

## **HOUSING CORPORATION FORMATION MANUAL SERIES**

### **PI KAPPA PHI FRATERNITY**

#### ***Outline of Series***

- I. KEY ORGANIZER'S SUMMARY AND GUIDE
- II. Preliminary Groundwork for Formation or Reinstatement
- III. Drafting or Amending Articles of Incorporation
- IV. The Organization Meeting
- V. Drafting Bylaws
- VI. Tax Exemption Considerations and Application

## **HOUSING CORPORATION OPERATIONS MANUAL SERIES**

### **PI KAPPA PHI FRATERNITY**

#### ***Outline of Series***

- I. PRESIDENT'S SUMMARY AND GUIDE
- II. Meetings, Decisions and Minutes: How a Corporation Operates
- III. Relations with the Student Chapter and Campus
- IV. Financial Management and the Housing Investment
  - Appendix A - How to Get the Bucks You Need for Competitive Housing
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# HOUSING CORPORATION FORMATION MANUAL SERIES

## PI KAPPA PHI FRATERNITY

### *Preface*

“To consider oneself different from ordinary men is wrong, but it is right to hope that one will not remain like ordinary men.”

- Yoshida Shoin

The manuals in the Housing Corporation Formation Series result from ten years of effort. The combined series represents the most comprehensive information source available to housing corporation officers in the fraternity world today. It is dedicated to you, the committed volunteer, without whom the Fraternity could not accomplish its objectives of expansion in number of chapters, membership growth and high standards.

The following individuals contributed to this series and deserve the Fraternity's debt of thanks (listed in alphabetical order): Brothers David R. Baker (Alpha Epsilon), Glenn A. Dickson (Beta Upsilon), Travis P. Julian (Omicron), David G. Lane (Omega), Gary A. Leonard (Alpha Epsilon), Durward W. Owen (Xi), Charles A. Rowland IV (Lambda), and Mark E. Timmes (Alpha Epsilon). Brother Steven S. Ryder (Gamma) prepared the initial draft. Brother Joseph A. Brady (Epsilon Omicron) coordinated the editorial committee that produced the final version.

Edited and reprinted in 1996.

# HOUSING CORPORATION FORMATION MANUAL SERIES

## PI KAPPA PHI FRATERNITY

- I. Key Organizer's Summary and Guide
  - A. Introduction
  - B. Preliminary groundwork
  - C. The organization meeting
  - D. Actions to be taken prior to the next meeting
  - E. First meeting of the board of directors
  - F. Securing income tax exemptions.
  - G. Final details and commencement of business

### ***I. KEY ORGANIZER'S SUMMARY AND GUIDE***

#### **A. Introduction**

The purpose of the Housing Corporation Formation manuals is to assist in developing housing corporations for chapters of Pi Kappa Phi Fraternity. If a chapter house is owned, a housing corporation is the legal entity which must hold title to the real estate and the furniture and equipment used in its operation. If a chapter house is being rented, a housing corporation should be involved as the lessee of such property. Almost every student chapter is housed, or has goals to be housed in the future.

Local housing corporations have jurisdiction over the largest share of assets within the domain of the Fraternity - it's not unusual for corporations to be responsible for individual properties worth half a million to a million dollars or more. It's unquestionably important that those assets be managed capably and responsibly.

Student members alone or as a chapter cannot purchase a chapter house. It's inadvisable or impossible for a number of reasons. A housing corporation is required for such activity. Every chapter that operates a chapter house or intends to acquire one in the future must have a housing corporation.

The alumni members staffing a housing corporation may not have expertise in all aspects of buying, building, leasing, or operating property. However, they have the experience and local contacts needed to access the necessary information. The corporation can more effectively solicit support of alumni members and community business leaders. It can coordinate alumni fund raising projects which will be successful, whereas experience clearly dictates that a

student chapter cannot.

This manual series is directed to the key-man organizer. The key organizer is responsible for spearheading the efforts to organize a new housing corporation or reinstate/revive an existing one. It's expected that the key organizer will delegate most of the organization effort to others on the organizing committee. He should spend most of his time making sure that others are getting the needed work done rather than doing it himself.

It's assumed that most of the organization tasks are assigned to others to be carried out. The logical officers for these tasks are mentioned in some instances. However, the reader should not interpret these as a pre-assignment to specific committee members. The key organizer or organizing committee are encouraged to make assignments of responsibilities based on the capabilities of the individual volunteers.

The manuals are intended to be copied and distributed to the members of your organizing committee. You should not, however, distribute the original copies. As key organizer, it's expected that you're in control and make assignments of duties among your organizing committee members. You'll need a complete set of manuals at all times.

The Formation Manual Series is intended to cover all general aspects of organizing or reinstating a local housing corporation. Due to variations in state laws and the unique circumstances of every chapter, some customizing will be needed in almost every specific situation. The manuals don't cover aspects of ongoing operations following after the initial start-up period.

The format of each manual's main section is

condensed. A quick overview of necessary actions and steps is thus facilitated, essential to the person with primary responsibility. Expanded sections that detail suggested procedures (and potential pitfalls) are grouped in appendices following the main body of each manual. The appendices are organized according to related actions and steps. That grouping enables delegation of responsibilities by the key-man organizer to other participants.

## **B. Preliminary Groundwork**

The key organizer's first task will be to form an organization committee. The purpose of the committee is to carry out the organization steps as a group effort. Three to six "core group" alumni members should be made interested in spearheading the proposed organization effort. Ideas on gathering participants and recommended qualifications are discussed in Formation Manual II—Preliminary Groundwork.

A preorganization meeting should be held of the

The key organizer is responsible for:

1. Arranging the preorganization meeting and soliciting the core group alumni to attend.
2. Coordinating the preorganization meeting. At that meeting, the later organization meeting must be planned, and individuals or committees assigned to work on the articles of incorporation or articles amendments.

## **C. The Organization Meeting**

The key organizer usually has direct responsibility for arranging the organization meeting.

The meeting often is held in conjunction with a social gathering for local alumni members. It should be open to all alumni members of the Fraternity. It's intended to 1.) Round out the organization committee, and supply a larger pool of volunteers willing to serve on the corporation during its initial year or otherwise provide support; and 2) Enable adoption of articles of incorporation or articles amendments in order to form or reinstate the corporation.

The organization meeting requires advance planning and preparation. The alumni members that you would most desire to meet and to have supporting the corporation should be in attendance. Specific steps for an organization meeting are recommended in Formation Manual IV—The Organization Meeting.

The key organizer is responsible for:

organizing committee participants. The preorganization meeting is the forum at which the new corporation's specific objectives should be discussed and timetables established. The alumni members serving on the organizing committee will be expected to assume responsibility for most of the organization effort.

The preorganization meeting also must plan the organization meeting for the corporation. A later activity for local alumni members should be planned. The social event will provide the basis for the new corporation's organization meeting. Many steps must be taken to prepare for organizing or reinstating the housing corporation. The important preliminary steps are summarized in Formation Manual II—Preliminary Groundwork.

The corporation's articles of incorporation (if newly organized) or articles amendments (if being reinstated) will be adopted at the organization meeting. Sample articles of incorporation and a certificate of amendment of articles of incorporation are included in Formation Manual III—Drafting or Amending Articles of Incorporation.

1. Being prepared to chair the organization meeting or arrange for its conduct by someone else.
2. Assuring that the meeting content is appropriate, relevant questions are answered, and the meeting's goals are achieved.
3. Making sure that the following committees are formed to act on certain matters and to report to the next meeting (duties discussed below):
  - a. Articles of Incorporation Committee (the articles should already have been prepared, so that the organization meeting has a copy ready to be adopted).
  - b. Nominating Committee.
  - c. Bylaws Committee.
  - d. (Temporary) Finance Committee.
4. Scheduling the next meeting (allow enough time for the committees to complete their tasks).

## **D. Actions to be Taken Prior to Next Meeting**

Several steps must be accomplished between the organization meeting and the first board of directors' meeting. Usually they are assigned to various members or committees. The duties are fully described in Formation Manual IV—The Organization Meeting.

The Articles of Incorporation Committee or person must arrange for the final execution of Articles of

Incorporation by the incorporators if the corporation is newly organized. If the corporation is being reinstated/revived, however, the committee instead will arrange for signing of the Certificate of Amendment of Articles of Incorporation, if one is required, by two principal officers. The committee will file them with the Secretary of State (or State Corporations Commission, etc.) Also, if filing of articles or amendments is required with

the county by the state of incorporation, the committee or individual must arrange that they be filed or recorded with the county as well. In some cases, filing of an income tax exemption application with the state taxing agency must be done concurrently with filing of the articles of incorporation. That also would be a committee duty if necessary in your state.

The Nominating Committee must meet. It must review the qualifications of potential candidates, meet with them, and develop a list of recommended nominees for the corporation's offices.

The Bylaws Committee must meet. It shall work either on bylaws drafting (for a newly organized corporation) or updating (for a corporation being reinstated).

Lastly, the (Temporary) Finance Committee must meet. It is to do research on local financial institutions for checking and savings accounts. The institutions to hold the accounts must be recommended, and respective account resolution forms obtained (often included on signature cards).

The key organizer is responsible for:

1. Coordinating with these committees to make sure that they carry out their assigned tasks before the next meeting.

## **E. First Meeting of Board of Directors—Officers, Bylaws, etc.**

When the intermediate steps are completed the corporation is ready for the first meeting of the directors. The key organizer usually has primary responsibility for conducting this meeting. The following business agenda is recommended for the first meeting of the directors:

1. Convene; appoint temporary chairman and secretary for the meeting; record time and names of those attending.

COMMENT: Be careful in appointing a Secretary. It's very important to take good formal minutes of the meeting.

