

SIOR Leadership Conference Presentation Outline

Part I- Incorporation & Tax-Exempt Status

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I. Chapter Incorporation

A. Why Incorporate

- 1. Basic reason: limit liability to assets of corporation**
- 2. Protect directors/members from personal liability**
- 3. Can organize as an unincorporated association, but this should be for very small organizations (no protections)**

B. Types of Corporations

- 1. Not-for-profit (or “nonprofit” in some states)**
 - a. must have the appropriate purpose**
 - b. certain statutory protections & advantages**
 - i. director liability protections (Good Samaritan laws)**
 - ii. may be exempt from certain State/local (but not Federal) taxes (example – sales taxes)**
- 2. For-profit-a chapter would choose this option if its unrelated business income was so large that its nonprofit purpose was no longer its central focus**

B. How to incorporate

- 1. Driven by state law**
 - a. will want to incorporate in state where headquarters is located**
 - b. will register corporation in other states where you do business (ex-Convention in CA, SIOR in DC)**

2. Checklist for incorporating a not-for-profit entity

a. Must meet statutory purpose for nonprofit status (listed in statute- 33 in IL)

b. Choosing a name

i. restrictions on what terms the name can contain

ii. check corporation division to see if desired name is available (this is usually the Secretary of State's office, and can be done via its website)

iii. if name is available, may be able to reserve while paperwork is prepared

c. Select registered agent

i. this person will receive all paperwork for corporation

ii. must be physically located in state where incorporated

iii. must have physical address; no P.O. Box

iv. for a small fee, there are companies who can serve as resident agent (i.e., receive the paperwork and then forward it to the relevant entity)

d. Describe purpose of corporation; will need to be for an acceptable purpose (i.e., SIOR purpose in its Articles of Incorporation ("AOI"))

e. If seeking §501(c)(6) status, then will need to enumerate a tax exempt purpose within the AOI- will be filed with IRS and is an important criteria

f. Will need to designate directors; probably need at least two (IL requires three)

g. List all other special requirements for your corporation that may not be described in the statute, such as members can only serve as directors

3. Post-incorporation

a. need to create Bylaws

i. Not-for-Profit Corporation Act is default rules, but can be changed in bylaws

ii. bylaws will establish rules for corporation, such as how meetings are conducted; elections; changes to governance process; etc.

b. obtain §501(c)(6) status from IRS (covered below)

c. file tax returns where needed (federal, state, local?)

d. maintain corporate formalities

i. follow processes set forth in bylaws and Act

ii. operate corporation as a separate entity; do not intermingle other businesses

e. File annual reports

i. for corporation, need to file annually with corporation office

ii. if have a foundation (see below), may need to file annually for solicitation license

4. Other issues

a. Lapsed corporate registration- can usually reinstate corporate status once all annual fees/penalties are paid; may want to start over if fees are too great; corporate status can be checked on SOS's website

b. Foundations/subsidiaries should be separately organized; charitable organizations may need a license to solicit contributions

II. Federal Tax Exempt Status

A. What is a Federal Tax Exempt Organization

1. Listed under §501(c) of IRS Code

2. Charitable Organizations, social welfare organizations, Labor organizations

3. Trade Associations listed under §501(c)(6)

B. Why Become Tax Exempt

1. Exempt from federal tax, except for unrelated business income
2. Unlike a charity, dues are not deductible for 501(c)(6) organizations

C. Special issues

1. Inurement
2. Political Activity
3. Income derived from nonexempt function is unrelated business income and taxed at normal rates

D. Creating a §501(c)(6)

1. Create appropriate state-level entity- corporation or unincorporated association
 - a. Will need organizing documents- AOI, Bylaws
2. Obtain Employer Identification Number
 - a. required, even if no employees
 - b. Form SS-4
3. Complete the Exemption application- §501(c)(6) specifically references “real estate boards”
 - a. Form 1024
 - b. Group Exemptions
 - c. User fee; Power of Attorney if represented by a third party
 - d. Notice to members about the amount of dues that are being used for political expenses/lobbying- nondeductible as a business expense
 - e. Recommended that chapter work with lawyer/accountant in completing application
4. §501(c)(6) determination letter

D. Annual obligation to file tax return

1. Under \$50k in revenue- File Form 990-N (i.e., e-Postcard)
 - a. filed electronically
 - b. due by the 15th of the fifth month after close of your tax year

c. failure to file for three consecutive years will cause organization to lose exempt status

2. Gross receipts less than \$200k and total assets less than \$500k- file 990EZ or 990

3. All others- full 990

a. 990 expanded in recent years- many schedules

b. disclose salary information of key employees

c. questions about document retention, whistleblower, other policies

4. If have a PAC or other connected political organization, may need to file Form 8871

5. Employment taxes/social security & medicare withholding required