Start-up Board Development & Function
Webinar ~ August 24, 2016

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Washington University School of Law
YOUR ENTITY

- All of you are associated with a church in some fashion

- Some of you are a corporate entity in the states you are organized
  - Separate “corporate” entity for liability purposes

- Some of you are currently or are seeking to be a 501(c)(3) tax-exempt entity with the IRS
  - Tax Exemption for Church
  - Deductibility for donors
WHY FAITH-BASED SOCIAL ENTERPRISE?

• Provide needed service
• Foster mission goals
• Minister to spiritual needs
• Build relationships
• Increase interaction with community
• Grow church
Integrated Auxiliary

• Meet the three requirements
  • Public Charity
  • Affiliated with the Church
  • Receive primary financial support from the Church

• Liability Shared
Separate Charitable Entity

- A separate charitable entity
- Operates with separate control and board
- Responsible for its own costs and liabilities
Wholly Owned “Subsidiary”

- Social enterprise is set up as an LLC
- Single Owner of LLC = the Church
- Social enterprise operates as separate legal entity
  - Own costs
  - Own liability
- Social enterprise shares tax exempt status of Church
- Net assets of social enterprise are accessible by Church
# Social Enterprise Entity Options

<table>
<thead>
<tr>
<th></th>
<th>Pros</th>
<th>Cons</th>
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</table>
| **Integrated Auxiliary of the Church** | *contributions tax deductible  
*not required to file a 1023  
*income tax exempt  
*not required to file Form 990  
*not required to file taxes/tax return  
*easiest to set up and manage | *shared liability |
| **Separate 501c3** | *no income taxes and may be exempt from employment tax  
*donor comfort  
*eligibility for grants  
*tax deductible donations  
*mail discount possible  
*media advertisement discount possible | *creation of brand new entity  
*file separate 1023  
*file taxes each year, Form 990 possibly  
*become a completely separate entity means giving up the benefits of being connected with the church  
*additional operational costs |
| **Wholly Owned Entity (owned by the Church)** | *liability of social enterprise & church separate  
*contributions would be considered gifts  
*no 501c3 filing required  
*exemption of federal income tax, federal unemployment tax and possibly other applicable federal taxes  
*may choose to report and pay employment tax for employees (will there by employees?) | *Church has to keep track of taxes  
*could be implicated as a trade or business and loss 501(c)3 status |
CORPORATE FORMALITIES

- Separate EIN
- Separate Bank Account
- Separate Financials
- Internal structure
- Industry Compliance
- Corporate Policies and Management
- Operations
  - Meetings
  - Minutes
  - Books and Records
  - Nonfunctioning board
- Entity must be separate from its creators, employees, donors, trustees, etc.
  - Transactions at arms length
  - No intermingling assets
  - Alter Ego
So WHO’S ULTIMATELY RESPONSIBLE?

Beneficiaries of the service

Mission

Organization

Goals

Directors

Board Committees

Officers

ED/Senior Managers/Administration

Employees/Staff

Volunteers
# Directors

<table>
<thead>
<tr>
<th>Overview</th>
<th>Basic Rights</th>
<th>Basic Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>The head and heart of the organization</td>
<td>• Access to info to make informed decisions, including books, records &amp; facilities</td>
<td>• Informed decision making</td>
</tr>
<tr>
<td>Unpaid</td>
<td>• Ability to vote at Board meetings</td>
<td>• Govern</td>
</tr>
<tr>
<td>Independent</td>
<td>• Election of Officers</td>
<td>• Oversee corporate activities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Elect qualified officers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Act in best interest of entity</td>
</tr>
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## Board Committees

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<tr>
<td>Executive, Administrative, Finance, Governance, Ethics, Audit, etc.</td>
<td>• Access to information to perform assigned tasks</td>
<td>• Serve at the discretion of the board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Service limited to functions specifically authorized by the board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Facilitate board research</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Report to board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Can’t usurp decision-making authority of the board</td>
</tr>
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</table>
# Officers

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<th>Basic Responsibilities</th>
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</table>
| Officers of the board  
  - President  
  - VP  
  - Treasurer  
  - Secretary |  
  - Access to info to oversee function  
  - Provide direction to management |  
  - Oversee management’s compliance with direction and strategies  
  - Act in best interest of entity |
| Members of the board | | |
| Unpaid | | |
| Different than employed management | | |
## Management

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<th>Basic Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typically, ED or other senior manager</td>
<td>• Access to info to run organization</td>
<td>• Keep all parties informed</td>
</tr>
<tr>
<td>Reports to Board</td>
<td>• Make and execute day-to-day decisions</td>
<td>• Day-to-day management</td>
</tr>
<tr>
<td>Paid</td>
<td></td>
<td>• Oversight and supervision of other employees and staff</td>
</tr>
</tbody>
</table>
## Staff

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<th>Basic Responsibilities</th>
</tr>
</thead>
</table>
| All other employees | • Access to info to carry out mission/functions of organization  
• Support for programs and activities | • Compliance in appropriate regulatory and licensure issues  
• Prepare to perform organization functions  
• Educate at all levels of organization and its intended beneficiaries |
# Volunteers

