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A Brief Description and Comparison of
**The Religious Corporations
Act of 1872**
and
**The Not for Profit Corporation
Act of 1986**

Prepared
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A Brief Description and Comparison of
The Religious Corporations Act of 1872 (RCA)
and
The Not for Profit Corporation Act of 1986 (NFPCA)

The Religious Corporations Act of 1872

The RCA is a brief statute enacted in 1872 apparently to enable churches to own real estate as a corporate body. Prior to this enactment, church property was necessarily held by trustees in their own name or by a formal trust instrument. The legal environment in Illinois was very simple compared to our current situation. Even in that day there were problems with people taking unwarranted control of religious and charitable property.

- ▶ The Act gives little or no attention to issues of governance or legal responsibilities and liability. The Act was a distinct improvement in the law of that day but it remains almost unchanged today.
- ▶ The leadership of churches under the Act is presumed to be in the hands of two or more trustees and potential problems of diverse or conflicting interests are not addressed.
- ▶ The Act seems to presume that churches are associated or affiliated with denominations having a distinct history and religious traditions. The governance procedure of a denomination may be well established, but independent churches under the Act have no such organizational structure. Churches under the Act must necessarily have a complete set of governing rules, or they risk unresolvable conflict. The rules and procedures necessary to operate the church must be written out by each church or denomination.
- ▶ The Act does not provide guidance concerning selection of leaders, delegation of authority or responsibility. There is little guidance concerning legal obligations or liability of leaders or members. The only significant changes or updates to the Act occurred in 1996 when certain civil immunity provisions were added to protect the volunteer leaders from personal liability.
- ▶ The Act does not provide for indemnification of leaders and under the general legal doctrine of Charitable Trusts, a church may not lawfully expend charitable assets to protect the interests of leaders who may be sued personally for negligent actions of the church.

THE NOT-FOR-PROFIT CORPORATION ACT OF 1986

The NFPCA is a comprehensive statute enacted in 1986. The current Act is based upon several prior statutes which were developed during the early decades of this century. Not-for-profit corporations are a relatively new concept in corporation law. During the 19th century most religious, philanthropic and eleemosynary corporations were operated as charitable trusts. As corporations became more common the law courts and legislators began to expand the use of charitable corporations by schools, churches, hospitals, etc. The perpetual nature of corporations combined with central authority and limited liability for members (or shareholders) was very attractive for philanthropic organizers. By 1943, not-for-profit corporations were common and under a new statute that year became the preferred form of legal organization for nearly all

charitable and religious endeavors. The RCA was seldom used for new religious organizations after 1943. The churches that existed prior to 1943 generally continued without amendment until confronted by a legal issue that revealed the inadequacy of the RCA.

- ▶ The Act provided a simple low cost legal process allowing a church to voluntarily elect to become organized under the NFPCA without adversely affecting its legal history. There is no legal provision for the reverse of this election since no one would be inclined to do so.
- ▶ The NFPCA provides default provisions for nearly all of the necessary legal structure for operating a charitable or religious organization.
- ▶ The default provisions of the NFPCA may be changed, giving corporations a wide range of legal options related to the organization and operation of charitable and religious programs.
- ▶ Membership interests are identified and protected. The election of leaders is described but each organization may use a wide range of elective procedures.
- ▶ The leadership group (three or more directors, elders, trustees, etc) is identified and guided according to standard principals of corporate law.
- ▶ The act provides structures for committees and provides for other necessary corporate procedures such as merger, consolidation, and dissolution. Nearly all significant legal issues that affect a charitable organization are outlined in the NFPCA.
- ▶ No part of the Act adversely affects any religious belief or policy of a corporation and there is latitude for different political preferences by different religious groups.
- ▶ The Illinois legislature maintains a close surveillance of the Act to ensure that it remains consistent with current legal conditions.

COMPARATIVE ANALYSIS

Given the information listed above, to follow are the pros and cons of the two statutes.

RELIGIOUS CORPORATIONS ACT

PROS

1. Corporation created by one-time filing with county recorder's office
2. No on-going filing or reporting requirements
3. Freedom to establish operating rules and procedures without statutory framework
4. Few ongoing regulations and less supervision by state authorities
5. Limited immunity from civil liability for volunteer leaders and members

NOT-FOR-PROFIT CORPORATION ACT

PROS

1. Provides well established corporate structure through "default" provisions
2. Clear guidance for operational rules and procedures affecting election of leadership, membership interests, governing board, committees, and transitional events
3. Default provisions may be modified giving wide latitude for the individual needs and preferences of diverse religious congregations
4. A simple certification process to establish current legal status of corporation
5. Reasonable provisions for indemnification and insurance to protect members and leaders as well as paid staff
6. Limited immunity from civil liability for volunteer leaders and members
7. Requires regular annual reporting which encourages ongoing awareness of corporate status
8. Since 1986, has been amended often by legislature to keep the law current with changing legal environment
9. Statute is correlated to business corp act and so has common concepts that permit easy judicial interpretation of legal conflict and reasonably predictable results
10. Fuller statute and extensive body of Illinois case law to give guidance in matters of legal conflict, reducing judicial discretion and making results more predictable.

COMPARATIVE ANALYSIS (CONTINUED)

RELIGIOUS CORPORATIONS ACT

CONS

1. No procedure to verify current legal status by outside agency
2. No regular reporting requirement to remind trustees of corporate status
3. No statutory framework for corporate structure to encourage equitable and responsible governance
4. Lack of guidance for rules and procedures to operate the corporation in the context of the larger business community
5. No indemnification or insurance provisions for church leaders and no protection for paid staff members
6. Problems arise with the business community when the RCA is not understood and a church cannot prove its legal status by an independent agency
7. No provision exists for the merger of religious corporations and a very cumbersome dissolution procedure is provided in 805 ILCS 135/1
8. Statute has not been updated by legislature to keep pace with current legal environment
9. The uniqueness of RCA makes interpretation difficult in situations of legal conflict and the outcome is nearly impossible to predict
10. Minimal Illinois case law to guide resolution of legal conflicts

NOT-FOR-PROFIT CORPORATION ACT

CONS

1. Initial registration is slightly more complicated and costs \$50.00 plus the recording fee
2. Annual report and \$5.00 annual fee must be filed with Secretary of State
3. Changes to Articles of Incorporation and changes in the Registered Agent must be reported to Secretary of State
4. The Act requires membership organizations to receive membership approval prior to conducting certain types of corporate actions (e.g. merger or dissolution)

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This list of pros and cons merely highlights some significant issues of difference. Feel free to contact us if you need more information about the legal issues raised in this attachment.

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