

THE RCRI BULLETIN



NUMBER

17

Spring 2017

RESOURCE CENTER FOR RELIGIOUS INSTITUTES

The RCRI Bulletin is published by the Resource Center for Religious Institutes (RCRI), which was established in 2009 by the union of the Legal Resource Center for Religious (LRCR) and the National Association for Treasurers of Religious Institutes (NATRI). RCRI serves Catholic religious institutes, their leaders and administrators.

Other RCRI publications include: *News In Brief*, a quarterly update on legal and financial issues of interest to religious institutes and the *Taxes* notebook, a practical “how-to” summary of tax law prepared specifically for religious institutes. Frequent webinars and an annual national conference provide ongoing education on relevant financial, civil law, and canon law issues.

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TRANSITIONING SPONSORSHIP

By Amy Hereford, CSJ, JD, JCD

The author presented a workshop with the same title at the RCRI National Convention in Anaheim in October of 2016. The materials and audio recording of that presentation are available on the RCRI website.

A fundamental part of the life and work of religious institutes is carrying on the mission of Jesus in today's world.¹ Institutes have a specific mission or a particular way of doing ministry that inspired their founding members, and that continued to animate generation after generation: "I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me" (Mt 25:36). Many religious institutes carried out their apostolic works in institutions that provided health-care, education, social and pastoral services to so many people.

The historical response to the call to mission is one of the great success stories of the Catholic Church and of Religious Life in the United States. We are blessed with institutions that carried on the mission of Jesus on these shores; these institutions played a central role in the Church in the United States, building up the people of God, building a more just society and caring for the poorest and weakest among us. As ministries grew and developed, certain

structures provided a more stable foundation for the continuing work.

The code of canon law describes the central place of mission in the life of religious institutes in Canon 573 §1:

Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely under the action of the Holy Spirit, and are totally dedicated to God, who is supremely loved. By a new and special title they are dedicated to seek the perfection of charity in the service of God's Kingdom, for the honor of God, the building up of the Church and the salvation of the world. They are a splendid sign in the Church, as they foretell the heavenly glory.²

Over the past fifty years, many of these institutional ministries were separately incorporated, due to several factors, including the increasing complexity of the ministries and their regulation, and growing

¹ Second Vatican Ecumenical Council, *LG*, 43.

² JOHN PAUL II, *CIC*, Can. 573.1.

concern with liability and litigation arising from the ministries.³ Sponsorship is the term that has come to be used for the relationship between a religious institute and its separately incorporated ministries. The term is somewhat problematic, because it gives the illusion of clarity when in fact it refers to any number of relationships between a religious institute and its separately incorporated ministries. Just like the term relationship may designate relations that are close or distant, mutual or hierarchical, warm or cool, friendly or troubled, long-lasting or casual, so sponsorship is used to describe many different arrangements. In transitioning sponsorship, it is important to understand the relationship from which we are moving and the relationship to which we are moving.

When the ministries were initially founded, members of the founding institute carried out all the roles, including direct service, administration and oversight. In time, and with the decrease in membership, fewer members were available for direct service, though often members remained in important administrative positions and the institute retained control of the ministry's board of directors. Now, direct service and administrative positions are increasingly in the hands of lay persons who are highly qualified and committed to mission. It is only with difficulty that institutes are able to responsibly exercise control over the boards of directors or member boards.

From a canonical point of view, ministries started by the institute remain an integral part of the religious institute as a single juridic person, even if they are separately

incorporated under civil law.⁴ For this reason, the institute retains the canonical responsibility to ensure that the ministry is carried out according to the institute's mission, that it remains in communion with the Church, and that its assets are administered as ecclesiastical goods.

As an institute comes to the point of acknowledging its inability to continue to responsibly exercise sponsorship, it must consider making other arrangements.⁵ There are many factors that help to determine the best option in any particular case. Though there is not a one-size-fits-all solution, we can point to several models of ministry that may be considered. Before turning to the models, we will lay some groundwork. This section of the article will cover the notion of "juridic person" and the canonical organization of a religious institute, civil corporations, sponsorship of ministries, and the present historical context with respect to sponsored ministries. Then we will be prepared to address the central topic of this article, namely transitioning sponsorship.

1. Juridic Person

The concept of juridic person is central to understanding sponsorship. A juridic person is a Church entity that bears a resemblance to a general nonprofit corporation in the civil sphere. The nonprofit corporation is a "legal person" established by the state that has rights and obligations under civil law. It can buy, own and sell property, it can sue and be sued. In the same way, the juridic person is a "legal person" established under canon law that has the ability to act in the Church. The code describes it as an

³ R. SMITH, W. BROWN, AND N. REYNOLDS, eds., *Sponsorship in the United States Context: Theory and Praxis*, CANON LAW SOCIETY OF AMERICA, Washington, DC (2006), 175 pp.

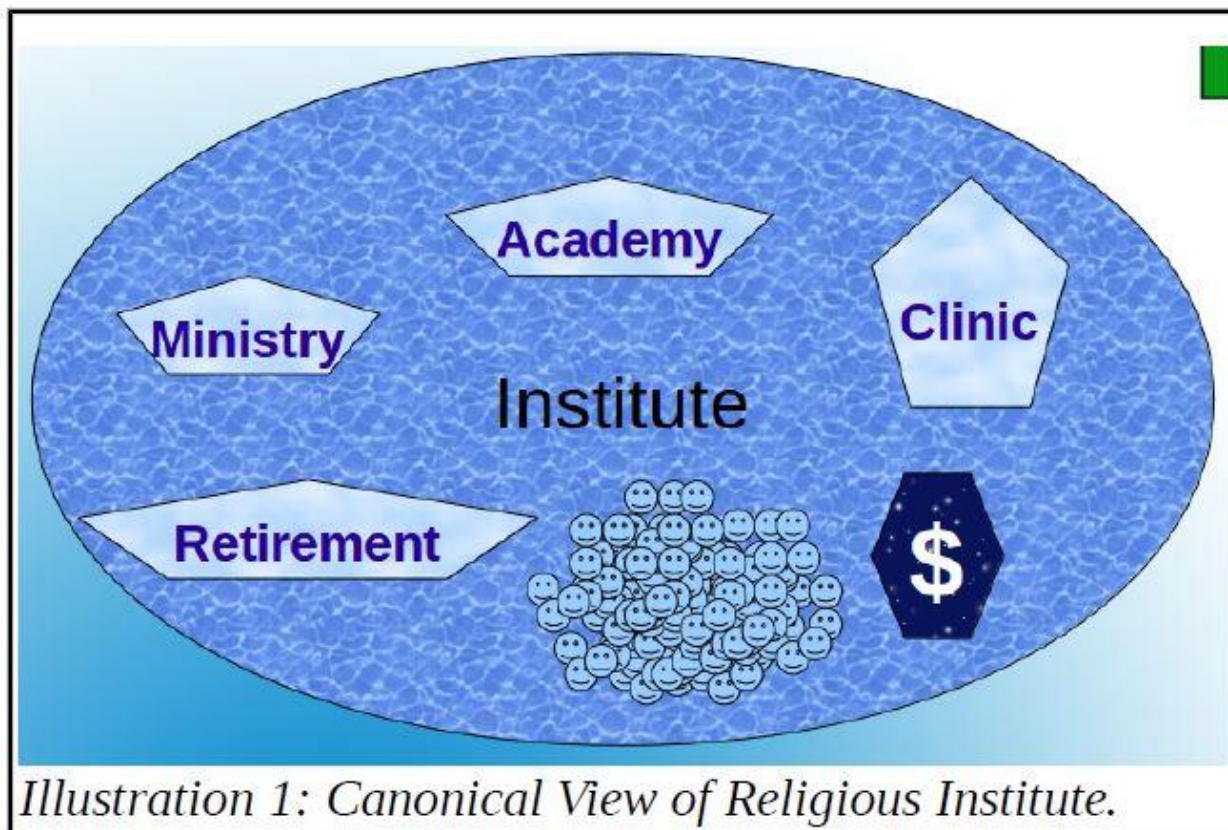
⁴ R.T. KENNEDY, "McGrath, Maida, Michiels:

Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States," *Jurist* 50 (1990): 351–401.