2. Is the meeting validly constituted? Determine that a quorum is present, and that notice was sent to all directors.
3. Read and review minutes of the incorporators' meeting (the organization meeting). Approval of those minutes (as read, or as corrected or amended).
4. Reports of officers and committees.
  - a. Proof of filing of articles of incorporation.
  - b. Officers and elections—receive the report of the Nominating Committee. The directors attending the meeting elect the initial officers of the new corporation.
  - c. Bylaws—receive the report of Bylaws Committee. Review and adopt bylaws (for a newly organized corporation) or bylaw amendments (for a revived corporation).
  - d. Bank, etc. Accounts—Receive report and recommendations of Temporary Finance Committee.
  - e. Admission of members. After bylaws have been adopted, review the membership subscriptions from the organization meeting and formally admit members if desired.
5. New business
  - a. Adopt required resolutions to open bank accounts.
  - b. Appropriate the funds to open the accounts.
6. Next meeting—adopt date, time, and place of the next meeting.

The key organizer must be prepared to do the following:

1. Chair the meeting until the chairman and secretary are selected.
2. If the chairman is someone other than the key organizer, to coach that person on the conduct of the meeting to follow.

Now that regular officers finally have been elected, the Formation Manuals should pass to the newly elected President of the corporation.

## **F. Securing Income Tax Exemptions**

Income tax exemption must be secured so that the corporation can begin financial operations. This process should be delegated to the corporation's attorney or finance/accounting volunteer.

The primary step is preparing and submitting the Application for Income Tax Exemption with the

Internal Revenue Service. With the preceding steps taken care of, the corporation must next apply for state income tax exemption, if applicable. The forms and procedures are reviewed in Formation Manual VI—Tax Exemption Considerations and Application.

Issuance of the determination letter(s) granting exemption signifies completion of this step.

The corporation's President is responsible for:

1. Coordinating with the person performing this task, to assure that it's accomplished in a timely fashion to the extent possible.

## G. Final Details and Commencement of Business

With the preceding steps completed, the incorporation process is virtually finished. Only a few final steps remain to be completed before the corporation is fully operational. The corporation's President usually has primary responsibility for them. The remaining steps are as follows:

1. **Business license or permit** - The information obtained about procedures to obtain any required business licensing, police permit, or other local registration (discussed in Formation Manual I—Preliminary Groundwork) should be carried out here.
2. **Checking account** - The account must previously approved must be opened. Some requirements will have to be satisfied with the selected institution:
  - a. The corporation's Employer Identification Number must be given to the selected institution in order to comply with Federal requirements.

COMMENT: To commence business immediately, it may be possible to open the account without supplying the EIN. The institution may allow a specified period of time to supply the EIN for their records, as long as it is applied for, without penalty. The institution may be permitted by law to offer a period such as perhaps 60 days. If the corporation doesn't already have the EIN and would like to start business immediately, ask about this alternative.

- b. Many banks also will require copies of articles of incorporation and bylaws for their files (photocopies showing filing information or stamps should be sufficient).
- c. Photocopies of the exemption determination letter(s)-- Federal and

State—may have to be provided in order to qualify for a service- charge free account (Don't give out the originals!)

- d. A corporate resolution adopted by the board of directors will be required (the institution usually provides resolution forms for this purpose, often on the signature card itself).

It's also possible to open a new account with a "temporary" signature card, as long as a fully executed card with ratified resolution is submitted within a certain time period.

3. **Savings or Cash Investment Accounts for reserves** - As with a checking account, the corporation's EIN will have to be supplied in order to comply with the institution's requirements. Failure to supply a correct EIN can result in a 20% backup withholding of interest earnings. The savings institution may also require copies of articles of incorporation and bylaws for their files (if so, photocopies showing filing information or stamps should be sufficient). A resolution adopted by the board of directors also will be required.

COMMENT: See comment under preceding section concerning EIN if not yet assigned, and use of a temporary signature card to open the account immediately.

4. **Change of Name: Amendment of Articles of Incorporation** - If the chapter becomes chartered after the corporation is organized, it may be desirable to amend the articles of incorporation to change the name to include the chapter Greek letter designation. The Secretary of State (or State Corporations Commission, etc.) should be contacted to find out the requirements for filing a Certificate of Amendment of Articles of Incorporation in your state. Requirements of the form will vary somewhat from state to state, but generally will follow the form set out in Sample 2 of Formation Manual III—Drafting or Amending Articles of Incorporation.
5. **Copies of documents to the Administrative Office of the Fraternity** - The Administrative Office is the Fraternity's ultimate information archives. Alumni members are busy with their careers and family; it's easy for important housing corporation documents to be misfiled or permanently lost. Keeping the records updated

at the Administrative Office could save the corporation from document keeping disasters. Send:

- a. Copy of Articles of Incorporation (or Certificate of Incorporation), as certified by state authority. If the corporation's actions involved amending the articles, send a copy of the certified amendment instead.
- b. Copy of Bylaws as adopted or amended.
- c. Copy of Federal income tax exemption letter.
- d. Copy of state income tax exemption letter (or statement signed by corporation officer that none is required in that jurisdiction).
- e. Copy of local business license/permit (or statement signed by corporation officer that none is required in that jurisdiction).
- f. Copy of Notice of Federal Employer Identification Number.
- g. Copy of full minutes of incorporators' meeting (the organization meeting), and/or first directors' meeting.

The corporation's President is responsible for:

1. Coordinating all individuals or committees assigned to the preceding tasks, to make sure that they are accomplished before the next board of directors' meeting.

With those tasks accomplished, the corporation will be able to start full operations.

**HOUSING CORPORATION FORMATION MANUAL SERIES**  
**PI KAPPA PHI FRATERNITY**

- II. Preliminary Groundwork
  - A. Introduction
  - B. Assembling the organizing committee
  - C. Steps for all organizing efforts (starting)
  - D. Steps for housing corporation seeking reinstatement
  - E. Steps for organizing a new housing corporation
  - F. Steps for all organizing efforts (concluding)

**II. PRELIMINARY GROUNDWORK**

A. Introduction

This manual reviews the steps needed to form a new housing corporation or to reinstate an existing one which has become inactive. The preliminary groundwork steps covered here consist mainly of information gathering.

B. Assembling the Organizing Committee

For best results, three to six “core group” alumni members should be made interested in spearheading the organization effort. Locating candidates will be easier if the local alumni members of the Fraternity are known and have been involved. To get information about potential candidates, coordinate with prominent local alumni members and the student chapter officers. Ask about names of alumni who have made themselves visible. Get the guest register of alumni that attended the previous Founders’ Day. Contact the Fraternity’s Administrative Office for a listing of local alumni addresses.

The organizing committee will be greatly helped if an experienced local attorney could be recruited to assist with some of the corporate legal needs. Many of the incorporation or corporate reinstatement/revival steps will require technical expertise that an attorney can best provide.

Hold a preorganization meeting of the organizing committee participants. The meeting is the forum at which the new corporation’s specific objectives should be discussed and timetables established. Alumni members will be expected to assume responsibility for most of the organization effort. A later activity (social in nature) for local alumni members should be planned at the meeting.

C. Steps for All Organizing Efforts (starting)

The following steps should be taken in all cases, whether to organize a new housing corporation or to

reinstate an existing one.

- 1. Survey the local alumni to find candidates for the future board of directors.** Survey the Fraternity’s alumni members who reside in the vicinity of the chapter the proposed housing corporation will serve.

The proposed corporation will benefit most if skilled alumni are attracted to participate. The organizing committee seeks to attract the best skilled alumni available. The main skill criteria are professional background and business decision-making experience. Additionally, a varied distribution of ages is helpful (adds a greater range of experience and contacts). Alumni members of chapters other than the chapter to be served by the corporation is helpful as well (again, adding broader experience).

Contact them and advise that a housing corporation is being considered. It would be part of the fraternity’s desire to improve support and activities for the alumni members, as well as for the student chapter. The immediate objective is to develop a list of interested alumni members and to learn more about the resources which they possess without making specific commitments about the corporation’s staffing which later could become a problem.

Alumni with experience in certain professions usually will help the corporation most.

These are:

- a. Real estate or property management;
- b. Law;
- c. Finance or accounting;
- d. Building construction and contracting.

Of course, alumni members of other professions also can be of help; one dedicated participant who can devote as

much time as is needed can be worth ten experienced but casually committed individuals.

COMMENT: Regardless of the professional backgrounds the potential candidates have, the corporation is seeking individuals who are accustomed to making business decisions. In the real world, there is no such thing as a business opportunity that has a zero risk level. The best candidates will be persons making management and business decisions on a daily basis. For example, if there are two candidates employed by a bank, one who's an appraiser and the other who's a loan officer, the loan officer would be first choice. (The appraiser is by nature more of an analytical advisor, while the loan officer has to make business decisions.) A further criterion is the length of time the candidate has been performing his decision making duties. If less than six months, it can be disregarded.

By all means, your board can add a teacher, house painter or the like for the sake of balance. Just keep in mind that the corporation will need other strengths as mentioned, and avoid creating a board composed entirely of teachers.

If the organizing committee was not able to obtain the participation of an attorney earlier, hopefully one could be recruited by this point.

To achieve positive results, some types of people should best be avoided. At all costs avoid negativists and those unable to focus on the immediate challenge. The organizing committee will be coming in contact with a broad range of alumni members. A problem could be faced if one is encountered either who is very negative, or who repeatedly brings up some disaster from his own chapter years ago.

The organizing committee is interested in forming a team that is going to build something positive. If the individual can't easily be channeled into a cooperative and upbeat mode, you're best off in striking his name from the organization meeting invitation list.

