NATIONAL BENEVOLENT ASSOCIATION

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><strong>Pros</strong></th>
<th><strong>Cons</strong></th>
</tr>
</thead>
</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?

Mission

Organization

Directors
Board Committees
Officers
ED/Senior Managers/Administration
Employees/Staff
Volunteers

Goals

Beneficiaries of the service
# 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>
</tbody>
</table>
## Board Committees

<table>
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<tr>
<th>Overview</th>
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<tbody>
<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>
</tbody>
</table>
# Officers

## Overview

<table>
<thead>
<tr>
<th>Officers of the board</th>
<th>Members of the board</th>
<th>Unpaid</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasurer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secretary</td>
<td></td>
<td></td>
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</tbody>
</table>

## Basic Rights

<table>
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</thead>
<tbody>
<tr>
<td>Access to info to oversee function</td>
</tr>
<tr>
<td>Provide direction to management</td>
</tr>
</tbody>
</table>

## Basic Responsibilities

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</tr>
</thead>
<tbody>
<tr>
<td>Oversee management’s compliance with direction and strategies</td>
</tr>
<tr>
<td>Act in best interest of entity</td>
</tr>
</tbody>
</table>
## 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>

**Overview**
- Typically, ED or other senior manager
- Reports to Board
- Paid

**Basic Rights**
- Access to info to run organization
- Make and execute day-to-day decisions

**Basic Responsibilities**
- Keep all parties informed
- Day-to-day management
- Oversight and supervision of other employees and staff
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<td>All other employees</td>
<td>• Access to info to carry out mission/functions of organization</td>
<td>• Compliance in appropriate regulatory and licensure issues</td>
</tr>
<tr>
<td>Report to EC or senior management</td>
<td>• Support for programs and activities</td>
<td>• Prepare to perform organization functions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Educate at all levels of organization and its intended beneficiaries</td>
</tr>
</tbody>
</table>
### Volunteers

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

Think, plan, strategize, feel, consider, oversee

Heart & Brains

Management

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

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></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>
</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.