⁵ SPONSELEE, LEYS, and VAN DAM, "Explorations on the 'Completion' of Religious Institutes," 11.

“aggregation of persons or things.”⁶ Religious institutes are juridic persons, “capable of acquiring, possessing, administering, and alienating temporal goods.”⁷ Religious institutes may be divided into major parts, called provinces or regions, etc., and these parts are also juridic persons. Generally institutes are divided by geography, but they can also be divided by

ministry or in other ways. This is up to the internal authority of the religious institute. Each institute or province juridic person is comprised of all the sisters / brothers, all the ministries, all the goods and patrimony, and the governance structures. This view is indicated in Illustration 1.



An institute or province will establish civil structures to facilitate its life and ministry. There is generally an institute corporation which holds the houses, cars, insurance and contracts for the life of the community. There may be additional civil corporations for individual ministries. E.g. a school, health clinic or social service agency may be incorporated under state law. It will have its own board of directors, responsible for the governance and oversight of that ministry.

The religious institute retains the canonical responsibility for these separately incorporated ministries. This responsibility is exercised through the inspiration and influence of an ongoing pastoral presence in the ministry and through the exercise of certain powers reserved to the religious institute, usually through a member board which reserves certain powers over the ministry. This view is indicated in Illustration 2.

⁶ JOHN PAUL II, *CIC*, Can. 116.

⁷ *Ibid.*, Can. 634.1.

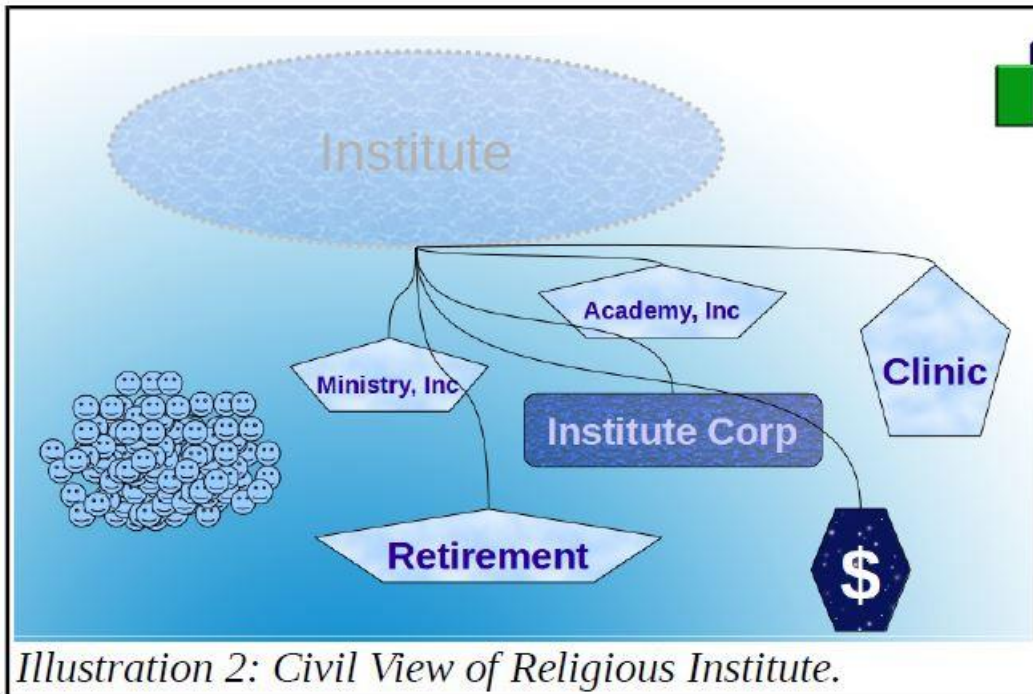


Illustration 2: Civil View of Religious Institute.

The institute should retain those powers necessary to exercise its canonical responsibility with respect to the ministry. In reality, Illustration 3 shows that the reality is

a complex and dynamic relationship in which there may be a tension between the ideal and the lived reality.

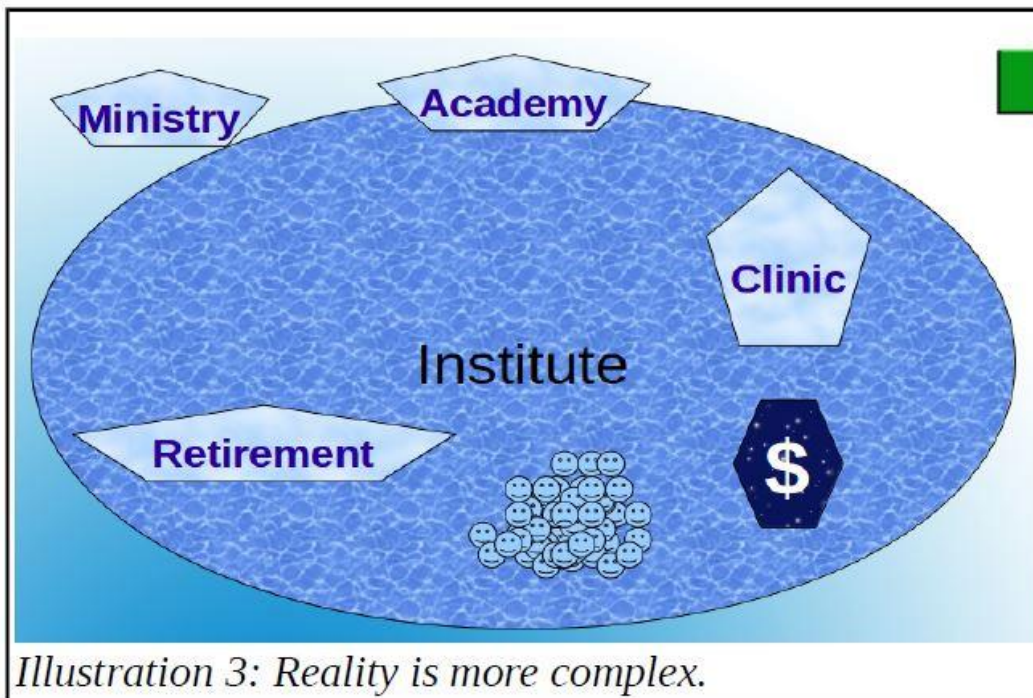


Illustration 3: Reality is more complex.

2. Corporations

A corporation is a civil entity that has a separate legal existence, established by application to the state government. Its articles of incorporation establish its name and mission, its governance, nonprofit status, duration and dissolution. The corporation's bylaws prescribe the governance of the corporation, particularly the powers of the board of directors, its rules of procedure for meetings and handling of assets. These documents may provide for a two-tiered governance, with the members holding reserve powers, i.e., certain authority over key decisions of the board of directors regarding mission, governance and assets.