**2. Publicity mailing** - Produce a mailing to be sent to all local alumni members publicizing the activity, the corporation's pending organization/revival, and asking them to attend or to participate in another capacity (leave general). The mailing should state the activity date, time and place, and include the organizing committee participants' names and telephone numbers for convenient response. The Fraternity's Administrative Office can be of assistance in

developing the mailing.

**3. Follow mailing with organized personal calling campaign** - Personal contact will increase the response factor. The mailing should be followed with a telephone call or personal visit. The local alumni members list should be copied, broken down into segments, and given to participants. The best contact people are the organizing committee alumni members; students should be used only as a last resort. As always, one key person should take the assignment of monitoring the progress of the contacts.

**4. Research whether a corporation formerly existed** - Do some research on whether a housing corporation served the chapter in the past (i.e., one already has been organized, and only need be reinstated or revived). Contact the Fraternity's Administrative Office for information on file concerning the original corporation.

COMMENT: Data you'll need: Articles of incorporation, bylaws, exemption letters, and employer Identification notification (may appear on other documents, such as tax exemption letter or Form 990). Names of last listed officers of corporation also could be helpful to pursue any missing documents and to verify that Administrative Office copies are the most current.

**5. Information on local permit, license, etc. needs** - Call the city and county tax and license agencies to find out if any business license, police permit, or other special registrations apply. If so, ascertain the application procedures and filing fees.

COMMENT: Many localities don't require licensing of nonprofit entities, except for charitable, educational, etc. type organizations that are doing active fund raising from the general public. The proposed corporation will be conducting housing services for a chapter of a national college fraternity on behalf of its members, and not for the general public. Make sure this point is clear when asking public bodies about licensing.

**6. Find a prospective registered agent** - Determine the person who is to act as the corporation's registered agent for the initial year, biennium, or other period until the next registration statement must be filed.

COMMENT: The "registered agent" is the person designated to be served with legal papers should the corporation ever be sued. The papers would notify

the corporation of the suit and start the legal process. Every state requires that a corporation designate such an agent. The agent need not be an attorney. The only other requirement that virtually every state makes is that the agent must provide a street address at which he could be personally served during daytime hours. Almost without exception, a post office box or other point used merely to receive mail is not acceptable. The organizing committee must consider this qualification in the selection.

#### D. Steps for Housing Corporation Seeking Reinstatement

If a housing corporation/incorporated alumni association did not previously exist, skip to section E.

- 1. Find out the exact name that the corporation was granted by the state when it was chartered or last amended** - If necessary, call the Secretary of State (or State Corporations Commission, etc.) for your state, which usually is found under the state government telephone listings for the state capital.

COMMENT: Most states keep their index records in alphabetical order rather than by keyword, so if you don't have the exact name, you'll have a problem. If you must work with less than an exact name it is better to have the first few words exact than the last few. With that information you can call and determine the requirements that must be met for reinstatement or revival (usually less cumbersome and less expensive than organizing a new one, unless the original corporation was organized as a stock corporation). Filing of some documents and payment of fees usually are required.

- 2. Request information circular** - Call the Secretary of State (or State Corporations Commission, etc.) for your state, and ask if they have a circular available describing the required procedures for amending the articles of a nonprofit corporation in your state. Also find out if amendments or other documents must be notarized.
- 3. Review corporation law** - With the organizing committee alumni members, assign task of reviewing the corporation law requirements in your state. The committee is specifically interested in requirements for amending the articles of incorporation, and allowable provisions in the articles and bylaws applicable to nonprofit collegiate fraternity and sorority chapter housing corporations. If the organizing committee was able to secure the assistance of an attorney, this task is best suited for his expertise.
- 4. Determine if tax exemption must be**

**reinstated too** - Call the state corporation tax bureau for your state, which also is usually found under the state government listings for the state capital. State that you wish to find out the fees and filing requirements to reinstate the tax exemption of a nonprofit corporation whose charter was suspended/revoked.

COMMENT: At the same time, find out whether there may be back taxes, franchise fees, or penalties for failure to file reports or statements, and accumulated interest on such charges, from the corporation's prior existence. Be careful! There is no point in reinstating or reviving if accrued fees, etc. are astronomical. avoid surprises.

- 5. Find the corporation's former Employer Identification Number** - The corporation's original EIN will be needed in order to resume using the original federal income tax exemption. If it can't be located, tax exemption will have to be reapplied for as though a new organization. Suggested procedures for finding the number:

- Contact the Administrative Office to find out whether they may have a record of the Employer Identification Number.
- Call the local Taxpayer Assistance number for the Internal Revenue Service. You will be connected to a Taxpayer Assistance clerk. Explain the problem, and that you're an officer of the corporation that is seeking information about itself. Give them specific information as to the exact name of the corporation including spelling and last mailing address if known.

COMMENT: Sometimes the clerks in Taxpayer Assistance, for whatever reason, are not able to locate any record of the organization. Possibly the problem may arise from an inability to exactly spell the long unusual names used by our corporations, and that the slightest misspelling at their computer terminals, even when given the correct spelling with your inquiry, will produce a failure to match.

- If both the preceding fail, call the local Taxpayer Assistance number for the Internal Revenue Service. Ask for the Disclosure Officer. Give the officer specific information as to the exact name of the corporation including spelling and last mailing address if known.

With the preceding steps completed, skip to section F.

#### E. Steps for Organizing a New Housing Corporation

Since a housing corporation did not exist for the chapter before, a new one must be formed.

- 1. Request information circular** - Call the Secretary of State (or State Corporations

Commission, etc.) for your state, which usually is found under the state government telephone listings for the state capital. Ask if they have a circular available describing the required procedures for organizing a nonprofit corporation in your state. Also find out if articles of incorporation or other documents must be notarized in order to complete the incorporation process; this may determine how the documentation must be completed.

COMMENT: Filing fees for nonprofit corporations usually are much less than for a stock corporation. In a state where a stock corporation requires a fee of \$300, a nonprofit corporation's fee may be \$30. Be aware that many states misleadingly use the term "nonprofit corporation" when they literally mean a corporation that is formed as a non-stock corporation (it is sustained by members rather than stockholders). Incorporation as a nonprofit corporation usually means only that your corporation has no capital stock. For recognition of nonprofit status (and exemption from corporate income taxes), the separate step of applying for recognition of exemption usually must be taken with the taxing authorities (often a different government agency than handles incorporation), discussed in Formation Manual VI—Tax Exemption Considerations and Application.

**2. Review corporation law** - With the organizing committee alumni members, assign task of reviewing the corporation law requirements in your state. You're specifically interested in requirements for filing articles of incorporation, and allowable provisions for articles and bylaws applicable to nonprofit collegiate fraternity and sorority chapter housing corporations. If you were able to secure the assistance of an attorney on the organizing committee, this task is best suited for his expertise.

**3. Determine state tax exemption requirements** - Call the state corporation tax

bureau for your state. Ask whether the state has any tax exemption filing requirements of its own for a nonprofit corporation now being organized, separate from the Federal procedures. If so, find out the filing requirements and whether there are any fees. Also, find out if the Federal exempt determination letter must be issued first for them to consider the state application (if it's required as an attachment to the state application, then it has to be issued first.) The state agency may have an instruction circular and application forms which they could send.

F. Steps for All Organizing Efforts (concluding)

**1. Determine if any filings required by county** - If the original articles of incorporation (or certificate of incorporation, etc.) or any amendments must be filed with your county, call them to obtain specific information on the required steps. Verify any filing fees or other requirements you may have heard from the state officials.

**2. Add up all the costs** - Calculate the total costs of organizing or reinstating the corporation—all the filing fees due for incorporation/reinstatement, notarizations if required, tax exemption, business licensing, etc., plus costs of mailing documents. This will give an idea of the total to be raised in the form of dues at the organization meeting (incorporators meeting if being newly organized, general members meeting if being reinstated/revived).

**3. Develop a contingency plan for financing the incorporation or reinstatement costs** - Suppose that the collection during the incorporation meeting only nets \$20 in contributions. Can the organization process still carry through? You should be prepared to make some personal sacrifice if needed.

# HOUSING CORPORATION FORMATION MANUAL SERIES

## PI KAPPA PHI FRATERNITY

### III. Drafting or Amending Articles of Incorporation

- A. Introduction
- B. Organization structure issues to be resolved
- C. Drafting articles of incorporation/ articles amendments
  - Sample 1 - Articles of Incorporation
  - Sample 2 - Certificate of Amendment of Articles of Incorporation

### III. DRAFTING OR AMENDING ARTICLES OF INCORPORATION

#### A. Introduction

This manual explains the articles of incorporation contents needed by the local housing corporation. It also presents the experience that went into their drafting. No special legal expertise is required in the following. However, it presumes the most common case, in which an attorney will be the principal person in charge of the incorporation, and who has some exposure to organizing a stock corporation but little or none with a nonprofit incorporation. Nonprofit articles include provisions to limit corporate purposes and to qualify for income tax exemption. If the attorney is not experienced with those he may initially be puzzled by their length and complexity. This manual is intended to make all those problems understandable.

A standardized set of articles of incorporation are presented here which have been used by many local corporations. However, the corporation laws of each state and province are different. The articles probably will need some modification to comply with the statutory requirements of the jurisdiction in which the corporation is being organized.

***The proposed articles or articles amendments must be drafted before the organization meeting is held. For greatest efficiency, the articles or amendments in final form should be adopted and signed at the organization meeting. Their adoption is one of the major purposes of the organization meeting. It's one of the most important steps in the formation or reinstatement process.***

#### B. Organization Structure Issues to be Resolved

Before the articles of incorporation and/or bylaws can be drafted, the organizing committee will have to decide some issues that will determine the corporation's internal structure.

