws Fact Sheet, at http://www.clccrul.org/projects/community_economic_development_law_project.html.

Bylaws is a helpful fact sheet that assists organizations with thinking through various issues that need to be addressed prior to drafting bylaws, including how the organization will elect directors and officers, how the organization will remove directors and officers from office, and whether the organization will be structured as a membership organization.

2. Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc., Compliance with Government Reporting Requirements and Responsibilities: A Guide for Nonprofit Organizations (1993).

Compliance with Government Reporting Requirements and Responsibilities is a popular guide to managing public reporting responsibilities and is available for free (other than extra postage charges) when ordering single copies from the CEDLP.

3. Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc., Legal Issues in Family Child Care: A Guide for Providers (2000).

Legal Issues in Family Child Care is a guide aimed at residents in Chicago and helps home day care providers understand important legal issues and problems involved in operating a family child care business. This guide is available in either English or Spanish for free (other than extra postage charges) when ordering single copies from the CEDLP.

4. Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc., Not for Profit Corporations: Understanding Board Composition, at http://www.clccrul.org/projects/community_economic_development_law_project.html.

Understanding Board Composition provides a basic understanding of the roles and

responsibilities of the board of directors, the officers, the staff and the founder and potential conflicts between such roles and is available on the CEDLP's website at http://www.clccrul.org/projects/community_economic_development_law_project.html.

5. Donors Form of Chicago, Illinois Nonprofit Principles and Best Practices (2005).

The *Illinois Nonprofit Principles and Best Practices* covers various issues important for nonprofit corporations, including board governance, legal compliance and communication, and encourages nonprofit corporations to and guides such corporations as to how not only comply with federal, state and local laws, but also strive for excellence. This guide is available from the Donors Forum of Chicago, which can be contacted at 312-578-0090, or from its website at <http://www.donorsforum.org/publictrust>.

6. Timothy P. FitzSimons & Arthur F. Foerster, Handbook: Introduction to Board of Directors Meetings: For Emerging Not-for-Profit Illinois Corporations (Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc. 2007).

The *Handbook* provides information to help directors conduct meetings and take care of the nonprofit corporation's business in an efficient and productive manner and is available for free (other than extra postage charges) when ordering single copies from the CEDLP.

7. Bill Forcade, Lobbying in Illinois: A Guide for Nonprofit Organizations (Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc. 1994).

Lobbying in Illinois is an excellent guide for 501(c)(3) organizations that might wish to have a voice in influencing governmental decisions and provides guidance on the restrictions the law places on political campaigning for or against candidates for elected office. This guide is available for free (other than extra postage charges) when ordering single copies from the CEDLP.

8. Paula Cozzi Goedert, Tax Issues for Exempt Organizations: A Primer (Jenner & Block LLP 1996).

Tax Issues for Exempt Organizations is an excellent introduction to the topics of "related" and "unrelated" business income and is available for free (other than extra postage charges) when ordering single copies from the CEDLP.

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9. Melissa Graham & Matthew S. Mock, Sales Tax Exemption for Illinois Not for Profit Organizations (Community Economic Development Law Project of The Chicago Lawyers' Committee for Civil Rights Under Law, Inc. 2005).

Sales Tax Exemption for Illinois Not for Profit Organizations provides information about the application process for obtaining Illinois sale tax exemption and helps organizations determine whether they are entitled to such an exemption. Such brochure is available for free (other than extra postage charges) when ordering single copies from the CEDLP or is available on the CEDLP's website at http://www.clccrul.org/projects/community_economic_development_law_project.html.

10. Guidebook for Directors of Nonprofit Corporations (George W. Overton & Jeannie Carmedelle Frey eds., American Bar Association 2d ed. 2005).

The *Guidebook for Directors of Nonprofit Corporations* provides a general understanding of the legal principles that govern nonprofit corporations and is available for \$24.95 (plus extra postage charges) when ordering single copies from the CEDLP.

11. http://www.illinoisattorneygeneral.gov/charities/charitable_advisory.html (last visited Jan. 19, 2007).

The above referenced webpage, entitled *Building Better Charities: Charitable Advisory Council*, provides numerous links to resources available to nonprofit organizations. Such webpage was developed by The Charitable Advisory Council, which was created in 1999 to advise the Attorney General of Illinois on various charitable issues ranging from charitable giving and fundraising to volunteering.

12. Illinois Legal Aid, Is a Not for Profit the Way to Go?, at <http://www.illinoislegalaid.org> (last modified Aug. 3, 2005).

Is a Not for Profit the Way to Go? provides a basic understanding of the differences between not for profit and for profit organizations and outlines the legal steps and documentation required for creating a not for profit organization. Such information is available from the Illinois Legal Aid on its website at <http://www.illinoislegalaid.org> or is available from the CEDLP on its website at http://www.clccrul.org/projects/community_economic_development_law_project.html.

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13. Illinois Legal Aid, How Do I Create a Nonprofit Organization?, at <http://www.illinoislegalaid.org> (last modified Jan. 23, 2007).

How Do I Create a Nonprofit Organization? provides a basic understanding of the differences between not for profit and for profit organizations and outlines the legal steps and documentation required for creating a not-for-profit organization, applying for tax exemption and registering with the Charitable Trust Bureau. Such information is available from the Illinois Legal Aid on its website at <http://www.illinoislegalaid.org> or is available from the CEDLP on its website at http://www.clccrul.org/projects/community_economic_development_law_project.html.

14. Internal Revenue Service, Publication 557: Tax-Exempt Status for Your Organization (U.S. Department of Treasury, Rev. March 2005).

Publication 557 is an excellent introduction to the various tax-exempt organizations under Internal Revenue Code, Section 501(c). It provides specific instructions on language required in an organization's articles of incorporation and on how to complete various IRS forms, including Form 1023 and Form 1024. It is a "must" read before filing articles of incorporation and before applying for tax exempt status. *Publication 557* is available from the IRS Taxpayer Forms and Assistance Office located at 230 S. Dearborn Street, Chicago, Illinois 60604, from the IRS' telephone form request line at 1-800-829-3676, or on the IRS' website at <http://www.irs.gov>. It is recommended that when ordering forms your organization should request: (i) *Publication 557*; (ii) the Form 1023 Package for charitable organizations or the Form 1024 Package for all other organizations; (iii) Form SS-4, which is the application for an employer identification number (such number is required in order to apply for tax exemption); (iv) Form 8218, which is the User Fee For Exempt Organizations Determination Letter Request, which should accompany payments of fees for processing a determination letter application; and (v) a Power of Attorney, which is necessary in order for an attorney to submit a determination letter application on your organization's behalf.

15. Public Education Committee of the Illinois Attorney General's Charitable Advisory Council, Annual Reporting Requirements for Charitable Organizations, at http://www.clccrul.org/projects/community_economic_development_law_project.html.

Annual Reporting Requirements for Charitable Organizations helps nonprofit organizations ensure that required reports are completed and filed before due with the relevant regulatory bodies and is available on the CEDLP's website at http://www.clccrul.org/projects/community_economic_development_law_project.html.

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16. Lisa A. Runquist, The ABCs of Nonprofits (American Bar Association 2006).

The ABCs of Nonprofits provides a basic introduction of the formation, operation, and tax exemptions of nonprofit corporations and is available for \$24.95 (plus extra postage charges) when ordering single copies from the CEDLP.