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Illinois Religious Corporation Act

A brief description of the law
and the legal issues that may
arise for a religious corporation.

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Such congregation, church or society may change its name or make other amendment to its original affidavit of incorporation by passing a resolution of such amendment in accordance with the rules and usages of such congregation, church or society and filing an affidavit to that effect in the office of the recorder in the county in which such congregation, church or society is located.

Such affidavit, or a copy thereof duly certified by the recorder, shall be received as evidence of the due incorporation of such congregation, church, or society.

The affidavit must be signed by one or more officers of the corporation and is to be filed with the local county recorder.

Operating under the RCA is even simpler. Unless the corporation changes its name or wishes to modify the declarations made in the original affidavit, no subsequent reports are required. No agency of the state or local government exercises any discretion over the content of corporate documents, and there are no name restrictions other than the common law protection of names that are already in use.

b. The RCA provides no guidelines for governance or operation of the corporation, thereby giving the organization the greatest latitude for creating its own system of governance.

c. The RCA does not provide for administrative dissolution of a religious corporation, so the leadership need not be concerned with being dissolved by the Secretary of State due to a failure to file annual reports or meet other filing requirements.

d. For religious corporations that are part of a hierarchical association or denomination, the RCA supports the legal imperatives established by such an ecclesiastical body, insofar as governance of the individual corporation is concerned. This enables the ecclesiastical body to regulate and control its participating members without concern that corporation laws would interfere.

On the other hand, there are at least six significant reservations about incorporating under the RCA that, given the casual and informal nature of most religious organizations, may leave the religious corporation vulnerable to problems that could otherwise be minimized by incorporating under the NFPCA. Consider the following:

a. The informal simplicity of the “affidavit of organization” filed with the recorder may result in a failure of the new organization to state certain important principles or rules of governance that would be required in articles of incorporation filed under the NFPCA. The lack of annual filing requirements is an administrative relief, but it may also give rise to ignorance on the part of the leadership as to the legal nature and status of the organization. Case law indicates that religious corporations can encounter significant legal problems when corporate formalities are ignored or neglected.

The annual report requirement under the NFPCA requires the leadership to maintain at least a minimum level of vigilance to manage the corporation, as the risk of administrative dissolution for failure to file annual reports is a mild deterrent to somnolent corporate management.

b. The RCA gives almost no guidance for developing the legal structure and governance of religious corporations. Founders must provide the legal structure from scratch, providing for trustees, corporate officers, committees, and a plethora of governing rules and policies. The NFPCA provides these essential elements of governance and structure so that, if matters are overlooked in the bylaws, the statute will often fill in the blanks. The structural simplicity of the RCA works best for religious organizations that are part of a well-established hierarchical association with skilled legal counsel. The RCA encourages this form of organization and supports hierarchical governments when a dispute arises with the local participating organization. Illinois courts are reluctant to arbitrate organizational conflicts between a religious association and its members. *Apostolic New Life Church of Elgin v. Dominquez*, 292 Ill.App.3d 879, 686 N.E.2d 1187, 227 Ill.Dec. 31 (2d Dist. 1997); *People ex rel. Stony Island Church of Christ v. Mannings*, 156 Ill.App.3d 356, 509 N.E.2d 572, 108 Ill.Dec. 876 (1st Dist. 1987); *First Apostolic Church of New Haven, Illinois v. Holtzclaw*, 336 Ill.App. 393, 84 N.E.2d 167 (4th Dist. 1949); *Alden v. Rector of St. Peter's Parish*, 158 Ill.631, 42 N.E. 392 (1895). Out of deference to religious autonomy, Illinois courts seldom exercise jurisdiction over the corporate operation. *Serbian Eastern Orthodox Diocese for United States of America & Canada v. Milivojevich*, 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976), reversing 60 Ill.2d 477 (1975); *Lowe v. First Presbyterian Church of Forest Park*, 56 Ill.2d 404, 308 N.E.2d 801 (1974). Individual congregations organized under the RCA are at risk if their de facto structure is not accurately provided for in corporate documents. Without skilled legal advice, the RCA can be an unfortunate trap.