The institute maintains a civil corporation to facilitate the life of the brothers or sisters. This is usually closely connected to the institute itself as a public juridic person. The leadership team of the institute is generally the board of directors of that corporation. The clause linking the board of directors of the corporation to the canonical leadership of the institute follows one of several patterns that ensure smooth succession of the corporate board.

The ministry corporations have a more distant relationship with the canonical leadership of the institute. This allows the ministry more autonomy to pursue its mission and affords some distance between the religious institute and the sources of liability in the ministry. There are several models for this arrangement and they all involve the religious institute retaining certain powers over the sponsored ministry, to ensure that it remains true to its mission, the charism of the institute and to Catholic identity. Reserve powers will thus afford the institute oversight of mission, governance and assets of the ministry. Often this is done through a two-tiered board in which the

institute retains complete control of a member board that holds these reserve powers. The board of directors is responsible for the general governance and oversight of the ministry, subject only to the reserve powers held by the member board.

3. Sponsorship

Our ministries were founded to carry out the mission of Jesus, traditionally understood as Jesus role as shepherd, teacher and healer. As Jesus the *Good Shepherd* led the people, so our ministries involve the organizational structures of the Church as well as the task of bringing the Gospel to a world in need and working for systemic change. As Jesus the *Teacher* preached, so our ministries teach and witness Gospel values in society. As Jesus the *Healer* touched and sanctified, so our ministries involve prayer and the sacramental life of the Church as well as the work of healing and reconciling.

Often when ministries were first founded by a religious institute, the institute itself was responsible for planning and implementation of the ministry and all aspects of its service. Over time, the institute invited others to share in the direct service and in the governance of the ministry and its ongoing relationship with the ministry evolved. If the institute retains canonical responsibility for the ministry, then it must have the authority necessary to ensure that its work is consistent with the institute's principles and charism and with Catholic identity.

The directors of the corporation are charged with carrying on the affairs of the ministry while the members retain oversight, through certain reserve powers, such as appointment of directors, approval of budget, receiving the audit, amendment of the articles and bylaws, and dissolution of the corporation. As a sample, the bylaws might have the following clause:

The following powers are reserved exclusively to the Members:

- (a) To approve the purchase, sale, conveyance, transfer, or hypothecation, of all or any interest in any real property, or any major financial transaction by the Corporation.
- (b) To approve the budget and to receive the audit of the Corporation.
- (c) To review and approve candidates for the Board of Directors and to remove any Director with or without cause.
- (d) To review and approve candidates for [the top staff position].
- (e) To propose and approve amendments to the Articles of Incorporation or the Bylaws of the Corporation.
- (f) To dissolve the Corporation and to dispose of its assets in accordance with Canon Law and the laws of the State of Missouri and the United States, or to approve the merger, consolidation, or affiliation of the Corporation with any other organization.
- (g) To propose and approve all changes to the Mission Statement.

Although all of these powers are not required, it is critical that the institute retain powers in four particular areas:

1. People – the power to appoint or approve all directors and to remove them with or without cause;
2. Purpose – the power to approve any changes in the purpose and the mission of the corporation;
3. Property – the power to ensure that the assets are used in accord with canon law, and particularly that alienation is done properly.

4. Paper – the power to approve any change to the articles and bylaws, particularly those clauses that affect the reserved powers.

4. Transitioning Sponsorship

Now that we have looked at the critical concepts: juridic person, corporation and sponsorship itself, it is time to turn to our central concern, namely the transitioning of sponsorship. We might look at each of these in terms of *missio* and *communio*.

Missio – is ensuring that the ministry is indeed carrying forward the mission of Jesus in one of its facets. Many non-Catholic organizations are involved in this work – they teach, heal and shepherd people, touching the lives of the poor and the vulnerable in ways that may be inspired directly by Gospel values or may be inspired indirectly by the spirit of the Gospel. As we evaluate the ongoing life of our ministries, we should keep in mind this fundamental aspect of the work they do.

Communio – is maintaining the communion or relationship with the Church both as community of faith, and as hierarchical structure. This is generally the aspect of ministries that draws our attention when we are dealing with sponsorship structures.

There are many models for the relationship between an institute and its ministries. Six models will be examined here, and for each, we will examine the factors involved in transitioning sponsorship.

a. Within the Institution Corporation

Many of our ministries began as ministries carried out within the ministry corporation. Initially, religious established and operated schools, hospitals and social services within the same corporation that held their Mother-

house and all the assets of the congregation. In time many of the larger ministries were separately incorporated as we will examine below. However, some ministries continue to be operated in the institute corporation. In some cases, these are smaller ministries of supplying altar breads, vestments or linens for liturgy; crafts or gift shops; spiritual direction, music lessons or other one-on-one services.

As an institute evaluates the ministry and its own trajectory, it should also evaluate the ministries that are operated through its own institute corporation. The ministry may continue to provide a much needed service as well as providing an opportunity for the sisters/brothers to serve; if it does not, it may be time to bring it to closure. This can be a difficult decision to make and to implement.

If the ministry continues to be viable, for the good of the ministry or the institute itself, it may be necessary to transition the ministry to one of the other models. Often times, the first step may be to separately incorporate the ministry so that it is easier to make the transition. However, it may be that the ministry can be transferred to another sponsor without that step.

b. Traditional Sponsorship

An institute may retain canonical responsibility for a separately incorporated ministry. This arrangement is traditional sponsorship that was described earlier in this article. The institute retains canonical responsibility for the ministry, and, as described above, it exercises its responsibility through certain reserve powers related to the four “P”s of people, purpose, property and paper.

Often this is the starting place for ministries

in need of some other mode of carrying out their mission. Naturally, the first discussion would be about the ongoing viability of the ministry, without the continued support of the institute. In terms we have been using: does the *missio* continue to be needed and is it viable on its own? And a second question regards the canonical responsibility for the ministry, namely *communio*.

If so, there are several important issues that must be addressed:

- Canonical Responsibilities (reporting) – The institute must identify another Religious Institute, a Diocese or some Public Juridic Person that is willing and able to take on the sponsorship of the ministry.
- Civil Responsibilities (reserve powers) – That new sponsor will take on the reserve powers currently held by the institute. A sponsorship agreement may exist that defines further mutual rights and obligations of the sponsor and the ministry. This will also have to be renegotiated.
- Assets / Alienation – If the sponsorship is transferred, some assets of the ministry may transferred away from the canonical responsibility of the institute, and some assets of the institute may be transferred as well. This alienation would have to be examined to determine what canonical process is required.
- Care of Sisters / Brothers – Because of the financial relationship of the institute and its ministry, it is important to ensure that the institute still has the ability to care for its sisters or brothers. Often the property associated with a ministry is a major asset of the institute; care must be taken to ensure that the institute still has the means to support itself and care for its members. Any alienation petition

should state that this has been considered and that the institute has what it needs.

- Ongoing support of the ministry – In some cases, a significant portion of the support of a ministry came from the sponsoring institute. If this is the case, the institute and the ministry will have to identify sources of ongoing support.

