

**COLORADO TENNIS
UMPIRES ASSOCIATION**

**A COLORADO
NON-PROFIT CORPORATION**

OPERATING **M**ANUAL

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INTRODUCTION

This manual contains some general information about your non-profit corporation. The information is not exhaustive, but covers the questions that come up most frequently arise for non-profit corporations.

The contents section at the front of this manual, or the index at the end of this manual, will help you quickly find specific topics.

HOW DO WE COMPLETE OUR RECORD BOOK?

In order to make your corporate book complete, you must do the following:

Adopt Bylaws

At the end of the Bylaws the Secretary of the corporation must sign where indicated, after they have been adopted by the directors.

Minutes and Attachments

At the end of the Minutes, the Secretary, the initial directors, and the newly elected directors must sign where indicated. If you have not used the Consent form of minutes, the initial directors must also sign the Waiver of Notice attached to the minutes.

1. Other Actions

The directors should also consider and act upon each of the following:

- ✓ Appointment of new directors to serve until the first scheduled meeting for election of directors;
- ✓ Election of the corporation's officers;

2. Bank Resolutions

You should obtain appropriate forms from your bank. After you complete these forms and they have been properly signed you will deliver the original to the bank and retain an exact copy in the corporate minutes.

3. Tax Issues

The directors should consider whether or not to make application to become a tax-exempt entity under federal tax laws.

GENERAL QUESTIONS ON DOING BUSINESS AS A NON-PROFIT CORPORATION

In order to preserve the advantages of doing business as a non-profit corporation, and to comply with the applicable laws in the course of conducting of the corporation's business, there are certain fundamental policies and procedures that should be established and followed. We strongly urge that you read and always observe these policies and procedures.

How do we observe the formalities to assure the corporate status as a separate legal entity?

As you know, the corporation is a legal entity or "person," separate from its members, directors, officers, and employees.

One advantage of doing business in the corporate form is to prevent the corporation obligations from becoming the obligations of its members, directors, officers, and employees.

It is essential that the separate existence of the corporation be continually recognized and respected. So any transaction done by the corporation should be conducted by it acting in its name to preserve its status as a legal person, not by the individuals involved.

How do we refer to the corporation?

The corporation should exercise care to hold itself out to the public at all times as an entity. No director or officer of the corporation should sign anything in an individual capacity on behalf of the corporation. Instead, all documents signed for the corporation must be signed by the appropriate officer on behalf of the corporation, and not personally.

How do we sign for the corporation?

When the name of any officer or employee is signed to a letter, contract, or check for the corporation, or printed on a card, you should make certain that the agency capacity of the individual so signing is clearly indicated. It is not enough that you sign a letter on the corporate letterhead. You should clearly indicate that it is the corporation's letter that is being signed by you for the corporation. So agreements and other documents you sign for the corporation should be signed by the officer as follows:

“

[name of person signing] President [or other officer such as Vice-President or Secretary] of Colorado Tennis Umpires Association, a Colorado non-profit corporation.”

What about corporate bank accounts?

Always observe the distinction between corporate and individual signatures. Establish a checking account for the corporation. That account, and any other accounts of the corporation, should be established in the corporation's name. Signature cards for the accounts should be executed by the appropriate responsible corporation officers in their official capacities and on behalf of the corporation.

What about property of the corporation?

Any assets transferred to the corporation become its property and must be treated as corporate property. Insurance policies for liability insurance coverage and property coverage should be obtained in the name of the corporation. If there will be liability coverage for individuals as well as for the corporation, the individuals should be added as additional insureds.

It is extremely important that any property of the corporation be clearly understood to be that of the corporation and not that of any individual member, director, officer, or em-

ployee. The corporation is a distinct legal entity. The failure of the members, directors, and officers of a corporation to recognize that their corporation's cash or other assets are not theirs could cause significant and unpleasant encounters with the Internal Revenue Service.

How does the corporation transact business?

It is essential that all important transactions of the corporation, such as contracts, employment agreements, leases, and the like, be considered and approved by formal action of the proper officers of the corporation, acting pursuant to authority given to them by the directors at a meeting or by a consent given in lieu of a meeting of the directors.