c. Laws concerning merger and dissolution of religious corporations are not part of the RCA. These two important aspects of corporate law were added, much later, in the form of separate enactments in 1903 and 1933. See Merger of Not For Profit Corporations Act, 805 ICLS 120/0.01, *et seq.*; Religious Educational or Charitable Corporation Dissolution Act, 805 ILCS 135/0.01, *et seq.* Those who wish to merge or dissolve a religious corporation must look beyond the RCA. *York v. First Presbyterian Church of Anna*, 130 Ill.App.3d 611, 474 N.E.2d 716, 85 Ill.Dec. 756 (5th Dist. 1984); *Kelley v. Riverside Boulevard Independent Church of God*, 44 Ill.App.3d 673, 358 N.E.2d 696, 3 Ill.Dec. 298 (2d Dist. 1976); *Stallings v. Finney*, 287 Ill. 145, 122 N.E. 369 (1919); *Kuns v. Robertson*, 154 Ill. 394, 40 N.E. 343 (1895). When they do locate the appropriate statutes, there is minimal guidance as to the correct procedures. It is interesting to note that a religious corporation cannot legally merge with a not-for-profit corporation. It is necessary for the religious corporation to first make an election with the NFPCA and then the two organizations can merge. (See Section 1.21A below).

d. The RCA does not authorize the corporation to indemnify its trustees, directors, officers, and agents, as does the NFPCA, nor does it authorize the corporation to provide insurance to protect those persons who negligently cause injuries while serving the corporation as volunteer or employee. If a religious corporation seeks to indemnify and insure its trustees,

directors, officers, and agents, the charitable trust doctrine, as developed in Illinois, may be an obstacle.

The RCA does provide limited civil immunity for members of the corporation and for directors, officers, or trustees of the corporation who are not compensated by the corporation in excess of \$5,000 per year. RCA §47. Like the similar provision in NFPCA §108.70, however, when the negligent act was done with willful or wanton disregard for the safety of others, the immunity provision gives no protection. Any lawsuit may allege such conduct of trustees and thereby require all defendants to mount a legal defense and pay their own legal fees. Without any indemnification provision, it is not clear under Illinois law that a religious corporation can expend charitable assets in the defense of its trustees.

e. Another significant aspect of the RCA that may discourage its use in a new corporation is the general ignorance of it within the legal community. Illinois attorneys are familiar with not-for-profit corporations operating in accord with the NFPCA. This is not the case with religious corporations operating under the RCA. Because they do not conform to the NFPCA, banks and other financial institutions are often reluctant to extend credit to religious corporations. It is difficult for religious corporations to prove their legal existence with a copy of the affidavit of organization, even when certified by the county recorder. The Secretary of State will not certify the good standing of a religious corporation except in circumstances that involve ecclesiastical bodies with participating groups in multiple counties.

Real estate transactions are often jeopardized (or at least greatly complicated) when either the buyer or seller is a religious corporation. The business community is usually ignorant of the legal aspects of the RCA; so, the process of proving corporate authority is difficult, and the legal documentation is frequently incorrectly prepared. These problems seldom affect a corporation organized under the NFPCA.

This general ignorance of the RCA sometimes results in what may be called the parallel corporation condition. The condition manifests when a long-established religious corporation, originally organized under the RCA, employs the services of an attorney to assist with the purchase of a new parcel of real estate. Naturally the attorney will confirm that the religious corporation is in good standing with the Illinois Secretary of State's Office. The Secretary of State reports that no record of the religious corporation exists. Instead of reading the RCA, the attorney assumes the client was originally incorporated under the NFPCA and subsequently neglected to maintain the corporation in good standing due to failing to file an annual report. The volunteer administrators have no knowledge about filing annual reports. They took over the job of their predecessors and no one ever spoke of the corporate status of the religious corporation. What a dilemma for the attorney! The obvious solution to the problem is to reincorporate the client under the NFPCA and proceed with the property purchase as if nothing was out of order. After the closing it might occur to someone that the client now operates two corporations. The religious corporation continues to silently exist and holds legal title to the main religious facility acquired prior to the incorporation of the new not-for-profit corporation. The not-for-profit corporation now holds title to the newly-acquired property that will be the site of the new education wing. The parallel corporations now exist and there will be mischief in the

future when subsequent legal counsel discovers the problem. The author here is not blowing smoke in this report. During the past two years, the author's law firm has encountered at least five separate cases of the parallel corporation syndrome.

f. A final issue related to multi-state operations; for an Illinois corporation to conduct significant operations or own real estate in another state it must be registered in that foreign state to do business. (See Section 1.20 below and Chapter inin4 of this handbook). In short, most states require evidence of incorporation from the state authority charged with regulating corporations. There is no regulatory authority involving a religious corporation in Illinois. Possibly, the Circuit Court in the county of a religious corporation could verify the existence of the corporation after a hearing on the facts. It is doubtful the foreign state authority would be able or willing to recognize such nonstandard authority. The easiest thing to do for a religious corporation in Illinois that wishes to conduct activities in a foreign state is to file an election with the Secretary of State and become a certifiable not-for-profit corporation.