Developing a plan for transitioning sponsorship requires communication, education and decision-making by various groups:

- The institute leadership must make the decision about its ongoing canonical responsibility for the ministry. Often these ministries play a large part in the life of an institute, and the brothers/sisters must be informed of the plan, and possibly be involved in the decision.
- The ministry board, administration, staff, clientèle and donor base will be involved in varying levels in the transition. The board generally requires the most communication and education, and it may be involved at some level in the decision-making. Communication with each of the other groups can help ensure a positive experience of the transition.
- The local bishop should be informed since he is responsible for the works of the apostolate in his diocese. His support can be helpful in making any transition, and his active participation may be required, depending on the transition plan.

c. Agnoscit – recognized as Catholic (c. 803)

Catholic schools have an option that is not explicitly available to other ministries, though they may propose it as a possibility. Canon 803 states that:

§1. A Catholic school is understood as one which

- a competent ecclesiastical authority directs (*moderatur*) or
- a public ecclesiastical juridic person directs (*moderatur*) or
- ecclesiastical authority recognizes as such through a written document (*agnoscit*).

Thus there are three ways of being a Catholic school. The first two involve a moderator that is either a bishop (competent ecclesiastical authority) or a religious institute (public ecclesiastical juridic person). This second was discussed in the previous section on traditional sponsorship.

The canon indicates that it is possible to have a Catholic school that has no formal sponsor, but it Catholic because it is recognized (*agnoscit*) as such by the bishop in a written document. In this case, it is likely that the bishop would also indicate the criteria of obtaining and retaining such recognition. In cases where an alternative sponsor is difficult or impossible to locate, this option may prove helpful. *Missio* would be in the hands of the board, administration and staff at the ministry. *Communio* would be the mutual responsibility of the ministry and of the bishop who recognizes it. Both have the responsibility to ensure that there is a forum for ongoing dialogue for the good of the ministry.

If this path is chosen, the ministry must transition from sponsorship by the institute. This can only be done after the institute and its members, the ministry and its constituents and the local Church are informed and educated about this new direction for the ministry.

- The canonical responsibility of the institute will cease. The ministry will be recognized by the local bishop. The

canon does not indicate that the recognition is time-limited. Nevertheless, good governance and pastoral practice would advise that the bishop and the ministry agree on some ongoing communication and mutual responsibility for the school.

- **Civil Responsibilities (reserve powers) –** The reserve powers held by the institute will be transferred to the board of directors. The bishop may request some authority in the corporation documents, however, if he simply retains the reserve powers that would make him the new sponsor. This model does not need a sponsor, but instead, it only needs the recognition of the bishop. The corporate documents must be amended to indicate this change. It will be necessary to ensure that the entity is still listed in the Catholic Directory in order to maintain its tax exempt status.
- **Assets / Alienation –** As sponsorship is relinquished by the institute, some assets of the ministry may be transferred away from the institute, and some assets of the institute corporation may be transferred as well. This alienation would have to be examined to determine what canonical process is required.
- **Care of Sisters / Brothers –** Because of the financial relationship of the institute and its ministry, it is important to ensure that the institute still has the ability to care for its sisters or brothers. Often the property associated with a ministry is a major asset of the institute; care must be taken to ensure that the institute still has the means to support itself and care for its members. Any alienation petition should state that this has been considered and that the institute has what it needs.
- **Ongoing support of the ministry –** In some cases, a significant portion of the

support of a ministry came from the sponsoring institute. If this is the case, the institute and the ministry will have to identify sources of ongoing support for the ministry.

d. Transfer Sponsorship

In some cases, it may be necessary to find another sponsor for the ministry, another religious institute, a diocese or some other public juridic person. In this case, the new sponsor will take on the canonical responsibilities of the institute. In this case, there are several important issues that must be addressed:

- **Canonical Responsibilities –** The institute must identify another religious institute, a diocese or some other public juridic person that is willing and able to take on the sponsorship of the ministry. This entity must be capable of taking on the sponsorship and be willing to do so.
- **Civil Responsibilities (reserve powers) –** The new sponsor will take on the reserve powers currently held by the institute. This will require modification of the corporate documents to indicate the new sponsor. A sponsorship agreement may exist that defines further mutual rights and obligations of the sponsor and the ministry. This will also have to be renegotiated.
- **Assets / Alienation –** If the sponsorship is transferred, some assets of the ministry may be transferred away from the canonical responsibility of the institute, and some assets of the institute corporation may be transferred as well. This alienation would have to be examined to determine what canonical process is required and what civil documents are needed to effect the transfer.

- Care of Sisters / Brothers – Because of the financial relationship of the institute and its ministry, it is important to ensure that the institute still has the ability to care for its sisters or brothers. Often the property associated with a ministry is a major asset of the institute; care must be taken to ensure that the institute still has the means to support itself and to care for its members. Any alienation petition should state that this has been considered and that the institute has what it needs.
- Ongoing support of the ministry – If a significant portion of the support of a ministry came from the sponsoring institute, the institute and the ministry will have to identify sources of ongoing support for the ministry.

Developing a plan for transitioning sponsorship requires communication, education and decision-making by various groups:

- The institute leadership must make the decision about its ongoing canonical responsibility for the ministry. Often these ministries play a large part in the life of an institute, and the brothers/sisters must be informed of the plan, and possibly be involved in the decision.
- The ministry board, administration, staff, clientèle and donor base will be involved in varying levels in the transition. The board generally requires the most communication and education, and it may be involved at some level in the decision-making. Communication with each of the other groups can help ensure a positive experience of the transition.
- The local bishop should be informed since he is responsible for the works of the apostolate in his diocese. His support can be helpful in making any transition, and his active participation may be

required, depending on the transition plan.

e. Ministerial Public Juridic Person

A separate ministerial public juridic person (MPJP) may be established for a single ministry or for a group of ministries, e.g. a national public juridic person for schools. The competent ecclesiastical authority establishes the juridic person by decree, after approving the statutes. In the case where the ministry exists in only one diocese, the diocesan bishop is competent (Canons 114, 312). If the ministry exists in several dioceses, the bishop or the Holy See could establish the juridic person. The bishop's conference is also competent, but in the United States, there is no mechanism for this to occur.

It is not enough to simply erect a structure. It is important that the ministry itself be viable and that there be a critical mass of persons who are willing and able to take on the responsibility for the ongoing mission of the ministry: *missio*. If this is in place, then a juridical structure can be established to facilitate the *communio* i.e. the ongoing relationship between the ministry and the wider community of faith and in particular the catholic identity of the ministry.

Establishing a MPJP requires the assembly and formation of those who will lead the MPJP. This is often initiated by the religious institute that has historically sponsored the ministry. There are often particular individuals that are active in the ministry and its support who may be good candidates for leadership in the MPJP.

Let us take a look at the canons governing the establishment of such an MPJP.

Canon 113 §2 states that “besides physical persons, there are also juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature.”

Canon 114 §1 indicates that a public juridic person is established by special grant of competent authority given through a decree. It is an “aggregate of persons (*universitates personarum*) ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals.

Canon 114 §3 further requires that the public juridic person “pursue a truly useful purpose and, all things considered, possess the means which are foreseen to be sufficient to achieve their designated purpose.”

Canon 115 §1 requires that there be a minimum of three persons forming public juridic person.

Canon 116 §1 states that a Public juridic person acts “*in nomine ecclesiae*”, i.e. in the name of the Church.

Canon 117 requires that the competent authority approve the statutes of a public juridic person

Canon 304 §1 speaks of associations of the Christian faithful. Though it is not directly applicable, it does provide guidance on the appropriate content for statutes of ecclesiastical entities. It requires that statutes define “the purpose or social objective of the association, its seat, government, and conditions required for membership.” In addition, the statutes of an MPJP generally requires a clause stating the relationship of the MPJP to the ecclesiastical authority and the rights and obligations of the MPJP, e.g. reporting to ecclesiastical authority, formation of members of the MPJP, dissolution of the MPJP, etc.

