

# **YOUR NON-STOCK** **CORPORATION**

What do you need to know ?

Not-for-profit Organizations . . .

Organization . . .

Maintenance . . .

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Informal Board of Advisors . . .

Planning for the Future . . .

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## Not-for-profit Organizations . . .

At the outset, there are many differences between a non-stock corporation and a stock corporation. The first is that stock corporations have investors, non-stock corporations do not. The second is that stock corporations are incorporated for profit. Non-stock corporations are usually incorporated for charitable or religious purposes, as foundations, chambers of commerce, sports promotions organizations, and more.

There is also a legal distinction between Wisconsin law which establishes a non-stock corporation, and the federal Internal Revenue Service which, by application, gives the status of a non-profit corporation, usually an IRS sec. 501 (c) status.

## Organization as - a Non-Stock Corporation . . .

In Wisconsin Non-stock Articles of Incorporation are signed, and once accepted for filing by the Wisconsin Department of Financial Institutions become a Wisconsin corporation under Chapter 181 of the Wisconsin Statutes. The period of existence of the corporation is usually perpetual.

As I stated, usually non-stock corporations are organized exclusively for charitable, religious, educational, and scientific purposes under Section 501(c)(3) of the Internal Revenue Code. This allows them to engage in any and all lawful activities authorized by Chapter 181, Wisconsin Statutes and by the Internal Revenue Service.

It is important that no substantial part of the activities of a non-stock corporation consist of the carrying on of propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Sec. 501 of the Internal Revenue Code addresses a number of different purposes, for example, if the corporation is organized under Section 501(c)(7) of the Internal Revenue Code it is as a club organized for recreation, pleasure, and other non-profitable purposes. As another example, there is another sec. 501 subsection under which Chambers of Commerce are organized, and yet another under which real estate subdivision home owners' associations can be tax organized.

The key in all of these is that substantially all of the activities of the non-stock corporations are for such stated purposes, and that no part of the net earnings may inure to the benefit of any private individual.

In the initial filing of the Articles, the principal office located is stated, together with the name of the initial Registered Agent and the street address of the initial registered office.

The affairs of the corporation may be managed by members or a Board of Directors.

The terms of office of the Directors may be established at, for example, one, or two, or three years. The Directors need not be residents of the State of Wisconsin.

At the annual meeting, depending on how the incorporator directed that I draft the Articles, either the individual regular members in good standing entitled to vote shall elect Directors, or the Directors elect the Directors.

You also have a choice as to what the quorum at the annual meeting shall be.

The By-Laws or, if no Bylaws have been adopted, Board Resolution shall establish the required notice for the annual meeting.

Articles may be amended by the Board of Directors in the manner authorized by the Laws of the State of Wisconsin, or only by the Members, or by some combination of both.

If the Articles permit, the By-Laws may increase the Board of Directors from three to five, seven, or nine.

The Corporate Officers of the corporation are the agents. The Directors are the policy makers. The Officers are a President, Vice-President, Corporate Secretary, and Treasurer. There shall be as many Vice-Presidents as are set forth in the By-Laws. The Corporate officers may be elected by the members or the Board of Directors.

Corporate Board members may also serve as Corporate Officers.

If the corporation has members, then either the Articles or the Bylaws establish the membership classification, rights and privileges. Only members in good standing are entitled to vote.

## Organization as - an Unincorporated Association . . .

In Wisconsin there is another legal organization which is formed under Chapter 184 of the Wisconsin statutes, which is the Uniform Unincorporated NonProfit Association Act.

Under Wisconsin law a "nonprofit association" is defined as an unincorporated organization consisting of 3 or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not, by itself, establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

And a "member" of this type of legal organization is defined as a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

## Legal Maintenance . . .

**NON-STOCK CORPORATIONS SHOULD HAVE ANNUAL MINUTES AND SPECIAL RESOLUTIONS IN ORDER TO MAINTAIN THEIR SPECIAL STATUS.**

My services include:

### Notification of Annual Meeting

- Update of Persons Interested Records

- Preparation of Annual Member Minutes with Waiver of Notice, Election of Directors, Resolutions, and Ratification of the Acts of the Directors

- Preparation of Annual Board of Directors' Minutes with Waiver of Notice, Election of Officers, Resolutions, and Ratification of the Acts of the Officers

- Draft of Special Minutes for Pension or Profit Sharing Minutes, Membership Classification Changes, Name Changes, Leases, major non-stock corporate changes, specific resolutions, and other legal matters

- Index of Documents into the Corporate Record Book with copy to Client

- Review or preparation of the Department of Financial Institutions Annual Report [when supplied by Client], and inclusion into Client's Corporate Record Book

## Tax Issues and Filings . . .

Non-stock corporations and organizations should work closely with a certified public accountant in order to obtain a tax exempt status under section 501 of the Internal Revenue Code and file annually. Look at <http://www.irs.gov/charities/index.html>.