Some states don't require that bylaws be completed

and officers and directors named at the time the articles of incorporation are filed (those that do frequently require them as a part of pre-qualifying for state tax exemption). If your state doesn't, many or all of the decisions in this section probably could be postponed until the first directors' meeting that follows after the organization meeting. The structural matters could then go into the bylaws draft. If, however, your state's corporation laws require advance specification of any of the items discussed in this section (either for inclusion in the articles of incorporation or for a concurrent tax exemption application), then that item should be decided and incorporated into the required documents.

The corporation laws of all states have provisions that corporations must include in their articles of incorporation or bylaws. However, be aware that many states include provisions are permissive rather than mandatory. Examples of these include: 1.) "A corporation may include in its articles or bylaws . . ."; 2.) "Unless otherwise provided in the articles or bylaws, a corporation shall . . .", etc. Sometimes the statutory requirements are a list of alternatives, or a default option that can be superseded by specific language to a different effect in the articles of bylaws. Determine which provisions must be included in the articles and/or bylaws in accordance with the laws of your state. Determine which should be included in order to supersede less desirable provisions which may come into play without provisions to the contrary. Plan out the necessary articles of incorporation and/or bylaws accordingly.

The organizing committee must decide the following structural matters before the articles of incorporation or amendments can be drafted:

- 1. Implementation of student memberships** - Student chapter members should be included in the corporation's membership, in addition to the chapter's alumni members. The issues to be resolved will concern the allocation of voting rights,

representation on the board of directors, and fixing of dues for the student members.

COMMENT: The corporation must have a defined membership. The membership should be those persons from which most of the corporation's income is derived. If it can be shown that substantially all the income is derived from "members" there would be no problem with excessive nonmember income which would result in tax exemption revocation. If, on the other hand, a local corporation derives 2% of its income from alumni "members," while 95% of its income is student chapter rent payments when the students have no defined relationship, the IRS may find its attention attracted. Creating a separate class of "student members" in the corporation will minimize likelihood of chapter payments being deemed taxable "nonmember income" (a problem subject discussed further in Operations Manual IV—Financial Management). It also could help head off a challenge to the corporation's tax exemption by making it easier to prove that the corporation sponsors a social "commingling" of its members consistent with tax exemption requirements.

**2. Determine the number of directors to serve** - Generally this will be an odd number within the range permitted by the state (many states have 3 as the minimum but a few have 1 or 5; the maximum is unlimited in most states but is fixed at 11 in a few). The ideal number is between 5 and 11, a compact number which will make for efficient meetings and still enable representation by a broad professional background of alumni members.

**3. Determine the basis for representation to be achieved through directors elected** - This is the formal or informal basis on which directors should be elected to the board. Should there be a diverse representation of alumni members from all the periods in the chapter's history? Or would a geographical representation work best? Etc.

**4. Staggered terms of office for directors?** - Determine whether directors may be elected to terms longer than one year in your state. If so, consider staggered terms for the directors, where one half the directors come up for election every two years or one third come up every three years.

**5. Determine the extent of overlap between officers and board of directors** - The organizing committee should decide whether a.) All the corporation's officers should be elected

from among the directors; or b.) Some are elected from among the directors but not others, or c.) They should not be serving as directors.

### C. Drafting Articles of Incorporation/Articles Amendments

With the preceding issues decided, drafting of the articles or articles amendments can proceed. Sample 1 - Articles of Incorporation, and Sample 2 - Certificate of Amendment of Articles of Incorporation, are presented at the end of this manual to assist in the drafting process. The samples incorporate the following principles:

**1. Articles include only broad principles** - The articles of incorporation (or certificate of incorporation) are the corporation's broadest set of rules, establishing a basic structural framework. They should be elements that are the most general and essential and will virtually never be changed.

COMMENT: If the corporation is newly being organized, see Sample 1 for a suggested outline. Put all specific operating matters in the Bylaws. If the corporation already exists and is being reinstated, review its articles for compliance with the structure outlined in Sample 1. Should changes be needed, use the Certificate of Amendment of Articles of Incorporation example shown as Sample 2.

**2. Standardization increases participation** - This manual is written with the presumption that local corporation organization structures and method of operations are standardized in all locations. Members then may participate meaningfully in any local housing corporation's affairs wherever they may become located. While the corporation laws of each state and province vary, the principles will be the same and would enable implementation of a standard corporation format on a multistate basis.

**3. Tax exemption needs are included** - Tax exemption needs must be incorporated into the articles. The corporation will be filing for tax exemption under section 501(c)(7) of the (Federal) Internal Revenue Code as a "social club."

COMMENT: This is a confusing categorization of the organization's activities but it is the closest available under which we have been able to qualify

our local housing corporations. Principal requirements for 501(c)(7) status include a need for members as the principal source of the corporation's revenues, and that the corporation sponsor social events for their benefit as an integral part of its operations. This usually means that separate housing corporations for housing purposes, and alumni associations for social purposes, such as once were customary within the fraternity, should be consolidated under the housing corporation's umbrella.

4. **The corporation is sustained by members rather than stockholders** - Organization as a membership ("non-stock") corporation rather than a stock corporation has been found best.

COMMENT: Tax exempt status is simpler to obtain for membership corporations, and registering the corporation with the Securities and Exchange Commission and equivalent state bodies is usually avoided. Incorporation fees are substantially less than for a stock corporation.

5. **Principles of memberships** - The structuring of memberships illustrated as follows is recommended:

- a. Memberships are annual, and expire on a uniform date.

COMMENT: If the corporation should become inactive for a time, or corporate records otherwise become lost, it could become impossible to determine who the members are if a "life" members definition is used. Statutory requirements for corporate reinstatement or its operations then could become impossible to meet. Expiration of all memberships on the same date, such as the first day of the corporation's fiscal year, eliminates this problem.

Also, "automatic" membership, i.e., without dues or other affirmative indication of acceptance of benefits and obligations of membership, is void under laws of some states. This is because automatic memberships would create a circumstance where people could be made members without their knowledge or consent.

On the other hand, it's best not to create an impression among alumni members that the corporation is constantly trying to reach into their pockets. Ultimately, all members serving as officers or directors should be dues-paying supporters (it looks poor in the alumni newsletter if the organization's leaders aren't listed among its contributing supporters—it leads to a serious

credibility problem). As one idea, consider giving your membership candidates an "involvement" year of membership to become familiar with the corporation and its support needs before placing them on regular dues solicitation.

- b. Membership fees paid to the corporation are used as a funding vehicle for the building fund or alumni social activities.

COMMENT: You need funds, don't you? Don't underestimate the effect of these "small change" income sources.

- c. Concentrate the corporation's membership among alumni who are interested and willing to support the corporation's day-to-day endeavors—i.e., who are serving as volunteers, or who are willing to pay annual supporting dues.

COMMENT: Corporations with a defined, contributing membership body have much better involvement support and accountability to their members (compared to a body organized as a board of trustees with no membership). In many states a corporation can't establish a quorum of the members for members' meetings at less than 10% of the total membership. If membership is extended to all the alumni regardless of whether they contribute or are involved, and only 10% of the alumni both live nearby and are interested in the corporation's endeavors, then a 100% turnout would have to be achieved to have a quorum. This is impossible in practice. It's far better to limit membership to those who are involved or who contribute, and quorum achievement will be much easier.

From a practical standpoint, the alumni members are not noticeably disadvantaged by having memberships defined in this way. It's assumed that the board of directors would take truly major matters to the chapter's alumni at large should any occur (regardless of whether they had participated as members to that point in time).

6. **Notarization and execution needs** - In a few states, articles of incorporation and other documents need not be notarized to form a new corporation; a declaration under penalty of perjury by the incorporators may be sufficient. This may influence the content of one or two of the articles and the execution procedure.

COMMENT: It's possible in some states to draft a

finalized copy of articles of incorporation in advance of the organization meeting, with fill-in blanks for the names of the individuals who actually attend (and are the corporation's incorporators). This could help streamline the organization process. It would permit the meeting to be held in a single session. A later follow up meeting would not be needed to obtain the articles signatures and proper notarizations.

If notarization is required, the organizing committee will have to arrange for a notary to be present at the organization meeting (the meeting probably would be

held on a week-night or weekend, making notary attendance typically not possible). Otherwise, the follow up session may have to be arranged during lunch time on a business day or similar time when all signers could be present to have the notarizations done. A less desirable alternative is to have each incorporator sign separately and arrange for his own individual notarization. This is less satisfactory because it will delay the incorporation and cost the organization process some momentum.

**[Sample 1]**

**ARTICLES OF INCORPORATION  
OF**

**[PI KAPPA PHI FRATERNITY AT (Name of town)  
HOUSING CORPORATION, INC.]**

[OMEGA OMEGA OF THE PI KAPPA PHI  
FRATERNITY HOUSING CORPORATION, INC.]

***ARTICLE I***

NAME

The name of this corporation shall be [if the student chapter is not yet chartered use a name like PI KAPPA PHI FRATERNITY AT (Name of town) HOUSING CORPORATION, INC.]/[if it already is chartered and has been assigned its chapter Greek letter designation, use a name such as OMEGA OMEGA OF THE PI KAPPA PHI FRATERNITY HOUSING CORPORATION, INC.]

***ARTICLE II***

PURPOSE

The primary purpose for which this corporation is organized is to effect the voluntary association of qualified members of The Pi Kappa Phi Fraternity for their mutual benefit, for literary, educational, and fraternal purposes.

The corporation shall have as general purposes the conduct of social events, holding of literary and educational seminars, publication of newsletters and other communications, holding of title to and operation of club and housing facilities, and all manner of other purposes and activities of literary, educational, and fraternal nature for the mutual benefit of the members. Furthermore, the corporation shall do all and everything necessary, lawful and proper for the accomplishment or attainment of any of the purposes previously mentioned, and generally, to perform acts, to transact business, and to exercise powers in connection with the preceding purposes but only to such extent as may be consistent with law or with such further specific limitations on this corporation's purposes and powers as may be imposed in these articles.