The statutes are drafted and approved by the initiating congregation(s) and the founding members of the MPJP. They are then submitted to competent ecclesiastical authority, i.e. the local bishop, or the appropriate dicastery in Rome with a request for approval of the statutes and a decree erecting the association.

Thereafter, the MPJP must organize itself and prepare to take on sponsorship responsibilities. This may be done through an initial period of co-sponsorship by the religious institute and the MPJP. This allows the religious institute to continue its active participation in the ministry and to help to form the members of the MPJP to take on the full sponsorship responsibilities.

- Canonical Responsibilities – The institute will generally begin by sharing sponsorship responsibilities with the new MPJP until it is ready to assume full responsibility, and the institute is ready to relinquish it.
- Civil Responsibilities (reserved powers) – The MPJP will initially share then fully take on the reserve powers currently held by the institute. This will require modification of the corporate documents to indicate the new co/sponsor. A sponsorship agreement may exist that defines further mutual rights and obligations of the sponsor and the ministry. This will also have to be renegotiated.
- Assets / Alienation – Assets may be transferred away from the canonical responsibility of the institute; some assets may be currently held by the ministry corporation, other currently held by the institute corporation. This alienation would have to be examined to determine what canonical process is required, and what civil documents are needed to effect the transfer.

- Care of Sisters / Brothers – Because of the financial relationship of the institute and its ministry, it is important to ensure that the institute still has the ability to care for its sisters or brothers. Often the property associated with a ministry is a major asset of the institute; care must be taken to ensure that the institute still has the means to support itself and to care for its members. Any alienation petition should state that this has been considered and that the institute has what it needs.
- Ongoing support of the ministry – In some cases, a significant portion of the support of a ministry came from the sponsoring institute. If this is the case, the institute and the ministry will have to identify sources of ongoing support for the ministry.

Developing a plan for transitioning sponsorship requires communication, education and decision-making by various groups:

- The institute leadership must make the decision about its ongoing canonical responsibility for the ministry. Often these ministries play a large part in the life of an institute, and the brothers/sisters must be informed of the plan, and possibly be involved in the decision.
- Those who will serve on the governance of the new MPJP must be identified, educated and formed for this important role. Once they are on board, they can work with the institute to move the transition forward, helping also to communicate with other constituents.
- The ministry board, administration, staff, clientèle and donor base will be involved in varying levels in the transition. The board generally requires the most communication and education, and it

may be involved at some level in the decision-making. Communication with each of the other groups can help ensure a positive experience of the transition.

- The local bishop should be informed since he is responsible for the works of the apostolate in his diocese. His support can be helpful in making any transition, and his active participation may be required, depending on the transition plan.

f. No Formal Sponsorship

The final model for sponsored ministries is to discontinue any formal sponsorship relationship. This may happen in one of two contexts. In the first case, a Catholic school may continue to operate as a Catholic school that is “recognized” by the local bishop under Canon 803. This model was discussed above. The other case is a ministry that can continue its work. It is unable to find another Catholic sponsor, and the nature of its work does not require the juridical connection with the hierarchical church that sponsorship implies. It would continue in *missio*, but it would not have any formal *communio* with the Catholic Church. It may continue to be a ministry of Catholics who are living out their baptismal call. But it is not formally a “Catholic ministry”. In some cases it may be carried out by persons of other faiths, or no faith at all, who value the work and are committed to the ministry.

In this case, the full responsibility for the ministry is entrusted to the Board of Directors of the ministry, or it may be given to another non-Catholic sponsoring entity that will continue the good work.

- Canonical Responsibilities – The institute will relinquish its canonical responsibilities. Thereafter, the Board of Directors or the non-Catholic sponsor

will take on the full responsibility for the ministry. It will no longer be listed in the *Official Catholic Directory*.

- Civil Responsibilities (reserve powers) – The institute will relinquish its reserve powers to the Board of Directors or to the non-Catholic sponsor. The institute may seek written assurances that the ministry will continue to uphold Catholic principles, or it may rely on the good will of those who have been willing to take on responsibility for the continued operation of the ministry.
- Assets / Alienation – As with other models, some assets of the ministry may be transferred away from the canonical responsibility of the institute. This alienation would have to be examined to determine what canonical process is required, and what civil documents are needed to effect the transfer.
- Care of Sisters / Brothers – Because of the financial relationship of the institute and its ministry, it is important to ensure that the institute still has the ability to care for its sisters or brothers. Often the property associated with a ministry is a major asset of the institute; care must be taken to ensure that the institute still has the means to support itself and to care for its members. Any alienation petition should state that this has been considered and that the institute has what it needs.
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Developing a plan for transitioning sponsorship requires communication,

education and decision-making by various groups:

- The institute leadership makes the decision about terminating its ongoing canonical responsibility for the ministry. Often these ministries play a large part in the life of an institute, and the brothers/sisters must be informed of the plan, and possibly be involved in the decision.
- The ministry board, administration, staff, clientèle and donor base will be involved in varying levels in the transition. The board generally requires the most communication and education, and it may be involved at some level in the decision-making. Communication with each of the other groups can help ensure a positive experience of the transition.
- The local bishop should be informed since he is responsible for the works of the apostolate in his diocese. His support can be helpful in making any transition, and his active participation may be required, depending on the transition plan.

5. Tax Exempt Status

In each of these transitions, there is a fundamental change in the governance of the ministry. The ongoing tax exemption of the ministry should be considered. If the ministry will be sponsored by another Catholic entity, it should remain listed in the *Official Catholic Directory*. This will ensure its ongoing tax exemption. However, it may be necessary to review that exemption and to notify the diocesan authorities about the correct listing of the ministry.

If the ministry no longer has a formal connection to a diocese, religious institute or other public juridic person, then it may be

required to seek an independent tax exemption ruling. This important task should not be neglected as the transition is moving forward.

6. Time-Line

As can be seen from this outline of models of sponsorship and discussion of transitioning sponsorship, this is a complex issue requiring discussion, education, discernment and decision-making at many levels and in many quarters. It involves both top-level visioning and meticulous attention to detail, and everything in between. It is useful to have a master-list of constituents, goals and strategies for each step of the way. Some steps can be taken simultaneously, other steps must wait till earlier tasks are accomplished. Without diligent management, the process can get bogged down, as other issues require attention, and as those involved move in and out of institute leadership and on and off the board.

Conclusion

It is important for institutes to ensure that their legacy of service, spirit and ministry are secured for their members and for the future. Through the process, institutes, their leadership, sisters and brothers, and those in the governance, administration, staff and clientele of the ministry can rely on the words of Jesus: "I am with you always.... I have prepared a place for you."⁸ The same God, who was present at the founding of the ministry and throughout its history, will be present, sustaining it, as it faces the challenges of today and tomorrow.

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⁸Mt 28:20, Jn 14:3.

MEMBERS OF A RELIGIOUS INSTITUTE CORPORATION: REQUIRED OR OPTIONAL?

By Donna Miller, Associate Director for Civil Law at RCRI

Over the years, as religious institutes have shared their corporate and canonical formational documents with us at RCRI, we have noticed a variety in the way that the corporate structures have been formed. In all cases, the religious institutes have been established under a given state's laws as a non-profit corporation. This is exactly as it should be. What varies, however, is the way that the legal components are enshrined in the documents.