If there is a pattern of individual action without director approval, the individuals involved risk a legal determination that they were acting and are liable as individuals, despite their use of the corporation's name.

Should the members have meetings?

As written, your corporate documents do give a vote to members. So they should have meetings. Also remember that you should allow members to attend any meeting of directors if they so desire, and for that purpose the corporation may want to establish a public meeting schedule that could be sent on to all members.

New and small non-profit corporations normally do not have the funds to pay for the bookkeeping and formal notices that would be required to notify each member of meetings, and for this reason members of newly organized non-profit corporations often do not have member voting.

Where member voting is allowed, then there should be an annual meeting of members, with appropriate notice sent to all members. In those cases, all actions by the members must be evidenced by resolutions adopted by the members. Minutes of meetings where such action is taken should be kept in the corporation record book.

Should the directors have meetings?

The directors should meet annually, and more often as they determine. For non-profit entities it is normal to have formal meetings rather than informal consent in lieu of meetings. The normal purpose of the annual meeting is to elect corporate officers and take other actions customarily requiring consent of the directors.

All actions by the directors must be evidenced by resolutions adopted by the directors. Again, minutes of meetings where such action is taken should be kept in the corporation record book.

All meetings must be held upon the notice as set forth in the *Bylaws* or any directors entitled to but not receiving such notice must waive notice in writing.

What about tax issues?

An additional matter should also be highlighted if the corporation is going to have employees. The corporation and its directors and officers are responsible for payment of salaries, wages and payroll taxes. They must insure that salaries and wages as well as payroll taxes are properly paid. They may incur personal liability if the corporation fails to make proper withholdings and tax payments.

1. Does the corporation need a federal Employer Identification Number

As separate entity under the law, the corporation must apply for a federal employer identification number. We may help you obtain this number, or you may choose to have your accountant do so.

2. Is income of the corporation exempt from income taxes, and are donations to the corporation tax-deductible?

Even though a corporation may be a non-profit entity under state law, that fact does not make it a qualified non-profit entity under federal tax laws. Under federal tax laws the corporation must normally apply to gain recognition as a non-taxed charitable organization under provisions of the Internal Revenue Code. This application is normally submitted by your accountant or attorney. In order to qualify under the Code, the Articles of Incorporation and the By-laws of the corporation must have certain provisions and limitations. Upon approval of the application by the IRS, the corporation would then be recognized as a charity, and so contributions to the corporation would then be deductible by donors.

3. Must the corporation withhold taxes on wages or compensation paid to any employees?

An additional matter should also be highlighted if the corporation is going to have employees. The corporation and its directors and officers are responsible for payment of salaries, wages and payroll taxes. They must insure that salaries and wages as well as payroll taxes are properly paid. They may incur personal liability if the corporation fails to make proper withholdings and tax payments. Employers who pay taxable wages to employees or who have employees who report tips must withhold income tax and Social Security (FICA) taxes. Each employee should fill out a Form W-4, withholding allowance certificate, or form W-4E, exemption from withholding. Every employer must file an unemployment tax return, Form 940, on or before January 31st of each year.

What should we have our accountant do?

If we do not obtain this number for you, your accountant should obtain your federal employer identification number.

Does the corporation have to file tax returns?

Yes, the corporation must file income tax returns. Your accountant should prepare the tax returns.

FIDUCIARY DUTIES OF DIRECTORS AND OFFICERS

Any officer, director, or operating manager of an entity such as a corporation, limited liability company, or limited partnership, is bound by fiduciary duties similar to those that apply to the trustee of a trust. These duties apply to a non-profit corporation.

Fiduciary duties are the highest duties recognized the law. You must very carefully consider your decision to accept the job of director or of any office of the corporation. (For convenience hereafter we will refer to a person acting for a company in a fiduciary capacity as an officer.) Once you accept the position of responsibility you accept all that goes with it. It is a sometimes a position of great honor and it can involve great responsibility. Your responsibility grows when more is at stake, so if the limited partnership will have significant value, you will have significant risk if you violate any or your duties.

