

## RE: FRATERNAL HOME CORPORATIONS

This is a guide for subordinate groups for use in forming and organizing a Fraternal Home Corporation. It is not a full answer to the issue. Because there are many complex situations that may arise, fraternal groups should seek competent professional guidance from a local attorney. If the attorney hired has additional questions, she/he may contact \_\_\_\_\_ .

The following general rules, however, are important and should be observed by all fraternal groups.

1. Subordinate fraternal groups are not corporations. They are unincorporated associations. They are subject to being dissolved or merged pursuant to the fraternal laws. Therefore, unless applicable laws provide otherwise, such fraternal groups cannot effectively acquire title to real estate.
2. Where a fraternal group cannot legally hold title to real estate, it should form a corporation to do so on its behalf. The corporation should be treated according to laws providing for non-stock, non-profit corporations. This type of corporation is recommended for two very important reasons: (1) the corporation should never issue shares of stock to anyone, and (2) the corporation should be formed so it will be able to qualify for tax-exempt status under appropriate laws.
3. Fraternal Groups are exempt from United States federal income tax under Internal Revenue Code Section 501(c)(8). The Internal Revenue Service does not treat a home corporation as a subordinate unit of either the Fraternal Group. Thus, the corporation will not have exempt status under Section 501(c)(8).
4. The corporation may be treated as exempt from United States federal income tax either as a title holding corporation [Section 501(c)(2)] or a social club [Section 501(c)(7)].
5. A corporation owning real property and engaging in any other income producing activity, such as operating a bar or restaurant, should request exemption as a "social club" (Section 501(c)(7)). A corporation merely owning real property should request exemption as a title holding company" [Section 501(c) (2)]. **NOT RECOMMENDED**
6. The Fraternal Groups name should not be used as part of the corporate name.
7. The corporation may include only members in good standing of the fraternal group for whose benefit the corporation is formed. When a person's membership is terminated, his membership and all rights in the corporation must also automatically terminate. This is required to show that membership is limited in some fashion in order to qualify as an exempt organization.

8. The corporation should be an aid to the fraternal group fostering its fraternal, charitable, and benevolent aims. The corporate “statement of purpose” in the creating document should express this purpose. In order to qualify as a 501 (c) (2) corporation, the corporate charter must confine the purposes and powers of your organization to holding title to property, collecting income from the property, and turning the income over to an exempt organization.

9. The corporation may be able to qualify for tax-exempt status. The creating document must state that it is non-profit, shall not issue shares of stock, no part of its earnings or assets shall inure to the benefit of members or any other private person, and the articles of organization must meet the IRS's organizational test. Reasonable compensation may, of course, be paid for services rendered to the corporation. The creating document should specifically prohibit activities and disbursements not permitted to a corporation exempt from taxation.

10. The rules governing a social club's tax-exempt status provide that it may not derive more than 35% of its gross revenues, including investment income, from sources outside its membership. Of that 35%, up to 15% of its gross revenues may come from the use by the general public, (persons other than members, their dependents and guests), of the club facilities. In addition to that percentage limitation, it may not derive more than 20% of its gross revenues from passive investment income.

11. There are special rules dealing with the sale of club property. The proceeds are taxable if not reinvested within three years in the new club property of equal or greater value. If the club property is economically ruinous, the fraternal group may request a waiver of capital gains upon sale.

12. A corporation filing for exemption under any provision should request exemption using IRS Form 1024. The requested supporting documents should be filed with the completed application. Local officers should obtain from the IRS, Publication No. 557, “How to Apply for Recognition of Exemption for an Organization.”

Attached are sample drafts of Ohio Articles of Incorporation and Corporate by-laws. However, Articles and by-laws should conform to the above guidelines.

LINKS:

<http://www.irs.gov/pub/irs-pdf/p557.pdf> - IRS Publication 557

<http://www.irs.gov/pub/irs-pdf/k1024.pdf> - IRS Application and Instructions for form 1024