Quite often, civil attorneys were engaged to help with the civil incorporation process when a religious institute was getting started. Unless the civil attorneys understood the role that canon law plays in the overall picture, the corporate structure that they developed for the religious institute's corporation could very well introduce an

unnecessary layer into the picture – that of corporate members.

This is because civil attorneys operate within the civil law realm, which generally calls for a “for-profit” corporation to have shareholders or stockholders whose money initially is used to fund the operations of the upstart corporation. These shareholder then get special privileges or responsibilities, which usually includes voting for the directors and/or officers of the corporation. Shareholders are not involved in the actual management of the corporation. In contrast, non-profit corporations are designed to be supported by money from a much smaller group or even from the general public. What sets a nonprofit apart from a regular corporation is that a nonprofit corporation does not have stockholders who put up the money to start the business in exchange for

owning a share. Rather than a nonprofit corporation issuing stock or shares in the corporation, nonprofit corporations can choose to have members.

A formal membership structure in a nonprofit often grants members certain basic rights, such as the power to vote for directors and approve a sale or merger. This creates a level where certain decisions have to be approved before the Board of Directors or Trustees can act. Many nonprofits, however, do not have members. This can avoid having to complete additional paperwork and keep up with required formalities that the state's law imposes on members.

Even if there are no members, other people may still participate as advisors, patrons or contributors. They just do not have a formal vote in the operations of the corporation. It is possible for a nonprofit to require that all of the members have a formal vote on certain important matters.

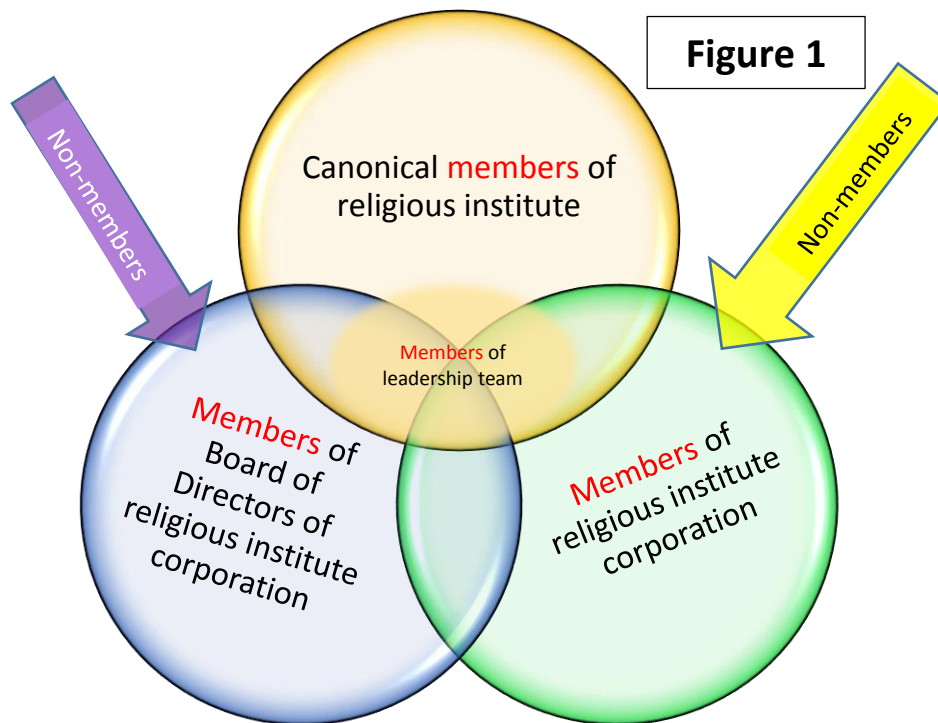
Whether a nonprofit organization is required to have members can depend on the type of corporation and the state which the incorporators chose for incorporation. In addition to state law requirements regarding incorporation, other federal and state standards for nonprofits with exempt status can determine whether a particular nonprofit must have members.

What is a corporate member? Generally speaking, the legal definition of members under nonprofit organizational statutes refers only to individuals or entities who have a right to vote in the election for directors or on certain fundamental corporate transactions, such as closing the business or amending the bylaws. Having rights as a *member of the board of directors* does not

make an individual or entity a *member of the corporation*.

This distinction can be very confusing to those who govern and administer religious institutes. Membership in the corporation is a separate category from membership on the board of directors of a nonprofit. Add in the concepts of *canonical members of the religious institute* itself and *members of the institute's leadership team* and it is not difficult to see why there is confusion. Members of the canonical entity that is the religious institute, members of the corporation itself, and members of the corporation's board of directors are all different specifications with different responsibilities. If we throw in members of the religious institute's canonical leadership team that adds yet another dimension of confusion.

The diagram below (**Figure 1**) shows how an uninformed attorney who assists with forming a corporation for a religious institute may envision the structures to fit together. Without a sufficient understanding of how canon law and civil law must interrelate in order to protect the Catholic identity and ecclesiastical property of the religious institute, a civil attorney may think that, because civil law allows it, some of the members of the religious institute corporation (green circle) can come from the canonical membership (orange circle) and others can be non-members of the institute (yellow arrow). Similarly, an attorney may suggest that some members of the board of directors (blue circle) come from the canonical members and some from outside of the canonical membership (purple arrow). Although this structure may be the norm for non-profit organizations, it does not provide the necessary protections to ensure that the canonical governing structure prevails in the civil arena.



Although this structure may be perfectly legal and acceptable in the formation of a typical non-profit in most states, it does not take into account the fact that Catholic organizations—particularly religious institutes—must operate under two legal structures: canonical and civil. As much as possible, the governing authority of the canonical entity must be protected under the civil legal structure. This helps to ensure that control over the civil entity is maintained by the canonical leaders of the religious institute.

In the case of a religious institute itself, the most direct means of accomplishing this is to make the members of the canonical leadership team the members of the leadership body for the civil corporation. That is, the members of the canonical leadership team should be the members of the board of directors for the civil corporation. There will not be any outside individuals who are not members of the religious institute on the board of directors.⁹

⁹ Some institutes with diminishing numbers and fewer members eligible so serve in canonical leadership are exploring options for their civil governance as well. It is important to make sure that the legal experts who are retained to assist in planning for the future understand the importance of maintaining control over canonical affairs and protecting ecclesiastical property when restructuring

is undertaken. It may be necessary to build in a transitional period for the board of directors that parallels the changes in the canonical governing structure. If amendments to the articles of incorporation are needed, then planning should be extra vigilant so as to avoid needing to file multiple amendments as the institute moves toward completion.

When this civil board structure is in place and the governing documents provide for this arrangement, there is *no need to have members of the civil corporation*. The board of directors is “self-perpetuating” in that the members are derived from the elected canonical leadership. After an institute holds a chapter of elections, the new canonical leadership automatically should become the board for the civil corporation of the religious institute.

A review of numerous corporate documents of religious institutes over the years has revealed that some institutes were set up as nonprofit corporations decades ago with their corporate memberships and boards configured in a variety of ways. For example:

- all members of the religious institute are the members of the corporation, with the authority to elect the directors;
- several members of the religious institute who were in office at the time of the initial filing of the corporate documents were named as the members of the new corporation, with the ability to name new members;
- the canonical leaders are the members of the corporation and also serve as the board of directors.