[COMMENT: Some states have mandatory statements about purposes which must be included or may substitute for portions of the above. Any such required statements would be specified in your state corporation law. Note the "social events" purpose above, the need for which was discussed previously. The "literary and educational" purposes mentioned are included because they typically are a limited part of a local corporation's objectives. They will not constitute the primary basis for tax exemption for reasons discussed in Formation Manual VI—Tax Exemption Considerations and Application. The IRS, as a matter of established policy, will classify local housing corporations with the above mix of differing nonprofit objectives as section 501(c)(7) organizations.]

***ARTICLE III***

LIMITATIONS ON PURPOSES AND POWERS

The purposes and powers of this corporation shall be limited as set forth in this provision, the broadness and generality of any other provision in these articles notwithstanding. This corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers which are not in furtherance of the primary purposes of this corporation.

This corporation is not formed in furtherance of a plan for the distribution of gains, profits or dividends to its members. No part of the net income or assets of this corporation shall inure to the personal benefit of any officer, director, or members thereof, or to the personal benefit of any private individual, except in such respects as shall be consistent with requirements of tax-exempt status.

[COMMENT: A nonprofit corporation is organized to serve a limited purpose. The purpose limitations are necessary to obtain tax exempt status.

[Some members have the misunderstanding that a "nonprofit" corporation literally can't make money, and that it can only break even or operate at a loss. That's incorrect. The term "nonprofit" is used with a meaning that may mislead. It means that the corporation is not organized for the primary purpose of making profits and distributing dividends to its constituents. A nonprofit corporation can still make a profit; it is only restricted as to what it does with its profits.]

## ***ARTICLE IV***

### **MEMBERS**

Those individuals who shall be qualified for membership in this corporation shall be all such persons who are members in good standing of the various chapters of The Pi Kappa Phi Fraternity, who meet such further specific qualifications as may be set forth in the bylaws. Such qualified persons may become members by paying to this corporation such membership fees and dues as may be established from time to time by the Board of Directors. This corporation shall not have any capital stock and shall be a non-stock corporation.

[COMMENT: This section permits members, but does not require that any actually be admitted. Note that membership is not limited to initiates of a specific chapter. Use of memberships of annual duration greatly simplifies treatment of initiates of other chapters. They can become members of the corporation, if the bylaws permit, on the same basis as alumni members of the specific chapter. When they're no longer involved, they need not be continued as members any longer.]

## ***ARTICLE V***

### **BOARD OF DIRECTORS**

The powers of this corporation shall be exercised, its properties controlled, and its affairs administered by a Board of Directors.

The number of directors may be changed by a bylaw duly adopted by those members entitled to vote[; provided, however, that in no event shall the number of directors be changed to a number fewer than three (3)].

[COMMENT: Many states require that a corporation have at least 3 directors. If that applies in your state, include the optional clause at the end of the second paragraph. A few states may require that the number of directors be a fixed number specified only in the articles. If that applies to your case, in lieu of the second paragraph above include "The number of directors of this corporation shall be ( )." instead.]

## ***ARTICLE VI***

### **INITIAL DIRECTORS**

[The number of directors who are appointed to act for the initial year following incorporation shall be ( ).] The names and addresses of the persons appointed to act as the initial directors of this corporation are:

[Insert Names and Addresses]

COMMENT: Include the bracketed initial sentence only if the number of directors must be stated in the articles, and if it may be changed after the first year. Enter the names of those acting as the initial directors of the corporation. Add as many sets of blank lines as needed to accommodate the actual number of directors.]

## ***ARTICLE VII***

### **BYLAWS**

The Board of Directors may adopt, amend, and repeal bylaws in conformity with these articles, and not inconsistent therewith, at any lawful meeting of the board. However, any matter reserved to the members or subject to ratification of the members by law, shall be subject to the applicable approval.

**ARTICLE VIII**

INACTIVITY; DISSOLUTION

In the event that this corporation’s charter should be suspended or revoked, the National Council of The Pi Kappa Phi Fraternity, subject to the rights of the members, may appoint directors to fill vacancies and take other necessary lawful steps to reinstate or revive the corporation.

In the event that this corporation shall be dissolved in accordance with procedures established by law, any net assets remaining after winding up of the corporation’s affairs shall be distributed to The Pi Kappa Phi Fraternity, a South Carolina corporation, or to the successors or assigns of the same.

[COMMENT: When a housing corporation can no longer operate to fulfill the purposes for which it was incorporated, it should voluntarily dissolve and remit the proceeds from sale of its assets, net of any income taxes due, to the National Fraternity. The assets were created for the use and benefit of the fraternity as a whole, and must continue to be used for those purposes in the event that the local corporation can’t utilize them. Additionally, having this provision is extremely important in cases of involuntary dissolution—i.e. for failure to file a mandatory corporate registration statement, for example—because otherwise any unclaimed assets could be kept by the state of incorporation after liquidation rather than turning them over to the Fraternity. The “successor” clause covers situations where, due to changes in corporation laws, the National Fraternity may desire to “reincorporate” under a different chapter of the corporation laws in the same state (probably becoming in effect a different corporation), or even to change its state of incorporation to a different state (such as one that doesn’t tax real estate owned by fraternal organizations). Again, the intention is to require a state taking over inactive local housing corporation assets, for whatever reason, to turn them over to the Fraternity.]

**ARTICLE IX**

RESTRICTION ON AMENDMENT

The Articles of Incorporation of this corporation may be amended by a majority vote of the directors at a duly held annual meeting or special meeting thereof.

The foregoing paragraph notwithstanding, Article III (Limitations on Purposes), Article VIII (Dissolution), and Article IX (Amendment) of these Articles of Incorporation shall not be amended without the prior written concurrence of the National Council of The Pi Kappa Phi Fraternity, a South Carolina corporation, or the successors or assigns of same.

[COMMENT: While not mentioned above, many states require that the corporation’s members ratify amendments adopted by the directors before they will become effective.]

[END OF MAIN BODY OF ARTICLES]

[COMMENT: The following are examples of other provisions that may be required in certain states. Include only those of the following that are specifically required.]

**ARTICLE \_\_**

PRINCIPAL PLACE OF BUSINESS

The county in the state of \_\_\_\_\_ where the principal place of business of this corporation shall be located is ---  
\_\_\_\_\_ county. [The address of the principal place of business for the first year following incorporation shall be \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.]

[COMMENT: Some states require that the address of the corporation’s initial principal place of business must be included, in addition to the county in which the corporation will be based. Many states do not allow post office boxes, and permit street addresses only.]

**ARTICLE** \_\_

INCORPORATORS

The names and addresses of the incorporators of this corporation are as follows:

Name	Address
------	---------

[COMMENT: These are the names of those acting as incorporators, or those who are signing the articles. Usually these are the same as the initial directors, but some states require this article in separate form nevertheless. Add as many sets of blank lines as needed to accommodate the actual number of incorporators.]

ARTICLE

INITIAL [REGISTERED] AGENT [FOR SERVICE OF PROCESS]

The name and address of the initial [registered] agent [for service of process] of this corporation is as follows:

Name	Address
------	---------

[COMMENT: This provision will be required to be stated in the articles in many states. The agent's function is described in Formation Manual II—Preliminary Groundwork, in the section "All Organizing Efforts." You may wish to include either of the bracketed portions shown above if they match the specific terminology used in your state corporation law.]

**ARTICLE** \_\_

TERM OF CORPORATE EXISTENCE

This corporation shall have perpetual existence.

[COMMENT: The above provision may appear to be a statement of the obvious, but the corporation laws of many states still require that the corporation declare "the number of years" that the corporation is to exist. Include it if such a statement is required under the laws of your state.]

**[END OF SAMPLE ARTICLES]**

**[Sample 2]**

**CERTIFICATE OF AMENDMENT OF**

**ARTICLES OF INCORPORATION**

**OF**

**[PI KAPPA PHI FRATERNITY AT \_\_\_\_\_**

**HOUSING CORPORATION, INC.]**

Providing for Change of Name

[NAME OF FIRST OFFICER] and [NAME OF SECOND OFFICER] hereby certify that:

We are the [President]/[Vice President] and the [Secretary]/[Treasurer]/ [Assistant Secretary]/[Assistant Treasurer], respectively, of [PI KAPPA PHI FRATERNITY AT \_\_\_\_\_ HOUSING CORPORATION, INC.], a nonprofit corporation organized under the laws of the State of \_\_\_\_\_.

[Insert the following paragraph only if the corporation has never had any members and has no provision for their admission in the future, or has not yet admitted any members as such apart from the Directors]:

The [PI KAPPA PHI FRATERNITY AT \_\_\_\_\_ HOUSING CORPORATION, INC.] under the present articles of incorporation is governed by an executive board known and designated as the Board of [Directors]/[Trustees who, in fact, discharge the duties of members or officers designated as Directors of a corporation],

[Then add one of the following clauses, as appropriate:]

[and there are no members of said corporation having voting rights.]

[and the corporation has not yet admitted any members to and including the date of filing of this certificate.]

At a meeting of the Board of [Directors]/[Trustees] of said corporation, duly and regularly called and held on \_\_\_\_\_, 19 \_\_, at which meeting a majority of said [Directors]/[Trustees] were present and participating in the meeting, the following amendment[s] to the Articles of Incorporation of this corporation were adopted [unanimously]/[by a vote of \_\_\_\_\_ to \_\_\_\_\_] by the affirmative vote of more than a majority of the said [Directors]/[Trustees] of said Corporation.