## Employees and Volunteers . . .

My representation includes:

- Working with Volunteers - as well as Employees
- Employment at Will / Employment Contracts / Personnel Records
- Defamation / Privacy / Libel and Slander
- Drug Testing / Honesty Testing / HIV Laws
- Employment Torts
- Wisconsin Fair Employment Laws / Federal Civil Rights Act
- Equal Pay Act / Discrimination in Employment Act
- Americans with Disability Act [Impairment / Reasonable Accommodation]
- Occupational Safety and Health Act
- Federal and Wisconsin Family and Medical Leave Act
- Unemployment Law / Worker's Compensation Law
- Wisconsin Trade Secrets Law

## Informal Board of Advisors . . .

As a person involved with a Non-stock corporation you understand that its operation is too complex for one person. Non-stock corporations must recognize that their strengths are in their field of operation, and you must continue to grow in both the knowledge required to remain an experts in your organization – and to work to promote it.

Success. However, one key reason for success, based upon my experience in working with non-stock corporations since 1973, is that when Non-stock corporations work closely with their advisors the Board of Directors and Officers can do what they do best. Your advisory group ideally should consist of an accountant, marketer, advertiser, insurance agents, banker, and [dare I say it?] your non-stock corporation lawyer. Each member of your informal board should possess the non-stock corporation knowledge and experience vital to you. How can each board members assist you?

**ACCOUNTANT.** Bookkeepers or CPA's render advice on the financial operational systems, and taxation. I work with a number of accountants who are very familiar with the intricacies of non-profits.

**MARKETEER.** Assist you in your initial and subsequent marketing studies to promote your organization and its services

**ADVERTISER.** Provide assistance in dealing with telemarketing, sales representatives, radio, newspaper, direct mail, and/or television advertising.

**INSURANCE AGENTS: BUSINESS AND LIABILITY.** Provide protection in the event of liability issues [fire, theft, casualty, vehicle, bonding, director and officer error and omission].

**BANKER.** You and your banker should review your cash flow needs and identify your credit needs well in advance of problems.

**LAWYER.** As your legal consultant and advisor, I offer legal options and the practical effects of your decisions.

*Some legal considerations: How do I best handle this employee problem? Can I terminate this volunteer? Should I have this contract reviewed? How can I best word this agreement to forestall expensive and time-consuming litigation? Does this lease protect us? Have I considered alternate dispute resolution procedures in the event this are disagreements? Is this the right policy for us?*

**Disagreements within your Advisory Board.** At times members of your Board will seemingly disagree with each other – yet no one will be wrong. Their dissents are the result of each director viewing a peculiar problem from his or her specialized discipline. After receiving various options, and then weighing the risks and benefits, you can make an Informed Decision.

**Your Non-stock corporation Plan.** This next section is addressed to the Board of Directors of your non-stock corporation.

Your Non-stock corporation Plan is your key to success. It is also a good self-test. Its value, because of the information you have gathered and examined, is to provide a basis for working with your Advisors to hone your plan – all in order to achieve your objectives. And, as you desire to improve your Non-stock corporation, your well thought out Plan will serve as excellent evidence of your Resolve.

**Index.** Based upon the disciplines of your informal board of advisors, the index and tabs of your Non-stock corporation Plan should be [and not in any order]:

- Vision and Mission Statement
- Key Directors, Officers, Members, Employees and Volunteers
- Accounting
- Marketing
- Advertising
- Insurance
- Banking
- Law

Your Non-stock corporation Plan should therefore include:

- A complete description of your proposed or existing Non-stock corporation and its objectives.
- A working resume of all Directors, Officers, Members, Employees and Volunteers describing not only what jobs and positions are held but what responsibilities each person has, and the results achieved by, and expected of, each person.  
This segment may also include the training undertaken by each person.
- Marketing objectives and feasibility studies in each area of your Non-stock corporation.
- Advertising goals and the varied means you are using to achieve those goals.
- The capital requirements of your Non-stock corporation.
- An Income Expense Analysis with a two year cash flow projection. This can be set forth in three scenarios: The Normal Expectation, If Everything Goes Better Than Expected, and The Worst Possible Scenario.
- A statement of your legal organization and compliance.
- A listing of your insurance policies and how insurance is protecting your Non-stock corporation.
- Each area should include the CV of each of your informal board of directors by discipline.