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<th>Basic Responsibilities</th>
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</thead>
</table>
| Unpaid ad hoc community volunteers | • Access to premises  
• Resources and support for programs and activities  
• Limited to specific purpose | • Care for beneficiaries of organization  
• Report any problems  
• Be good role models for beneficiaries, community or other volunteers |
| Overseen by staff             |                                                                               |                                                             |
Governance

Think, plan, strategize, feel, consider, oversee

Management

Do, act, manage, follow, adhere, move, effectuate

Heart & Brains

Arms & Legs
BOARD FUNCTION
**Board Function**

- **Oversight**
  - Direct management of business
  - Build Mission
  - Not management

- **Decision-making**
  - Exercising corporate powers on behalf of organization

- **One Voice**
  - The Board as a whole has substantial governing powers
  - Individual board members, acting alone, have significantly less power
THREE ESSENTIAL DUTIES

• Duty of Loyalty

• Duty of Care

• Duty of Disclosure/Confidentiality
Duty of Loyalty

- Act in Good Faith
- Avoid Conflicts of Interest
- Provide opportunities to entity first
Duty of Care

• Be reasonably informed
  • Inquire

• Participate in decisions
  • Attend meetings

• Do so in good faith
  • Use independent judgment

• And with the care of an ordinarily prudent person in a similar circumstance
**Duty of Disclosure/Confidentiality**

- Requires Directors to disclose material information to fellow Directors and management

- Must not intentionally mislead or misinform any Board members, management or other constituents

- Balance duty to disclose with duty of confidentiality
  - Duty to disclose covers disclosure of information to other Directors, to corporate and legal authorities as appropriate and required
  - Duty of confidentiality requires non-disclosure to anyone else
OVERALL RESPONSIBILITIES

- Promote best interest of organization
- Protect organization’s financial well-being
- Elect and evaluate qualified officers
- Ensure compliance reporting requirements
- Provide direction for management
- Use knowledge, experience and judgment to benefit organization
- Participate and stay informed
- Understand organization’s business, industry and objectives
- Maintain independence
**Board Development Considerations Startup Social Enterprise**

- Size
- Needs
- Experience/Skills
- Friendraising/Fundraising
- Prior board experience
- Access/Engagement
- Dedication/Focus
- Stakeholder representation
- Stewardship
- Addition to organizational culture

*What is the ideal mix of skills, knowledge, experience, and demographics that will enable us to be successful in our mission and financial and other sustainability?*
SAMPLE SKILL SET USEFUL TO STARTUPS

- Finance
- Human Resources
- Specific Industry Experience
- Legal
- Marketing
- Public Relations/Media
- Fundraising
- Audience Development
- Education
- Building and facilities management
- Access, equality
- Information technology
- Charity /governance
- Business and management
- Change management
**Determining Needs**

- Consider
  - Mission Statement
  - Goals
  - Core Values
  - Board Culture
  - Strategic Plan
- Review current board
- Assess skills met
- Assess skills needed
- Maintain ongoing list of potential board members; ask them to serve on committees first to assess compatibility
- Set forth plan to attain representative skills on board whether immediately on planning for the future
## Sample Tracking Sheet

<table>
<thead>
<tr>
<th>NAME</th>
<th>EXPERIENCE</th>
<th>SKILLS</th>
<th>PRIOR OR CURRENT BOARD SERVICE</th>
<th>COMMUNITY CONNECTIONS</th>
<th>COMMITTEE PREFS</th>
<th>START OF FIRST TERM</th>
<th>END OF FIRST TERM</th>
<th>OPTIONAL SECOND TERM?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joe Smith</td>
<td>Finance</td>
<td>Consensus builder, artist</td>
<td>Previously on Art Museum Board</td>
<td>Can provide access to art community</td>
<td>Finance</td>
<td>July 1, 2013</td>
<td>June 20, 2016</td>
<td>No</td>
</tr>
<tr>
<td>Betty Jones</td>
<td>Legal</td>
<td>Personnel, Contract review, presenter</td>
<td>Currently serving ABC School Board and Legal Advocates Board</td>
<td>Legal community, St. Joe’s church</td>
<td>Governance</td>
<td>July 1, 2013</td>
<td>June 20, 2016</td>
<td>Yes; term ending June 30, 2019</td>
</tr>
<tr>
<td>Susan Abbott</td>
<td>HR</td>
<td>Get details of all board service</td>
<td>ZYZ corporation funding</td>
<td>Nominating</td>
<td>Potential to start in 2 years; invite to join Finance Committee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adam Wells</td>
<td>Marketing</td>
<td>PR, presenter</td>
<td>None</td>
<td>Current donor; passionate about our mission</td>
<td>Development</td>
<td>Potential to start next year; invite to join Development Committee</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BEST PRACTICES

• Begin small
• Staggered terms with term limits
• Board training
  • Initially and ongoing
• Strong board Chair
  • Bridge between ED and board
  • Sets tone and drives board culture
• Board self-evaluation
• Scope of authority in governance documents
• Mission and goals adherence
• Checks & Balances
“The way to get started is to quit talking and begin doing.”

- Walt Disney
Founder of Walt Disney Co.