[If members have been admitted and their concurrence is required, add the following paragraph:]

At a meeting of the members of said corporation, duly and regularly called and held on \_\_\_\_\_, 19 \_\_, at which meeting a quorum of the members were present and participating in the meeting, the following amendment[s] to the Articles of Incorporation of this corporation were [adopted]/ [ratified] [unanimously]/[by a vote of \_\_ to \_\_, constituting the affirmative vote of more than a majority of the said members.

## ***ARTICLE I***

NAME

The name of this corporation hereby is changed to [OMEGA OMEGA OF THE PI KAPPA PHI FRATERNITY HOUSING CORPORATION, INC.]

[Include other provisions if any which are desired to be amended, e.g. other provisions being brought into conformity with structure of current recommended Articles of Incorporation.]

[Provide for execution by the officers named above. The following is typical of an execution format used in many states.]

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this day of \_\_\_\_\_, 19 \_\_.

[Provide for witnessing or notarizations in accordance with the requirements of your state, if any.]

## **HOUSING CORPORATION FORMATION MANUAL SERIES**

### **PI KAPPA PHI FRATERNITY**

#### **IV. The Organization Meeting**

- A. Introduction
- B. Holding the organization meeting
- C. Questions commonly asked at organization meetings
- D. Actions to taken prior to the next directors' meeting

## **IV. THE ORGANIZATION MEETING**

### **A. Introduction**

The organization meeting requires advance planning and preparation. The alumni members that you most desire to meet and to have supporting the corporation should be in attendance. With the right preparation, all advance groundwork already has been taken care of by the time the meeting is held.

An organization meeting must be held to draw together a group of alumni members who are willing to form the corporation, serve as initial directors, and sign documents to complete the legal step of corporate organization.

The articles of incorporation (for a corporation being newly organized) or amendments of the articles (for a corporation being reinstated, if applicable) should already have been drafted and then reviewed by legal counsel. They must be adopted by those present who are to act as the incorporators.

COMMENT: If the articles need not be notarized in your state, consider having the articles signed on the spot and save the need for holding another session. Even if the articles must be notarized, all issues should be resolved and the articles of incorporation adopted at that meeting. The entire purpose of the organization meeting is to adopt articles of incorporation and elect the initial directors!

After the organization meeting, follow up actions must be accomplished before the first board of directors' meeting. Those steps constitute the majority of the incorporation or revival steps.

## B. Holding the Organization Meeting

The following steps apply in the case of existing corporations being reinstated as well as organizing of new corporations.

1. The alumni activity is held as scheduled, including the portion allocated as the corporation's organization meeting.
2. The purpose, objectives, and organization structure for the corporation should be announced in summary form. The draft Articles of Incorporation (for a newly organized corporation) or last known articles of incorporation and bylaws (corporation being reinstated or revived) should be presented for review. If reinstating or reviving a dormant corporation, the old documents already are in effect and the board will be limited to operating within their provisions.
3. Establish a Bylaws Committee for drafting new bylaws (for a newly organized corporation) or redrafting them (for corporation being reinstated) bylaws. Establish a Nominating Committee to review qualifications of candidates

for corporate offices.

4. Collect dues from those present to pay for the costs of incorporation or reinstatement.

COMMENT: The dues level can be estimated by multiplying the total organization costs (incorporation or reinstatement, tax exemption, notarizations, licenses, postage, etc.) by 1.5, dividing by the number of alumni members attending the meeting, and rounding upward to the next multiple of \$5 (hopefully not more than \$15). Because of potential cost surprises, it's better to collect funds that may never be needed than to come up short. Exhibit some tact and common sense in collecting the dues. Do not attempt to embarrass or hound individual alumni members into contributing—it would cast a very negative perception on the meeting and the proposed corporation (even for those alumni members that were going to contribute). If you do find yourself short, you should best just state that you are short, and ask if anyone else would like to contribute by addressing the meeting, not individuals.

5. Elect the directors to serve for the initial term commencing at the meeting.

COMMENT: The board of directors is the basic decision making body of the corporation. It is provided with the power to conduct all corporate affairs except those reserved to the members by statute or in the articles or bylaws.

Typically, the alumni attending the organization meeting are solicited to serve as directors. The number of directorships to be filled must be specified in the corporation's bylaws (a few states may require the number to be fixed in the articles instead). Sometimes the number of volunteers to serve will be fewer than or equal to the number of vacancies, and they can simply take office without election.

In other instances, the number of volunteers will exceed the number of vacancies. In this event, the following strategy is recommended. Remind those attending that some committees have to be staffed as well, and solicit volunteers for those.

The corporation's officers (President, Vice President, etc.) are not elected at the organization meeting. Instead, they are elected at the first directors' meeting which follows after the organization meeting.

6. If directors are to serve for terms longer than one year, they will need to draw lots to stagger their terms.

COMMENT: The following is one suggested method. On a set of blank ballots, equal in number to the number of directors the corporation is to have, write down the number of years that the directors may

serve, e.g. 1, 2 or 3 if directors may serve three years. The numbers should be written on the slips in as closely equal quantities as possible. Fold them and mix, then have the directors draw. The number drawn by each director then will determine the length of his own term.

### C. Common Questions Asked at Organization Meetings

#### 1. **What is my personal liability?**

Individuals who are merely members of a corporation, and do not take an active part in its day to day business affairs, are not liable for the debts of the corporation.

COMMENT: Directors and officers acting in their capacities generally are not liable for the acts of the corporation. However, there are exceptions. They must have acted conscientiously and prudently for limited liability to apply. They must consider the corporation's capitalization and business risks. The corporation must observe the formalities of conducting business like a real corporation—holding regular directors meetings, making formal decisions, and the most important requirement being the maintenance of complete and proper corporate minutes in a set of minutes books that documents the decisions. Also, actions taken pursuant to the advice of legal counsel may limit liability of the officers or directors. If all else fails, a director can go on record in minutes as opposing a decision regarded as imprudent, or resign their capacities.

In addition, the national fraternity carries a liability insurance policy to cover its members, directors and officers. Each chapter pays a per man assessment for part of the liability insurance premium. Coverage is in effect for the directors and officers of each local alumni housing corporation.

Additional potential liabilities exist from student chapter acts such as hazing, illegal acts, alcohol abuse, etc. These are discussed in Operations Manual V—Insurance and Risk Management.

#### 2. **We have no money - why do this now?**

Let's wait. The corporation must be organized and running before any housing activities can be undertaken. Some basic tasks must be accomplished before the corporation can turn to complex ones such as a housing endeavor, however. These can be begun immediately. As one example, before any housing activities can occur, the organization must accumulate a building fund. There's no reason to delay establishing a building fund.

#### 3. **What's the time commitment?**

Emphasize to the alumni members that the

corporation's board of directors is not a body that meets only once a year or when some infrequent matter requires it to act. The board must establish a regular meeting schedule, from two to six times per year, and participants must be made aware that this is a commitment of those serving.

COMMENT: The officers and directors of a successful corporation adapt their time requirements to the business of the corporation, rather than reducing the corporation's endeavors to fit their time available. Be aware that alumni members having no prior housing corporation experience will tend to overestimate the amount of time that they can devote. Emphasize that time, in addition to experience, is an important part of their service.

#### 4. **Those of us here lack needed**

**experience in doing this.** We all have to start somewhere. If we don't undertake the effort, we'll never get the experience that is lacking. One inexperienced but dedicated individual who can devote as much time as is needed can be worth ten experienced but casually committed individuals.

#### 5. **Are contributions made by alumni tax**

**deductible?** The correct answer to this is that contributions to a chapter housing corporation ordinarily are not tax deductible to the donors.

COMMENT: This topic is a frequent area of misunderstanding among alumni members. There are over twenty-five different types of "nonprofit" organization recognized by the Internal Revenue Service. Only two of those types usually afford tax deductibility of contributions to the donors.

Within the structure of the Fraternity's umbrella the only organization to which contributions usually are tax deductible is the Pi Kappa Phi Foundation. It is possible to set up a special fund within a housing corporation for tax deductible purposes, but ordinarily the legal requirements and ongoing solicitation and expenditure criteria are far too difficult to utilize on a local basis. However, the Pi Kappa Phi Foundation is able to establish a separate fund within itself that would enable deductibility of contributions. For specific information on this subject, contact the Pi Kappa Phi Foundation in care of the Fraternity's Administrative Office, at the address listed on the back page of this manual.

#### 6. **Why does the housing corporation have to own the house?**

The student chapter will pay all the rent—let's have the chapter own it. This question already should

have been answered in the organizer's introductory speech earlier. The answers are: 1.) In many states an unincorporated association can't legally own real estate, whereas a corporation can; 2.) In those states where associations can own real estate, problems with obtaining clear title to property and with satisfying lender requirements for title insurance will make association ownership virtually impossible; 3.) Corporations are universally understood and have specific statutory powers with respect to ownership of real estate; they are the best proven vehicle for owning real estate to be used for the fraternity's benefit.

**7. Why do the chapter members have to contribute to a "building fund" when we don't even have a house?**

It seems to me that we here would be paying extra so that somebody else in the future would benefit. The answer is:

1.) Commercial real estate is normally bought or built with a major down payment of at least 20% to 30% of purchase price; 2.) Down payments are, by definition, cash equity and not borrowed funds; 3.) Alumni contributions count for only a small portion of funds that could be expected to go toward a housing purchase (if the chapter is less than 20 years old, they virtually could be ignored); 4.) Alumni members will not contribute to something that the students themselves do not believe in enough to commit \$5 or \$10 per month of their own money; and 5.) Alumni members will not contribute to a building fund project that was ignored for years and suddenly began being funded by the students a few months ago (a short-term interest).

A building fund contribution program is a cost of membership (it is to build a better fraternity—to ensure that the chapter that the members enjoy today will exist in the future for them to return to as alumni members.) It is not a housing cost, at least not until a house is acquired.