The first situation is not uncommon for monasteries that have a limited number of members and whose canonical governance structure permits all perpetually professed members to vote in canonical elections and affairs. The corporate membership would then be reflecting the canonical governing structure. But normally, if the institute has a

substantial number of members and a chapter that is attended by delegates, such a large corporate membership is impractical, unnecessary, and not reflective of the canonical governing structure. In fact, it creates the potential for the members of the civil entity to elect someone other than the canonical leadership team to serve on the board, which could create problems in governing the corporation with the strictest degree of canonical oversight and control.

The problem with the second example should be evident immediately. What happens if the initial members die without ever appointing additional members to their ranks? In this instance, the sole duty of the corporate members was to appoint the directors, which is a common arrangement in the non-profit world. However, the institute’s leadership did not understand the importance of this provision when the corporation was founded or in subsequent years. As a result, the named members failed to add any new corporate members.

In a recent example where this arrangement came to our attention at RCRI, no new members of the corporation had ever been named throughout the 60 years since their corporate filing initially was made. Luckily, both of the two founding members who were named in the articles of incorporation were still alive, were in their late 80s, and had the capacity to name additional members. So it was arranged for them to name two new members immediately. Then the articles were amended—in accordance with the bylaws—to change the corporation from a member corporation to a non-member (board-directed) corporation with a self-perpetuating board of directors.¹⁰

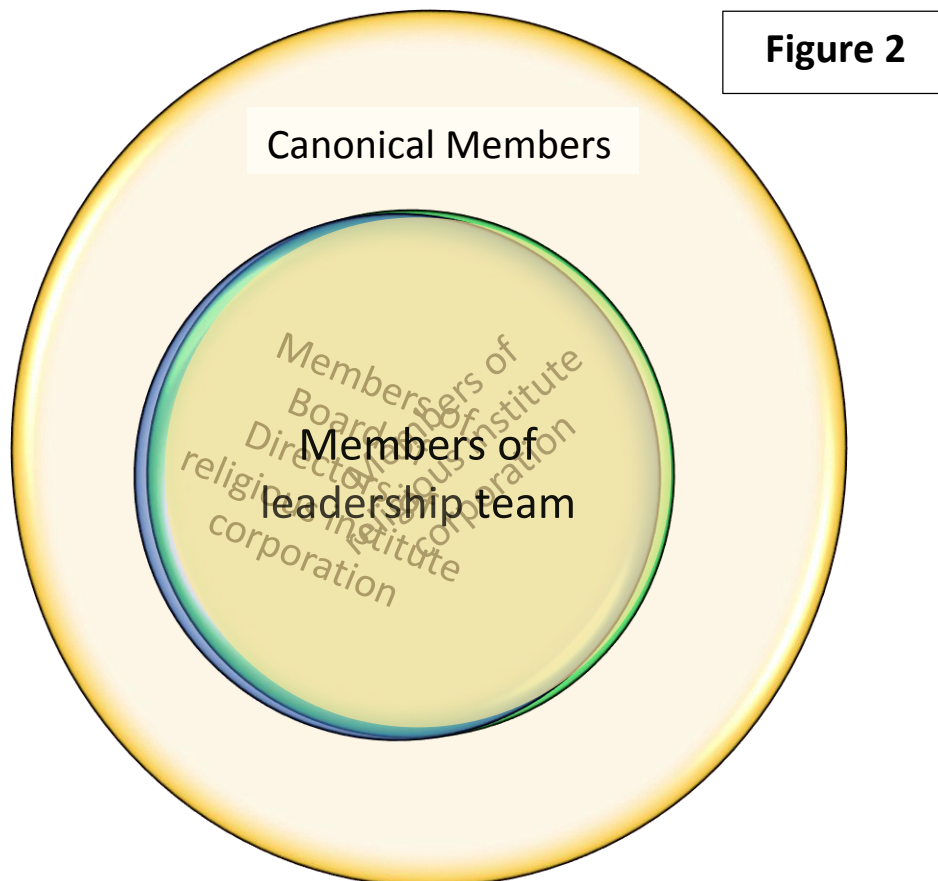
¹⁰ In this instance, the fact that the corporate members did not in fact appoint the members of the board was not explored. The canonical leadership served as the corporate board, which is appropriate.

We did not explore the validity of actions placed by a board of directors who were not selected in the manner dictated by the corporate documents. Canonically, the concept of sanation exists to correct

In the third example, the members of the civil corporation and the members of the board of directors were the same people – that is, the canonical leadership team.

Figure 2 below illustrates this scenario to show how the members of the leadership team equate with the board of directors and

with the members of the corporation. Notice that in this depiction there is no option for board members to come from outside of the canonical membership of the religious institute.



Although this arrangement seemingly offers the most protection for the religious institute over its temporal goods and its own governance, it actually has an unnecessary component—members of the corporation. As depicted here, all canonical leaders are members of the board of the corporation

and, if there is a provision for membership in the corporation, they also serve in that capacity. This helps show why there is no need for members of the corporation since those same individuals are already the members of the board of directors by virtue of a provision in the articles and bylaws of

certain past imperfections. In this case, since the two original members were alive, one option may have been to draft a document wherein the two original members stated that they unequivocally approved

the appointment of all past canonical leaders to the civil board of directors by their tacit acceptance during the years that each board served.

the corporation. The board of directors establishes corporate management-related policies, makes decisions on major company issues, and oversees the major business of the corporation in order to protect its nonprofit and tax-exempt status and overall mission. There is nothing for the members to do since the canonical leaders are already serving as board members.

This begs the question of whether a religious institute as a nonprofit is *required* to have members. Although most states give nonprofits the option not to have members, the mechanics of this choice can vary. For instance, Illinois and Maryland generally provide that a nonprofit can choose not to have members, while New York affords only a charity the right not to have members. The corporation's articles of incorporation and its bylaws should state that the nonprofit has no members. In the state of Maryland, when winding down a corporation, there must be a statement in the articles of dissolution that there are no members of the corporation if indeed there are none. If there are members, their approval is generally required—in addition to affirmative votes of the board of directors and the members—to move forward with dissolution. State law must be followed carefully in these matters.

Membership Requirement in Delaware

Delaware is a state where many incorporators go to file their Articles of incorporation due to that state's more favorable treatment of corporations. However, Delaware law requires all nonprofit corporations to have members. If members are not expressly provided for in the organization's legal documents,

Delaware law provides that any individual or organization with the right to vote for the directors of the new corporation will be considered to be a member. In practice then, if the board is self-perpetuating, and if members are not defined in the articles or bylaws, a Delaware nonprofit's directors are, by default, its members.¹¹ Thus, if an attorney suggests that Delaware is the recommended place for a religious institute to incorporate, this membership requirement should be given due consideration.

Membership and Federal Tax-Exempt Status

The tax-exempt status of a nonprofit can also be a determining factor in whether it must have members. For example, condominium “apartment owner” associations are required to have members—namely the owners of the apartments themselves. Similarly, a Section 501(c)(7) organization under the Internal Revenue Code is a “social club” supported by its members. Luckily, there is no requirement for charities exempt under Section 501(c)(3) to have members. Since all religious institutes normally qualify as 501(c)(3) organizations, the Internal Revenue Code does not require their corporations to have members.

Voting Members vs. Self-Perpetuating Boards

In addition to the religious institute itself, some sponsored ministries are necessarily separately incorporated as a means of separating the activities and the finances from the religious institute itself. When forming a separate nonprofit corporation, the

¹¹ See, e.g., “Recent Changes in Delaware Law Governing Not-for-Profit Corporations,” PROSKAUER ROSE, LLP, *Not For Profit/Exempt Organizations Blog*, (October 5, 2011) <http://nonprofitlaw.proskauer.com/2011/10/05/recent-changes-in-delaware-law-governing-not-for-profit-corporations/>.

