

## Maintaining Corporate Status is Important for HOAs

by

John D. Richards

(from the First Quarter 2007 issue of the [Utah Community Living](#) newsletter)

Many experts consider a state's nonprofit corporation act to be the "forgotten tool" with respect to homeowner associations.

Utah's Nonprofit Corporation Act is found in Title 16, Chapter 6a of the Utah Code. This comprehensive chapter establishes the procedures for setting up and maintaining nonprofit corporate status. The Chapter also

*"Many experts consider a state's nonprofit corporation act to be the 'forgotten tool' with respect to homeowner associations."*

discusses in great detail the additional statutory provisions that apply to incorporated associations. That discussion is not part of this article, however.

**The important part to remember is that nonprofit corporate status, once obtained, will expire unless diligently maintained and monitored each year.** The initial filing fee for a nonprofit corporation filing with the State of Utah is currently \$22.00. Thereafter, the association has an annual obligation to renew its corporate status. This is currently a \$7.00 annual charge and can be done online.

Recently, there was a change in the notification procedures for corporate renewals. The Utah Department of Commerce, the Division of Corporation and Commercial Code, has decided to send out a "postcard" sized reminder to the registered agent of associations. Sometimes this document gets overlooked and discarded in the rush of getting through the mail. In such an event, however, your corporate status will expire. Thereafter, you will need to apply for reinstatement.

When an association fails to renew by not paying its filing fees or if it fails to deliver its annual report to the Division, it may be administratively and involuntarily dissolved. Other grounds for administrative dissolution include the homeowners association being without a registered agent, without a registered office, or if the association fails to notify the Division that it has changed its registered office or agent.

**Therefore, it is extremely important that you choose a registered agent and office which will survive the changing of a board.**

Your property manager, attorney, or accountant make ideal candidates for registered agents. The Division will notify your registered agent if your corporate status has been dissolved. Fortunately, a homeowners association that has been administratively dissolved may apply to the Division for reinstatement within two years after the effective date of dissolution. Again, this is done through the filing of the appropriate documents. The reinstatement fee is presently \$22.00. If more than two years have passed since corporate status was dissolved, then you will have to begin the incorporation process again.

*"The biggest concern with an expired or dissolved corporation is that the Association no longer enjoys the two fold benefits of the Nonprofit Corporation Statute."*

The biggest concern with an expired or dissolved corporation is that the Association no longer enjoys the two fold benefits of the Nonprofit Corporation Statute. The first benefit is the additional statutory procedural

provisions provided to the association which help supplement and fill in the gaps of the bylaws and other procedural aspects of managing the community.

The second benefit which the association loses upon expiration or dissolution is the additional layer of liability protection granted to the board members. Specifically, the directors are to be indemnified by the corporation for conduct that was done in the corporation's best interest in good faith.

In fact, the Nonprofit Act specifically states that, unless limited by its Articles of Incorporation, a nonprofit corporation shall indemnify a director against reasonable expenses incurred by the director in connection with a proceeding or claim against him or her.

Lastly, it is important to note that the Nonprofit Act clarifies how to properly "insure" a director, officer, employee, or agent of the nonprofit entity while they were serving in such a capacity. In other words, it is easier to obtain "director and officer" insurance if you maintain your corporate status.

To conclude, the benefits of being an active nonprofit corporation as a homeowners association far outweigh the burdens of maintaining your active status through filing and procedural requirements. Accordingly, you must diligently maintain your annual renewal, make sure that your registered agent is current, and be familiar with the Nonprofit Corporation Act.

Contact [Richards & Kimble](#) for further information and help regarding the incorporation of your homeowners association.