Formulation of your Non-stock corporation Plan requires personal discipline because you have to analyze your objectives and outline the means to those objectives. Critical examination is crucial. The results will be worth it. Remember: **Success is not equivalent to luck.** Success means that you must

- plan carefully;
- understand and accept the complexity of Non-stock corporation;
- surround yourself with good Non-stock corporation information sources;
- accept advice from a variety of sources.

This is the foundation for success!

Review your Plan annually and test it with your "Informal Board of Directors". Be prepared to modify it because your Plan must be a dynamic tool for your Non-stock corporation.

**Options.** When you approach a problem it is important to learn all of the available options. This is the only way to facilitate appropriate decision making. Since profit is the goal of all Non-stock corporations, it is critical that you know, measure, and decide upon the appropriate options.

Your consultations with your board members should give you meaningful Non-stock corporation counsel allowing you to:

- [1] Clarify your Non-stock corporation objectives for your Non-stock corporation;
- [2] Grow in your particular expertise and contacts;
- [3] Expand your total knowledge of various disciplines, allowing you to focus on your Non-stock corporation; and
- [4] Start and stay in the successful one-fourth of Non-stock corporations!

## Planning for the Future . . .

The goal of your Non-stock corporation continuity plan is to minimize disruption to your Non-stock corporation upon the disability, or death, or retirement of key Directors, Officers, Members, Employees and Volunteers. It also includes what happens if there is a fire, tornado, or flood. Because you want to protect the non-stock corporation, the benefit of planning both for the future, and for catastrophe is essential.

**Questions to Ask.** In working with Non-stock corporation Clients I ask these questions:

- Who are the key successors to your Non-stock corporation?  
     What is the training and experience of these key successors?  
     Can they be relied upon to take over when the time comes for succession?
- If there are no successors in the Non-stock corporation operation, what is the plan for dissolution?

## How I Can Help You . . .

**A Profitable Foundation for Your Non-stock corporation.** As a Non-stock Corporation Attorney my goal is to assist you in building a successful foundation. I can professionally assist you in the following legal areas:

- Contracts [Agreements]
- Draft of Real Estate Offers to Purchase
- Covenants Not To Compete
- Administrative Hearings

Employer/Employee Issues  
Discharge Assistance  
Corporate Book Maintenance, Annual and Special Minutes and Resolutions  
Employee Handbooks, Policies and Procedures  
Non-stock corporation Plan Draft and Consultation  
Real Estate-Review or Draft Commercial Leases  
Arbitration & Mediation  
Negotiation

Alternate Dispute Resolution [ADR] Includes Arbitration and Mediation. Often there are other methods of solving a problem other than in litigation. I have experience as both arbitrator and as counsel. I will use this experience on your behalf.

## Our Mission . . .

I want to share our Mission Statement with you:

*Our standard of operation and service is excellence. We believe in substantial ongoing professional education. We believe that proactive law can protect the majority of Clients, and that education of Clients by presenting and explaining options are part of well representing Clients. We believe that no Client should ever have a question or a concern as to how his or her matter is being handled. We believe that Clients should remain in control of the solution to their matter. We treat and care for a Client's problems as if they were our own and will loyally, honestly, and confidentially carry out our professional services.*

Because the principle of excellence has endured at our firm, we hope you will be well served by our relationship.

**Our Professional Relationship.** Our professional relationship is based upon trust which includes the willingness to discuss all relevant issues and, perhaps, painful in presenting the truth of a matter. When you retain us to advise and represent you, you will receive:

- [1] care and concern about each of your matters;
- [2] ethical standards affecting our relationship;
- [3] professional competence;
- [4] fair professional legal fees;
- [5] an efficient staff;
- [6] negotiating skills;
- [7] ability to anticipate additional causes of action; and,
- [8] quality services.

How I can help you. I look forward to discussing your non-stock, not-for-profit organization with you and assisting with any advisable updates toward the goal of helping you organize and maintain your non-profit.

Other Booklets which may be helpful to you. I have a number of other Booklets which may be of interest to you. They cover business, real estate, and more. Feel free to contact me for further information.

Affiliated with Schober Schober & Mitchell, S.C. to better serve you. I am an Of Counsel member with the law firm of Schober Schober & Mitchell, S.C. This association benefits you in many ways, because I continue to work and serve you, and all of the resources of Schober Schober & Mitchell, S.C. are available to you and to me. The Business Journal has ranked Schober Schober & Mitchell, S.C. in the top 30 Milwaukee-area law firms.

Call with any questions you may have,

Sincerely,

Barry W. Szymanski

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This booklet has been prepared to give a general overview of the legal issues in this area and is not intended to provide the type of legal advice that is given when an Attorney confers with a Client and is able to discover exactly the needs and requirements of the Client's matter and thereafter provide specific professional advice for the Client's benefit.

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