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To Incorporate or Remain An Association

At the request of the Chinook Pass Cabin Owners Association (CPCOA) Board of Directors, I have put together these notes on associations and 501 (C) (7)'s. I have done so as a layman, not as an attorney or a CPA. If you see errors or something that we have missed, please let us know so we can.

As a member of the CPCOA, the below summary of information is being provided to you in order to assist you in making a decision to either remain an association or to become a non-profit corporation under the IRS Code 501 (C) (7). Please review the material and feel free to ask questions. Or, feel free to do some research on your own that will enable you to make an informed vote for or against incorporating. The vote will be taken at the **September 23rd, 2017** meeting of all CPCOA members.

Should the CPCOA members agree to become incorporated we will consult with counsel to insure we have our actions in accordance with state and federal laws and squarely aimed at supporting our purpose.

It is the recommendation of the board that we vote in favor of incorporating.

For more reading that is provided by the state I have attached the link to the Washington State Handbook on Non-profit's.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjW2LLdg9DVAhWrxlQKHQDHDwEQFggmMAA&url=https%3A%2F%2Fwww.sos.wa.gov%2F_assets%2Fcharities%2FWashington%2520Nonprofit%2520Handbook.pdf&usg=AFQjCNFKkvb2X6ZU_fvfHQpgz-i6mexpCQ

Ralph Berthon
CPCOA Board Member

A Layman's View Of Associations

An association has no legal identity of its own and in legal terms is only a collection of individuals who share a common interest. The Chinook Pass Cabin Owners Association (CPCOA) is an unincorporated association and cannot in and of itself:

- start a legal action
- enter into contracts in its own name

While the CPCOA is not likely to be expanding to the degrees below, remaining an association will not offer much in terms of a long-term solution if we intend to expand and:

- take on employees
- raise finances
- enter into contracts
- protect its members and board of directors

Unlike an incorporated organization, an unincorporated association is not a "legal entity"; it has no legal rights and is not separate from its members. If the association acts through individuals, committees, or any other delegated authority, then in most cases, those individuals are responsible to the person they deal with, for what they do in the name of the organization. And in some cases, all members can be held responsible for the actions of the association.

Associations may have a constitution or bylaws. The most obvious reasons for having a written constitution or bylaws is that it provides a record of what was agreed. New members joining will be able to understand far better what is expected of them, and disagreements as to how the organization should be managed will be minimized. Another reason for such rules stems from the fact that all members are collectively responsible for the actions of the association. Writing the rules

(Constitutions/articles/by laws) down reminds all members what they may or may not do and therefore helps reduce the possibility that an individual acts in a way that jeopardises the interests of another member. CPCOA does not have a constitution; rather, they have a set of bylaws governs how we operate.

The downside of being unincorporated is that the members are never safe from liability incurred by others members of the association. Having a constitution is one way for an organization to ensure that the rules make clear that no member may commit the association to any contract or expense without consent of the body of members and that all expenses are funded in advance. By providing clear guidelines as to how the organization, club or society will work, a constitution safeguards but does not insure the interests of members against each other.

A layman's view of a Non Profit

A Washington Nonprofit as certified by Washington State

Forming a Not for Profit Corporation in Washington through the Secretary of State under RCW /24.06 allows an association/club to have a legal identity as a corporation along with the benefits of incorporation. Nonprofit corporations may be organized under the Act for any lawful purpose such as mutual, social, cooperative, fraternal, beneficial, service, labor organization, homeowners associations, and social and recreational clubs.

The corporation is able to enter into contracts in the corporations name for a variety of reasons such as hiring a Web master. Except in the case of gross negligence and intentional misconduct the board is generally not individually responsible for actions they take in their capacity as board members on behalf of the corporation. And generally the organization will often purchase board insurance in order to cover the actions of the board. And in most cases it is my understanding the members of the corporation are not liable for the activities of the corporation.

A 501 (C) (7)

CPCOA would most likely file Under IRS 501 (C) (7). This designation is mostly used by Not-for-profit social clubs/organizations/associations that are organized for pleasure and recreation. Under this title of the IRS code Congress generally exempts these clubs from paying federal income tax. The practical effect of the exemption is to allow individuals to join together to provide themselves with recreational or social opportunities on a mutual basis without further tax consequences.

Assuming a 501(C)(7)'s money comes entirely from membership dues, it is generally not taxed and requires a simple reporting with the Internal Revenue Service. Other income from rents, fundraising outside of its membership, dividends, and interest may be subject to federal taxation. In order for a 501(C)(7) corporation to abide by IRS requirements, a "substantial" amount of the organization's activities must further the organization's exempt purposes. Generally, no more than 35 percent of the organization's revenues can come from non-member sources. Additionally, a 501(C)(7) organization could be subject to taxation or lose its tax exempt status if it engages in business outside of its exempt purpose or if it receives too much income from non-members.

One difference between 501(C)(7) tax-exempt organization and traditional charities 501 (C) (3)'s is that donations to the 501(C)(7), including dues, are not deductible as charitable contributions on the members' individual tax returns or others that contribute to the association.

Generally, social clubs and associations are membership organizations primarily supported by funds paid by their members. In order to qualify as a tax-exempt organization, a social club/association must meet the following requirements:

- Membership is limited
- Organized for pleasure, recreation, and other non-profitable purposes
- Substantially all of its activities must further those purposes
- Must provide an opportunity for personal contact amongst members; there must be a "commingling" of the members for social, recreational, or similar purposes

- Supported by membership fees, dues, and assessments
- Net earnings may not inure to the benefit of any person having a personal and private interest in its activities
- May not hold itself out as providing goods and services to the general public
- Cannot provide pleasure or recreation on a commercial basis

The IRS does not require a 501-(C) (7) to file an application for recognition as a nonprofit; they can “self-proclaim” tax exempt status. That said, it is generally accepted as a “best practice” to file the 1024 request for exemption. 501 (C) (7) organizations are similar to other tax-exempt entities in that they must file annual returns each year. The type of 990 form is contingent on gross receipts and other factors.

501(C)(7) organizations must spend their income on activities that further their exempt purpose, which is a charitable cause. Designation as a 501(C)(7) also allows the group to limit membership. Instead of operating like a business serving the public, social clubs/associations only serve its members.

References:

Washington (State) Nonprofit handbook

Washington State RCW 24.06

IRS Charities and other nonprofits, Social Clubs