COMMENT: It's unlikely that you'll be asked this question as bluntly as stated above, but it's extremely important that you recognize its essence when expressed in a much more innocuous or vague form. The key thoughts in the question focus on increased outlays by the student members today, for housing benefits at an indefinite time in the future. In whatever form the question is heard, it must be answered decisively. You may be hearing a vague or innocuous question, but the student members are interpreting it as the version above instead.

8. You're proposing that we [insert proposed act]. At my old Psi Zeta chapter, we

instead [insert anything from an unexpected but reasonable alternative, to an alternative that was popular 30 years ago but now clearly is contrary to the official policies of the Fraternity, to an alternative that could be irrelevant or bizarre.] You'll have to make a judgement on this type of response. You must keep the meeting moving smoothly and minimize turbulence. Your answer could be one of the following:

a. If the matter isn't pressing (it doesn't affect any decision that must be made at the organization meeting, such as a bylaws matter that need not be dealt with until the first directors meeting), thank the alumnus member and invite him to attend the first directors meeting so that he can describe it while the bylaws are being considered for adoption.

b. If matter does have to be decided at the organization meeting, you may be forced to simply call a vote of those present and decide it. A good example of this would be a motion to "table the adoption of the articles of incorporation until the next meeting, to allow time to study them." The whole purpose of the organization meeting is to adopt and sign articles of incorporation and elect directors. If a motion preventing either is adopted, you will have to convene another meeting all over again, probably with a lower attendance and in jeopardy of a quorum, for little accomplished. Instead you should thank the alumnus and express appreciation at his concern. Remind him that by and large the articles don't contain anything but the bare bones, and many of them are specified in the state corporation law. Read a short synopsis of each article, following with a question as whether everyone understands it. When all have been read, and everyone understands, there's no reason at all for any postponement.

**D. Actions to be Taken Prior to Next Meeting**

At the close of the organization meeting, final steps must be taken. The newly elected board of directors must assign members to accomplish certain tasks by the first board of directors meeting:

**1. File signed articles/articles amendments** - The steps to be taken here will differ depending on whether the corporation is being newly organized, or is a reinstatement of an existing corporation.

For a new corporation, the Articles of Incorporation (or Application for Certificate of Incorporation) are filed with the Secretary of State (or State Corporations Commission, etc.),

and, if required in your state, filed or recorded with the county. Some states require filing with the county first, so that they show a filing stamp or certification, before filing with the Secretary of State.

For a corporation being reinstated/revived, the existing Articles of Incorporation (or Certificate of Incorporation) must be examined for conformity with the standard form. This is shown in Sample 1 at the end of this manual. Due to variations in state corporation laws, the existing articles will probably differ in some respects. As long as the differences aren't significant, the corporation's articles need not be amended. However, if changes are needed, see an example of a Certificate of Amendment of Articles of Incorporation as shown in Sample 2 at the end of this manual. File any amendments with the Secretary of State (or State Corporations Commission, etc.), and, if required in your state, filed or recorded with the county. Some states require filing with the county first, so that they show a filing stamp or certification, before filing with the Secretary of State.

**2. Nominating Committee acts** - A Nominating Committee (temporary committee) is formed. The Nominating committee reviews suggested candidates for the corporation's officers, develops a list of recommended nominees.

**3. Bylaws Committee acts** - The Bylaws Committee works on Bylaws drafting (for a newly organized corporation) or updating (for a corporation being reinstated). Bylaws matters are reviewed in Formation Manual V—Drafting Bylaws. (Note: This step may be omitted if bylaws have been drafted in advance and were adopted as a part of the organization meeting business).

**4. (Temporary) Finance Committee acts** - The committee will research information on banks and other financial institutions for a checking account, and high-yield account. Recommendations must be developed of institutions to hold the accounts, and respective account resolution forms obtained (often included on signature cards).

COMMENT: Some institutions offer service charge-free accounts to nonprofit organizations. Check with the student chapter officers or the university officials for information on service charge-free accounts if any trouble is encountered.

In selecting the institution, also check on the deposit insurance coverage. For the high-yield account,

additional considerations are a.) The corporation's possible liquidity needs (how soon can you get at the money if you really need it; what portion are you likely to have any need for through the account maturity date); and b.) Is it a prudent and secure investment consistent with the board's fiduciary obligations?

**HOUSING CORPORATION FORMATION MANUAL SERIES**  
**PI KAPPA PHI FRATERNITY**

- V. Drafting Bylaws
  - A. Introduction
    - Sample 3 - Sample Bylaws

**V. DRAFTING BYLAWS**

A. Introduction

This manual explains the bylaws contents needed by the local housing corporation. It also presents some of reasoning and experience that went into their drafting. No special legal expertise is required in the following. However, it presumes the most common case, in which an attorney will be the principal person in charge of the drafting or amending process.

A standardized set of bylaws is presented here which have been used by many local corporations. However, the corporation laws of each state and province impose differing requirements. The sample bylaws may need some minor modifications to comply with the statutory requirements of the jurisdiction in which the corporation is being organized.

The bylaws will be the document governing the corporation's day-to-day operations. Consequently, there is greater need for detail than was present in the articles of incorporation.

The bylaws are subordinate to the articles of incorporation. In event of any conflict between the articles and the bylaws, the articles provisions will prevail. Generally, however, the articles provisions are so general that the bylaws merely serve to supplement them. So long as there is no conflict between the two, no problems result.

The Bylaws Committee must draft or redraft the bylaws, and arrange printing of copies and distribution to the directors no later than the first board of directors meeting. Presentation and reading should be followed by adoption at that point.

[Sample 3]

## BYLAWS

OF

[Use the name stated in the articles of incorporation, such as

**PI KAPPA PHI FRATERNITY AT (Name of town) HOUSING CORPORATION, INC. or**

**OMEGA OMEGA OF THE PI KAPPA PHI FRATERNITY**

**HOUSING CORPORATION, INC.]**

### I. PURPOSE

**A. Orientation to student chapter at \_\_\_\_\_.** This corporation shall operate to advance the interests of [Omega Omega] chapter of the Pi Kappa Phi Fraternity at the \_\_\_\_\_ of \_\_\_\_\_.

### II. MEMBERS

- A. Qualifications for membership.** In addition to the general qualifications set forth in the Articles of Incorporation, the following specific qualifications must be met. To be eligible to become members of this corporation, applicants must be life members in good standing of The Pi Kappa Phi Fraternity, either of the alumni members class or the student members class. Furthermore, such applicants may reside anywhere if their chapter of initiation was the [Omega Omega] Chapter of the said Fraternity, or must be resident in [the counties of \_\_\_\_\_]/[a radius of \_\_ miles from said chapter] if their chapter of initiation was any chapter other than the [Omega Omega] chapter.
- B. Commencement of membership.** An eligible applicant may become a member of this corporation upon exhibiting significant involvement in this corporation's affairs, or upon payment of annual dues.
- C. Duration of memberships.** Membership in this corporation shall be for a term not to exceed one year in duration. All memberships shall expire at midnight on the last day of this corporation's fiscal year.
- D. Classes of members; Alumni members; student members.** The two classes of members in this corporation shall be student members and alumni members. The definition of the two classes shall be the same as that in effect for the Fraternity, as those definitions may be amended from time to time.
- E. Assignment or transfer of membership prohibited.** The Board of Directors shall have the sole power to issue or renew memberships in this corporation. Memberships shall not be assignable or transferable. Any attempted assignment or transfer shall be void and without effect.

### III. MEMBERS MEETINGS; ACTIONS WITHOUT MEETING

**A. Annual members meeting.** This corporation shall hold its annual members meeting on or about \_\_\_\_\_ in each year. Written notice announcing the meeting shall be sent to each member of record not less than ten (10) days in advance by first class mail, and not less than fourteen (14) days in advance by any other class of mail.

[COMMENT: The corporation can use the alumni publication directed to chapter alumni for notice purposes, but allow a long lead time if not using first class mail!]

- B. Special meetings.** Special meetings of the members may be called by the President, by any three directors, by the Executive Director of the Fraternity, or by the greater of five members or 10% of the members of record at any time and place named in the call, for such purposes as the business of this corporation may require. Written notice stating the purpose of the meeting shall be sent to each member of record not less than ten (10) days in advance by first class mail.
- C. Quorum of members.** A quorum of this corporation's members for any members meeting, regular or special, shall be the greater of five members or [10%] of the members of record of the alumni class together with greater of three members or [10%] of the members of record of the student class. Such members shall be in good standing. If the total number of members of any class should be less than the minimum required by the preceding, then such minimum shall be reduced to such total number.

[COMMENT: Check your state corporation laws for the allowable lowest limit permitted for a quorum. In many states the limit may not be less than 10% of the members. Note that a bylaw specifying a members quorum may not be reduced to a number less than a majority in many states without a two thirds approval of all members and may not be amended by the directors alone. Set a low quorum before admitting members other than the directors.]

- D. **Voting rights.** In all matters submitted to a vote of the members at any duly held meeting, the act of a majority of the votes shall be the act of the members, unless a greater proportion is required by statute or in these bylaws.
- E. **Actions without meeting.** Any action which may be taken by the members assembled at a meeting also may be taken without meeting if written consents (ballots) to the proposed action are obtained, the total number of which shall be equal in proportion to the total number of members of this corporation as the number of votes which would have been required for adoption of the same matter at a duly held meeting in proportion to the number of members there present and voting.

