

Herrick & Kasdorf, L.L.P.

Patricia Hammel
Scott N. Herrick *Court Commissioner*
Robert T. Kasdorf *Trustee in Bankruptcy*
Juscha Robinson
David R. Sparer

Robert L. Reynolds, Jr. (1930-1994)

Law Offices

16 N. Carroll, Suite 500
Madison WI 53703

Peter Zarov *of counsel*
Gretchen Twietmeyer *of counsel*
Roger Buffet *of counsel*

INCORPORATING YOUR COOPERATIVE AND OBTAINING TAX EXEMPT STATUS

1. Incorporating - formal creation of the cooperative
 - a. Why incorporate at all?
 - i. Have an entity that can enter into contracts and own things
 - ii. Have an entity that lasts beyond your personal involvement
 - iii. Limitations on personal liability
 - b. Articles of Incorporation
 - c. Need to comply with State laws, and also IRS requirements too
 - i. Special provisions required by IRS - be very clear you are comfortable with these requirements
 - ii. (mention the "public support test" and "disqualified persons" issue - possible need to have only portion of residents be on the board (need more than 1/3rd "income" from non-board members)
 - d. By Laws - this is where you get into number of board members
 - e. When to do Articles
 - f. When to do By Laws
 - g. How quickly to apply for exemption - 27 months
2. Other documents you'll need
 - a. Membership Agreement
 - b. Lease Documents
 - c. Make yourself aware of LL/TN rules - legally you are a landlord
3. 501c3 vs. 501c7 for tax exemption

- a. Why do you even care
 - i. by use of depreciation you can go years before needing to actually pay any tax at all
 - ii. however, you don't get the benefits from being a non-profit
 - iii. BUT do you care?
- b. C3
 - i. more complicated, and harder to win approval
 - ii. more opportunities for financial assistance from others, grants, etc., because they get to write off as tax deductible gift
 - iii. do not have to pay any income tax, often avoid state sales tax, possibly able to get property tax exemption - now that one is big
- c. C7
 - i. much easier to obtain
 - ii. no real opportunities for financial assistance from others - they DO NOT get to write off as deductible gift
 - iii. do not have to pay any income tax
 - iv. not as likely to be exempt from sales tax - not likely to be eligible for property tax exemption
- 4. 1023 - go through it bit by bit
 - a. Part VI - limit services to members, people in right income levels
 - b. Part VIII - activities - item 21
 - c. Part IX - financial data - call your "rent" membership fees, NOT gross receipts (note exception from the \$5,000 or 1% rule)
 - d. Part X - whole non-private foundation issue
 - i. Touch on the whole "disqualified persons" issue - the risk of becoming a "private foundation"
 - ii. Consideration of small board vs. all members being on board, as a fix
 - iii. Pick "h" - the 509(a)(2) - publically supported
 - e. Advance vs. definitive ruling
 - f. The FEE - no joke, it's a lot - \$750.00
 - g. Schedule F - section III

5. Safe Harbor Rule for Low income housing
 - a. Income requirements for the rule
 - b. How to locate the income requirements for your own local
 - c. Verification Document for income

6. Publicly supported test (509(a)(2))
 - a. More than one-third from the public
 - b. Not more than one-third from investment income
 - c. Issue of "disqualified persons" and what that means
 - i. Their payments can not be counted toward the one-third
 - ii. Includes board members & managers
 - iii. If all residents are on board - then all "income" is excluded as being from "disqualified persons" - thus fail the 1/3rd test
 - d. "Rent" is NOT a "contribution" or a "donation" - because you get the "service" of housing
 - e. Payments for "services" by members don't count toward the \$5,000 or 1% rule
 - f. If fail the test - end up being a "private foundation"
 - i. Still 501c3
 - ii. Operating foundation - don't have to give away a percent of your assets
 - iii. Many more reporting requirements
 - iv. "Renting" to "disqualified persons" (board members) not prohibited "self-dealing" if rent amount is same as any other person pays (in other words no special deals)
 - v. It can still work - just much more time consuming record keeping