In conclusion, the RCA was enacted in 1872, a time when the legal environment in Illinois was relatively simple and different from that of today. The legislative history of this Act is not available. There are court cases that refer to the RCA's predecessors. *See Northwestern University v. People ex rel. Miller*, 99 U.S. (9 Otto) 309, 25 L.Ed. 387 (1878); *First Methodist Episcopal Church of Chicago v. City of Chicago*, 26 Ill. 482 (1861). In today's legal environment it is difficult to imagine a client situation where it would be advisable to organize a new religious organization under the Religious Corporation Act unless this legal structure was mandated by denominational or hierarchal rules. On the other hand, there are many good reasons to file documents with the Secretary of State making an election to come under the NFPCA - See following Section 1.21A regarding this process.

4. [1.21A] Election To Accept Act

An Illinois corporation organized under one of the above corporate structures is permitted to "elect to accept" the NFPCA and alter the legal basis of its corporate authority. Section 101.75 of the NFPCA expressly provides a procedure whereby a religious corporation, an educational corporation, or even a special corporation can become an Illinois not-for-profit corporation without alteration of corporate history or any property interest. 805 ILCS 105/101.75. The election process is similar to a merger of two corporations in that the history and property rights of both organizations may become a single entity without the need to revise the earlier documentation. The most common use of this provision affects religious corporations, *i.e.*, churches that pre-existed the enactment of the 1943 NFPCA. For example, the First Baptist Church was incorporated in 1891 under the Religious Corporation Act (RCA), enacted in 1872. This organization status would have been appropriate in the nineteenth century; however, by 1943 the laws of Illinois were substantially changing, making it less acceptable for a church to be incorporated under the old Act when the newly enacted NFPCA was available. The legislature approved the new law with a door open to all incorporations that were previously organized or would reorganize in conformance with the NFPCA.

Since 1943, many, if not most, otherwise incorporated religious and educational institutions have elected under the NFPCA. Special charter corporations may not find the same benefits to the election, depending on how advantageous the original special legislation was in formulating the

special corporation. The legislative act for many special corporations included expansive exception from state regulatory laws, including favorable sales tax and property tax exemptions. For these special corporations to elect under the NFPCA, they may disaffect other special advantages. However, for most religious corporations, there are very few advantages to remaining outside of the NFPCA. Most often ignorance or denominational restriction keeps religious organizations under the old Act.

Another daunting factor affecting the process of election under NFPCA §101.75 is the unclear and ambiguous directions to follow in making the election. The Secretary of State provides no form for the election procedure. The statute gives ten specific instructions that may appear to be clear until the attorney attempts to draft a form that will satisfy the Secretary of State. In an effort to assist the concerned person reading this handbook, the author has included a form in the appendix. See §1S.116A. This is a form that generally works when filing elections with the Secretary of State. As explained above, there is no official form for the election process and occasionally this form is initially rejected by the first reviewer at the Corporation Department. However, as a general rule, this form will work if the applicant is persistent.

If accepted, the Secretary of State will not acknowledge the actual date of incorporation in the public records. For example, the First Baptist Church described above was legally incorporated in 1891, but the state records will indicate the date of incorporation/qualification to be in 2004, or whatever year the election occurs. Clearly the organization was not incorporated in 2004. What does it mean to be “qualified in 2004?” The Act does not define the term “qualification” and it does not otherwise have legal significance. Qualification for what? This date in the public record is probably erroneous in light of the statutory language of §101.75(d) which states, “[u]pon the filing of a statement of acceptance, [no longer a certification] the election of the corporation to accept this Act shall become effective, and such corporation shall have the same powers and privileges . . . as though such corporation had been originally organized hereunder.” Prior to the mid-1990's, the Secretary of State's public records reflected the original date of incorporation. A policy has been adopted to disregard the actual date of incorporation and report a date of qualification. This factor often confuses title companies or commercial lenders trying to evaluate the real estate title records for a church that acquired property in 1891, but was qualified to act under the NFPCA in 2004. If the original election form clearly shows the correct date of incorporation, *i.e.*, the date of recordation of the original affidavit (see §1.12 a. above) legal counsel should have little difficulty demonstrating that the qualification date reported by the Secretary of State is generally irrelevant to matters of property and contract law. The election form in §1.116A suggests that the actual date of incorporation be prominently described in the document.