The law does not demand absolute perfection from any officer. However, it does demand absolute **loyalty**, absolute **honesty**, and complete and accurate **disclosure**, even if that disclosure could cast you in an uncomfortably negative light. In the classic words of Judge Benjamin Cardozo, who went on to become a justice of the United States Supreme Court, and who referred to a trustee (but the same standards apply to officers):

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A [fiduciary] . . . is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions.... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd.... *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928).

Officers are subject to a variety of duties, some of which are summarized below. Please bear in mind that the penalty for your breaching any of these duties is that you will have to pay for any resulting damage to the business entity out of your own pocket. Personal liability — even if you are not paid for your efforts — is one of the things that goes along with being a fiduciary.

1. Duty of General Prudence

An officer is duty bound to deal with the company property as a “prudent person” would deal with the property of another. Note that this is a standard of conduct rather than of performance. Your actions (or times of inaction) will be judged against what a reasonable person would have done in the same circumstances, given the same limitations to which you were subject, and armed with the same information that was at your disposal.

If you conduct yourself properly, you will not be faulted if something bad happens, such as a decline in the value of company assets. Acting reasonably in the circumstances is your basic job description, and if you do that, you generally need not worry about being judged in the light of hindsight. Note that if you have or claim to have special expertise in connection with any facet of business, you will be duty-bound to exercise that expertise. Thus the standard for judging your job performance will take into account your special abilities (whether actual or claimed).

2. Duty of Loyalty

As an officer, you must always act to further the interests of the company and its owners, even if you are one of the owners. For a non-profit you must strictly adhere to this standard since by definition you cannot be an owner of the company. You are serving as an officer for the benefit of someone other than yourself. You should not enter a transaction that gives you an opportunity to benefit yourself at all, much less at the expense of the business entity. If any situation should arise in which there is a conflict between your personal interests and the business, or between the business and the interests of third parties, you as an officer should put the interests of the company first.

For example, you should usually not sell company property to yourself or sell your property to the company because this creates the appearance that you may have taken advantage of the company. Also, you should not sell company property to a relative of yours, or buy from a relative of yours, without full disclosure to the other affected owners and the obtaining of their prior written consent if possible.

Similarly, unless you are the only present owner of the company you should not loan company funds to yourself or to any of your relatives, and definitely never make any loans of company funds without adequate security and on terms similar to the terms a bank would impose.

The rules set forth here are strictly applied not only to transactions in which you deal directly with yourself or your relatives and friends, but also to transactions in which you deal with entities (such as partnerships or corporations) in which you are personally interested. These rules apply even though a particular transaction may be scrupulously fair, and even if it is advantageous to the company.

3. Duty to Not Delegate Improperly

Once you have accepted the position of an officer, you are responsible for the performance of duties you have assumed, and you should not turn over the performance of such duties to others except where you need help or particular expertise. This does not mean that you must actually perform all of the work yourself. You can delegate certain jobs to persons qualified to handle them..

If you are one of two or more officers, you cannot rely on the other officers to properly manage the company. You must participate in the management, at least for the duties of the officer you have assumed. If another officer acts improperly with respect to company matters, you have the obligation to correct the situation. You have an obligation to be aware of what other officers are doing on behalf of the company. Each officer is responsible to the owners for the misconduct and breaches of duty of the other officers of which the officer in question is aware. Consider an important part of your job as being the watchman for the owners. If something goes wrong, don't let it go wrong on your watch!

4. Duty to Account

Another of basic duties is the duty to account to the owner or owners of a normal company. Here you must treat the members of others interested in the non-profit corporation as if they were owners. This means they entitled to be kept reasonably informed about the company and its affairs.

5. Duty to Segregate Company Assets

You must keep the company property separate and distinct from your own property. In other words, you should have a separate bank account or accounts for the corporation, and you must not put either company principal or income into your personal accounts. Company assets must always be

readily identifiable as such and must be segregated from your other property.

