

CREATING A SUCCESSFUL NONPROFIT ORGANIZATION

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What is Your Role in the Group?

- ▶ **Executive Director/CEO?**
- ▶ **Other Staff?**
- ▶ **Board Member?**
- ▶ **Founder?**
- ▶ **Funder?**
- ▶ **Other Volunteer?**
- ▶ **Registered Agent?**
- ▶ **Other?**

What is the Status of your Organization?

- ▶ Long-Standing Nonprofit in the State of SD?
- ▶ New Nonprofit in the State of SD?
- ▶ Are you a Membership Corporation?
- ▶ Working in getting incorporated in SD?
- ▶ Tax Exempt by the Internal Revenue Service?
- ▶ Working on getting exempt by the IRS?
- ▶ Any non 501c3's?
- ▶ Do you know whether the Annual Report has been filed with the SD Secretary of State, if you are a SD nonprofit corp.?
- ▶ Other?

**WHAT QUESTIONS DID YOU BRING
WITH YOU TO THIS SESSION?**

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The overall composition is clean and modern, with the text positioned in the upper left quadrant.

DISCLAIMER

- ▶ I am a Lawyer
 - ▶ Licensed to Practice in SD
- ▶ I am not your Lawyer
- ▶ Served on many of the best boards in SD
- ▶ Attended some of the best board training available
- ▶ Ran a couple of different nonprofit organizations

- ▶ How many of you have a lawyer for the corporation?

WHAT WE WILL COVER TODAY?

- ▶ **A Few Legal Considerations**
- ▶ **Updates since 2016**
- ▶ **Sales/Contractors Excise Tax**
- ▶ **Meetings**
- ▶ **Answer Your Questions**

NEXT TEST QUESTION

- ▶ How many of you know the last time your bylaws were amended?
- ▶ How many of you know what is contained in your Articles of Incorporation?
- ▶ Strongly advise: review them if not amended since 2016

AREAS OF THE LAW THAT WE WATCH

- ▶ **State Law re: Nonprofit Corporations**
- ▶ **State Law re: Taxability of Nonprofit Corporations**
- ▶ **Federal Law re: Volunteers**
- ▶ **Federal Law re: Tax Exempt Status of Nonprofit Corporations**
- ▶ **Federal Law re: Tax Status of Gifts to Nonprofit Corporations**
- ▶ **Federal Laws re: Various Housing Programs**
- ▶ **State Law/Regs re: SD Housing programs**

2016 IS AN IMPORTANT DATE IN THE LIFE OF SD NONPROFITS

- ▶ July 1, 2016—Effective Date
- ▶ House Bill 1068
- ▶ Rewrote major sections of SD nonprofit corporation law
 - ▶ SDCL 47-22—Formation and Powers
 - ▶ SDCL 47-23—Members, Directors, Officers and Agents
 - ▶ SDCL 47-24--Records
 - ▶ SDCL 47-25 and 25 A—Domestication and Conversion

MAJOR FEATURES OF 2016 LEGISLATION

- ▶ **1 Incorporator**
- ▶ **Meetings**
- ▶ **Electronic Communication**
- ▶ **Notice**
- ▶ **Conversion to a Business Corporation**
- ▶ **Domestication of Foreign Nonprofit to Domestic Nonprofit**

2016 LEGISLATION DID NOT CHANGE

- ▶ **Liability of Officers and Directors**
- ▶ **Immunity**
- ▶ **Sales Tax Status**
- ▶ **Other State Sales Tax Status**

ONE SPECIFIC AREA TO PAY ATTENTION: ELECTRONIC MEETINGS/COMMUNICATION

- ▶ **Electronic Meetings and Notices—Pre 2016**
- ▶ **Most Lawyers would have Sanctioned**
- ▶ **There were lawyers running around saying that those meetings were illegal**
- ▶ **Advise: Ratify!**

**NONPROFIT CORPORATION
NEW LANGUAGE
RE: ELECTRONIC COMM.**

“If permitted in the articles of incorporation or the bylaws, such consent and signature may be transmitted by any reasonable means including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile.”

HB 1068

MEETINGS & SPECIAL MEETINGS

- ▶ **Can be electronic IF:**
 - ▶ Participants can Read or Hear
 - ▶ Allowed in Bylaws or Articles of Incorporation
- ▶ **Membership Meetings:**
 - ▶ Ballots—Very specific language

MINUTES

- ▶ Can be very boring!
- ▶ But an important piece of your legal papers!
- ▶ And more importantly they can be an effective communication tool
- ▶ Law requires:
 - ▶ ****Complete books of minutes**
 - ▶ ****Complete book of financials**
 - ▶ ****List of members of the board, names, street address, etc.**
- ▶ Advise Writing Minutes as soon as possible after a meeting
 - ▶ Mark the as “draft”
 - ▶ Distribute to whole board—particularly those who weren’t in attendance

PROXY VOTES

- ▶ **Officially allowed since 2016**
- ▶ **If allowed in Bylaws or Articles of Incorporation**
- ▶ **Allowed in Writing**

DISSOLUTION/MERGER/CONVERSION AFTER 2016

- ▶ **Dissolution Plans have to be approved by the Attorney General now**
- ▶ **IRS requires assets go to a similar tax exempt organization**
- ▶ **Plan has to be filed with Secretary of state**
- ▶ **Merger or Conversion of Nonprofits**
 - ▶ **Also has to be approved by Attorney General**
 - ▶ **This was a missing area of the law in SD before 2016**

LIABILITY AND IMMUNITY: REMAINS THE SAME

- ▶ **Indemnification—SDCL 47-23-27**
 - ▶ **Good Faith**
 - ▶ **in the Best Interests of the Corporation**

- ▶ **Immunity—SDCL 47-23-9**
 - ▶ **Good Faith**
 - ▶ **Within the Scope of the Official Functions and Duties**
 - ▶ **Not Gross Negligence or Wilful and Wanton Misconduct**

SALES TAX STATUS IN SD

- ▶ **1-800-TAX-9188**
- ▶ **Sales Tax Exemptions are Very Specific in SD:**
 - ▶ **Governments & schools**
 - ▶ **Non-profit hospitals**
 - ▶ **Religious educational Institutions**
 - ▶ **Nonprofit accredited private ed. Institutions registered with the state**
 - ▶ **Nonprofit charitable hospitals registered with the state**
 - ▶ ****Nonprofit charitable relief agencies, recognized by the fed. Govt. and Dept. of Rev.**
- ▶ **Need a Sales Tax Permit**
- ▶ **Contractor's Excise Tax Liability—contractor will owe excise tax on the gross receipts from that work and on all materials**

SUMMARY

- ▶ **Bylaws—Update if not done since 2016**
- ▶ **Articles—Take a Look at Those if not done since 2016**
- ▶ **Meetings—Update those provisions**
- ▶ **Look at Immunity and Liability**
- ▶ **Sales Tax**
- ▶ **Keep a Set of Bylaws, Minutes, Financials in your Headquarters Office**

ANOTHER DISCLAIMER

- ▶ Haven't covered all of the possible ground
- ▶ Got the discussion started
- ▶ Refocused us on what the 2016 Legislature did
- ▶ And on good governance
- ▶ Worth What You Paid For!

QUESTIONS?
OR OTHER THOUGHTS?

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