[com/2011/10/05/recent-changes-in-delaware-law-governing-not-for-profit-corporations/](http://nonprofitlaw.proskauer.com/2011/10/05/recent-changes-in-delaware-law-governing-not-for-profit-corporations/), accessed 13 June 2017.

institute's canonical leadership and the attorneys must decide whether the corporation will be board-driven or member-driven. If the corporation is board-driven, there are typically no members or, if members are required, they have very limited rights. If the organization is member-driven, the members are typically voting members who have the power to elect and remove members of the board of directors.

This helps show why it could be a conflict of interest for a corporate member to also be a board member. Voting for oneself is a form of self-dealing, and this could raise ethical concerns.

Voting Members

Voting memberships are useful when an organization wishes to be democratically controlled by its constituents. Voting membership structures are commonly used by member-driven organizations such as social clubs, congregational churches, chambers of commerce and trade associations. Since these types of organizations exist to serve their members, it makes sense for control to be vested in the members. In addition, members can be required to pay fees and can be influential ambassadors for fund-raising events.

When considering whether to include voting members in a nonprofit corporation, it is important to understand that voting members of a nonprofit corporation generally are comparable to shareholders of a business corporation. Voting members normally have statutory rights under the laws of the state where the corporation is formed. Therefore, it is important to clarify

the rights of members to avoid unintentionally creating a voting membership class and vesting ultimate control in the members when that is not the intended structure.

Other points to note with regard to corporate membership are the following:

- Members generally have a right to inspect all records of the organization, including financial statements;
- There is a potential for the creation of liability on the part of members under state law; and
- Once a membership corporation has been established, it may be difficult to eliminate the members. Indeed, it may not be possible without the consent of the members themselves. So if they do not want to be voted out of existence, they can block their own demise.¹²

Recently a religious institute sent its articles and bylaws in for review. The articles never mentioned members, but one of the first paragraphs of the bylaws was titled "Members of the Corporation." It went on to state only that the members were the canonical leaders of the religious institute. After that, there was not another mention of the members. A later entry in the bylaws explained that the corporation's board of directors was made up of the members of the canonical leadership team of the religious institute. When the person who submitted the bylaws was asked when the corporate members met, the response was that there was an "annual meeting of the members and directors." No distinction was made as to the capacity in which the individuals filling those position were acting at any given time

¹² California law provides that a class of voting members cannot be abolished by the directors without the consent from the voting members. See

"California Attorney General's Guide for Charities," http://ag.ca.gov/charities/publications/guide_for_charities.pdf, p. 24, accessed 13 June 2017.

during the meeting. The assumption was that these were interchangeable terms for the same positions.

Clearly the attorney who drafted the articles and bylaws for this corporation was not acting in a knowledgeable manner. There is no use in having corporate members when they have no stated purpose. In this instance they did not elect the board members, which is the most common reason for having corporate members. They did not have authority to approve a merger or dissolution. If there was a state law requirement that there be members, then there should be an indication as to what their duties were. In this case, there was no such state law requirement, so the superfluous imposition of members only added a layer that served to complicate things. If the law gave statutory rights to members of a nonprofit corporation, such as the right to elect board members, then overlooking these provisions could make actions of the board invalid under the law.

Voting memberships can further complicate the governance of a nonprofit corporation. For example, corporations with voting members must hold meetings of the members in addition to meetings of the board of directors. This includes sending out notices and agendas, holding the meetings according to the bylaws, and documenting the meetings in a similar fashion as the meetings of the board of directors. Naturally, the membership roster must be kept up to date to know who is eligible to vote. Failure to hold required annual meetings could result in loss of “good

standing” status or the imposition of penalties under state law.

Corporations with voting memberships can also be subject to difficulties from among the membership. If the requirements for membership are too broad with whom they allow to be members, it is possible for factions within the membership to recruit their supporters as members and shift the direction of the nonprofit corporation. Many nonprofit boards are so desperate to recruit members of a certain status or with certain credentials that they accept people who are not at all familiar with the mission of the organization and who, therefore, do not have the best interest of the organization in mind when undertaking to vote on important undertakings.

One such case in 2004 included the well-publicized struggles at the Sierra Club, a well-known environmental organization. The dispute focused on efforts by several outsiders and the grass-roots members of the club to win seats on the board of directors.¹³ A faction within the organization’s 750,000 members developed that supported an anti-immigration agenda that offended many of the Sierra Club’s longtime supporters and allies. The anti-immigrant faction encouraged its supporters to send in their annual dues payment so that they could gain the right to vote at the annual meeting. In the end, the incumbents were successful in repelling the takeover attack. The Sierra Club case was unusually high profile; however, similar scenarios regularly play out in nonprofit boardrooms across the country.

¹³ See. e.g., F. BARRINGER, “Bitter Division for Sierra Club on Immigration,” *New York Times*, March 16, 2004, at http://www.nytimes.com/2004/03/16/us/bitter-division-for-sierra-club-on-immigration.html?_r=0, accessed 13 June 2017. See also the conflict between the CEOs of Coca-Cola and some of

its board members between 1997 and 2004. R. HASSON, “How to Resolve Board Disputes More Effectively,” *MIT Sloan Management Review Magazine*, Fall 2006, at <http://sloanreview.mit.edu/article/how-to-resolve-board-disputes-more-effectively/>, accessed 13 June 2017.

Self-Perpetuating Boards

In contrast to corporations with boards elected by voting members, most charities are governed by self-perpetuating boards. Self-perpetuating boards simply vote for their own replacements. In a nonprofit with a self-perpetuating board, the board of directors is typically the ultimate seat of authority within the organization. Self-perpetuating boards tend to be more stable, but they can become insular and unresponsive to the needs of constituents if their ranks are not regularly refreshed.

It is also possible to combine a self-perpetuating board with nonvoting members. Some nonprofit organizations require nonvoting members to pay dues to receive certain program benefits. Some museums which sell memberships to patrons use this fee-structured approach. The membership may entitle a member to free admission to exhibits and to receive certain other benefits, such as gift shop discounts, exhibit previews and invitations to special events. However, such memberships typically do not include voting rights or special privileges related to governance of the organization.

Non-voting memberships are useful in some other religious organizations. For example, the Resource Center for Religious Institutes sells its memberships to a specific group of organizations (religious institutes), and the members of those member organizations are then entitled to specified benefits. There

may be classes of membership also, which can entitle the classes to more or fewer benefits, within the discretion of the organization.

Organizations that have memberships of this type must take extra care to define and limit the rights of non-voting members because, where governing documents are ambiguous or unclear, state law may fill in the blanks and grant unintended rights to those designated as “members.”

Conclusion

The understanding of “members’ within the various contexts in which it arises in the civil law for religious institutes is extremely important. Unintended consequences can result when the corporate documents inadvertently create roles or positions when they are unnecessary for carrying out the institute’s mission. Those who handle the administrative affairs of a religious institute should take time to review the formative and governing documents to see if they include unnecessary classes of members and whether the required meetings are being held. If a superfluous corporate membership is included, it may be wise to explore the possibility of amending the articles and/or bylaws after explaining the reasoning to the board of directors. They are in the best position to have in mind the best interests of the religious institute and should support such an amendment of the formative and governing documents.