6. Duty to Seek Help if You Need Help

Should any questions arise as to the proper steps to take on behalf of the company, you have a duty to seek competent professional help, such as that provided by accountants and lawyers familiar with the issues. Do-it-yourself accounting or legal drafting is dangerous, because it can expose you to personal liability if something goes wrong. On the other hand, your reliance on the advice of a competent and qualified professional can be a defense to a claim that you breached a fiduciary duty.

7. Duty to Protect and Preserve Company Assets

You have the duty to protect and preserve the company assets, and to insure them whenever practicable. Be sure to consult a competent insurance agent regarding proper coverage for the company assets. Few things are worse than having a company asset destroyed through no fault of yours and then discovering that the asset was not insured. In that case, your own personal bank account could become the insurance company.

8. Avoid the Appearance of Impropriety

You will find very little sympathy with a judge or jury if you do something that looks like it may be improper, whether or not it really is. If someone questions your activities as an officer, you may find yourself having the burden of proving that you acted properly. You don't have the advantage of being presumed innocent until you are proven guilty. Most of the time, you will find the contrary presumption working against you. Wise officers do their best to be completely above reproach.

In general, you must keep the company assets invested and managed prudently at all times. It is important for you to remember that because you are serving as an steward for someone other than yourself, you will be held to a higher standard of care than you would be if you were simply investing and managing your own funds.

CONCLUSION

Please keep this brochure for your review. If it does not contain the answer to questions you have from time to time, feel free to contact us. We will be able to provide the necessary answers for you or direct you to appropriate professionals for help. Please direct questions first to the staff person assigned to you. If that person cannot provide answers, an attorney will answer your questions. If the questions are not repetitive and involve a very short time there is usually no charge for responding to such questions.

Our goal is to have your non-profit corporation fully operational within the month following its creation.

Our law practice is directed primarily to estate and business planning, and relies heavily on referrals. If you feel we have served your needs well, we hope you will remember us when your friends and relatives need similar services.

**Minutes of Annual Meeting
Of Directors Of
COLORADO TENNIS UMPIRES ASSOCIATION**

A COLORADO NON-PROFIT CORPORATION

The annual meeting of directors of the corporation was held at ____ o'clock __.M. on _____, at _____.

Directors present were:

The President of the corporation, _____, acted as chairperson of the meeting, and the secretary of the corporation, _____, acted as secretary of the meeting.

The Secretary presented written waivers of notice signed by certain of the directors, and the same were filed with the minutes of the meeting. The Secretary also presented formal notice of the meeting sent to certain of the directors, and the same was filed with the minutes of the meeting.

The chairperson announced that the meeting was properly convened, that a quorum was present, and that the meeting was open for transaction of business.

On motion duly made, seconded, and passed, it was

RESOLVED, that the minutes or records of the preceding meeting or action of directors, dated _____, are hereby approved.

RESOLVED, that the following persons are hereby elected as directors of the corporation, to serve until their successors are elected and qualify:

The following persons were then nominated to serve as officers of the corporation:

<u>Nominee</u>	<u>Office</u>
_____	_____
_____	_____
_____	_____
_____	_____

There being no further nominations, the directors proceed to vote and the following persons were elected to the specified offices to serve until their successors are elected and qualify:

President:	_____
Vice-President	_____
Secretary	_____
Treasurer	_____

The newly elected president then took over as chairperson of the meeting and the newly elected secretary took over as secretary of the meeting.

The chairperson then called for any item of old business:

The chairperson then called for any item of new business.

Upon motion duly made, seconded, and carried, it was then

RESOLVED, that the officers and directors shall have full authority to enter into and bind the corporation, on contracts in the ordinary course of business, for the period until the next regularly scheduled meeting of directors.

Secretary

NOTICE OF [REGULAR] [SPECIAL] MEETING
OF DIRECTORS OF
COLORADO TENNIS UMPIRES ASSOCIATION
A COLORADO NON-PROFIT CORPORATION

A [regular] [special] meeting of directors of the corporation will be held at ____ o'clock ____M. on _____, at _____, for the transaction of all business that properly comes before the meeting, and for the following special items of business:

Dated _____.

Secretary

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