#### IV. DIRECTORS

- A. **Authority.** The business and affairs of this corporation shall be managed by the Board of Directors at any regular or special meeting. The Board of Directors shall have all powers conferred by these Bylaws, except as provided by statute or in the Articles of Incorporation that shall be conferred upon or reserved to the members.
- B. **Qualifications of directors.** \_\_\_[Use 1 or 2] of the directors shall be student members of this corporation. The remaining directors shall be alumni members. To be eligible for election, each candidate must be a dues-paid member in good standing of this corporation, and of the required class.
- C. **Qualifications of directors and elections.**
  - a. The Student Director(s) shall be elected directly by the student members of the [Omega Omega] Chapter of Pi Kappa Phi Fraternity, in accordance with the rules and procedures of that organization.
  - b. The Alumni Directors shall be elected by the alumni members of the corporation according to the following schedule:

[Select one of the following alternates:]

[One third of the directors each year, serving terms of no more than three years.]

[One half of the directors each year, serving terms of no more than two years.]

[All directors shall be subject to election each year.]

- D. **Number of directors.** The number of directors of this corporation, which shall remain fixed until amendment of this section, shall be (\_\_\_).

[COMMENT: See discussion on number of directors under “Organization Structure Issues to be Resolved” in Formation Manual III—Drafting Articles of Incorporation. This number can be increased and new directors elected to fill the vacancies created in most states. However, in several states a reduction in the authorized number of directors does not reduce the number of directors until the terms of those in office expire.]

- E. **Compensation.** The directors of this corporation shall not receive any salary or remuneration for their services. This shall not be construed to prohibit reimbursement of expenses incurred on behalf of the corporation, to the extent that provision in the corporation’s budget exists for such reimbursement.

#### V. DIRECTORS MEETINGS

- A. **Meetings.** The Board of Directors shall meet immediately following the Annual Members Meeting and at least times per year for the purpose of reviewing the corporation’s status and to transact any business which necessity may require. Election of the corporation’s officers shall be held each year at the Board of Directors meeting which immediately follows adjournment of the Annual Members Meeting, and any office in which a vacancy occurs may be filled at any regular meeting.
- B. **Quorum.** [A majority]/[Forty percent (40%)] of the number of directors of this corporation, rounded upward to the next integer, shall constitute a quorum for the purpose of transacting ordinary business.

[COMMENT: Unless your state statutes specifically state otherwise, the quorum is based on the total number of authorized directors—regardless of the number that may be vacant. Too many vacancies could make quorum

achievement impossible. Avoid excessive vacancies by having at least two meetings per year.]

**C. Directors Vacancy Elections.**

- a. In the event of the death, disability, or resignation of a director, a successor shall be elected by the lesser of the following number of directors:
  1. A majority vote of those directors present and voting at a duly held directors meeting at which a quorum has been found present.
  2. A majority vote of those directors present and voting at a duly held directors meeting where the majority is calculated on the basis of the directors remaining in office though they be less than a quorum for the purpose of transacting other business.
- b. In the event that no directors remain in office and no members of record can be located to fill directorships, then the National Council of the Fraternity shall be authorized to elect qualified persons to the directorships of this corporation.

**VI. OFFICERS**

- A. Qualifications of officers.** To be eligible for election, all candidates for the offices of this corporation shall be directors.  
[COMMENT: If you have a very large group of involved alumni you may want to change “directors” to “members in good standing.” That would enable election of officers who are not also directors.]
- B. Election of officers and term of office.** Officers shall be elected by the Board of Directors each year at the directors meeting which immediately follows after the Annual Members Meeting. Officers shall serve for a term which ends at the next succeeding directors meeting following after the Annual members meeting, and in the event of a failure to elect officers of this corporation at any such meeting then all acting officers shall serve until their successors are qualified and elected. Offices vacant by reason of resignation, disability or death in office may be filled by the directors at any duly held directors meeting at which a quorum is present.
- C. Offices and duties.** The officers of this corporation, ranked in descending hierarchy, shall be President, Vice President, Treasurer, and Secretary. The officers shall perform such duties as are provided in these bylaws and as may be prescribed by the board of directors.
- D. President.** The President shall be the chief executive officer of the corporation. He shall preside at all meetings of the members or of the Board of Directors. The President shall be responsible for issuing calls of meetings of the Board of Directors. He shall be responsible for monitoring the activities of the other officers during intervals between meetings of the Board of Directors. He shall appoint the chairman of the committees, who need not be directors.
- E. Vice President.** The Vice President shall be vested with the powers of the President in the latter’s absence or disability.
- F. Treasurer.** The Treasurer shall prepare the corporation’s operating budget for each fiscal year during his term of office. He shall present the budget to the Board of Directors for adoption thereby. The Treasurer shall keep proper books of account for this corporation, and shall turn over same to the Audit Committee for review within sixty (60) days of the end of each fiscal year. He shall prepare proper statements presenting this corporation’s financial position each year and shall present same at the first Board of Directors meeting which occurs one hundred twenty (120) days or more following the end of a fiscal year, and shall make such statement available at the Annual Members Meeting.
- G. Secretary.** The secretary shall be responsible for taking the minutes of all meetings of the Board of Directors or of the members. He shall be responsible for sending notices of such meetings within the required notice period. He shall be responsible for written communications with related organizations and the general public in the interval between meetings of the directors.

**VII. COMMITTEES**

- A. Chapter House Committee.** This committee shall be responsible for supervising repair and improvement projects to the chapter house. It shall also be responsible for performing the furniture and equipment inventory prior to the end of each academic year.
- B. Budget and Finance Committee.** This committee shall be responsible for developing the corporation’s operating and reserves budget each year. It shall coordinate with the Chapter Advisor, Financial Advisor and student chapter officers in developing the budget in a draft form prior to the end of each academic year for next

year's operations, and in final form at the commencement of the academic year.

- C. **Alumni Events Committee.** This committee shall coordinate the conduct of social and recreational events for the chapter's alumni members ("Alumni Association").
- D. **Audit Committee.** Not less than sixty (60) days after the end of each fiscal year the Auditing Committee shall convene to review the corporation's accounting records. The committee shall render an opinion statement based on the results of its examination which shall be in conformity with generally accepted auditing standards.
- E. **Other temporary committees.** The Board of Directors may from time to time establish other temporary committees. Such temporary committees shall serve for a term not to exceed the next following Annual Members Meeting, but may be extended at the discretion of the Board of Directors.

## VIII. CONTRACTS; FINANCES

- A. **Dues.** Annual dues for membership in this corporation shall become due on July 1<sup>st</sup> of each year. There shall be no proratability or refundability of any person's dues. There shall be two dues rates payable by qualified persons for membership in this corporation:
  - a. For all alumni members of [Omega Omega] chapter of the Pi Kappa Phi Fraternity (except those currently serving as directors of this corporation), the annual dues rate shall be fixed at such sum as may be established for the respective year by the Board of Directors in connection with the alumni publication sent to chapter alumni.
  - b. For all student members of this corporation, all alumni members of all chapters of the Pi Kappa Phi Fraternity other than the above, and those alumni members serving as directors of this corporation, the annual dues rate shall be fixed at Five Dollars per member per annum.
- B. **Building Fund.** It shall be the policy of this corporation that reserve funds shall be accumulated for long-term housing needs as determined by the Board of Directors from time to time.
- C. **Contracts, Checks, Drafts, etc.** The Board of Directors may authorize any two officers to enter into any contract or to execute any instrument in the name of and on behalf of this corporation. Such authority may be general or may be confined to specific instances. Unless so authorized by the Board of Directors, no officer of this corporation or other person shall have the power to bind this corporation by any contract or engagement, or to pledge its credit or assets, or to render it liable for any purpose or to any amount.
- D. **Financial reports, accounting system, books and records.** The Treasurer shall present financial statements (an annual report) of this corporation at the first Board of Directors meeting which occurs one hundred twenty (120) days or more following this corporation's fiscal year end. The corporation's books and records shall be maintained in accordance with generally accepted accounting principles for nonprofit organizations.
- E. **Audit.** Within sixty (60) days following the end of this corporation's fiscal year, the Treasurer shall make preliminary operating statements and all financial books and records available to the Audit Committee. The Audit Committee shall present its opinion on the statements at the first Board of Directors meeting which occurs one hundred twenty (120) days or more following the end of this corporation's fiscal year.
- F. **Annual registration/report/statement with state corporation authorities.** At the first Board of Directors meeting which occurs one hundred twenty (120) days or more following this corporation's fiscal year end, the Treasurer or Secretary, as appropriate, shall present proof of filing of required registration forms or reports with the Secretary of State or State Corporations Commission to the Board of Directors.
- G. **Federal and state nonprofit information returns.** At the first Board of Directors meeting which occurs one hundred twenty (120) days or more following this corporation's fiscal year end, the Treasurer shall present proof of filing of applicable required information and/or tax returns with the Internal Revenue Service and state taxing agency to the Board of Directors.

## IX. MISCELLANEOUS

- A. **Corporate seal.** In the event that a corporate seal is required under the laws of this state, the seal of this corporation shall be in the form of a circle within which shall be inscribed the name of the Fraternity, the name of this corporation, and the words, "CORPORATE SEAL".
- B. **Duties.** The officers of this corporation or their representative shall give a report to the student chapter at least

once each year. They will instruct new members or associate members as to the purpose, objectives, and operations of the corporation.

**C. Literary and educational activities.** This corporation shall from time to time sponsor or otherwise make available to the student chapter any and all programs, lectures, devices, or facilities which will improve the literary or educational achievements of the chapter's members.

**D. Loans and Scholarships.** This corporation may assist in the establishment of a student loan and/or scholarship fund, for the purpose of assisting those members who are worthy and/or in need so that they may continue their educational pursuits. If established, the fund shall be created by contribution to a separate account with the Pi Kappa Phi Foundation, an educational foundation headquartered at Charlotte, North Carolina, upon such terms and conditions as shall be agreed upon with said Foundation.

## **X. AMENDMENT**

**A. Amendment Procedure.** These Bylaws may be amended by a majority vote of the directors of this corporation at any duly held meeting.

***[END OF SAMPLE BYLAWS]***

# HOUSING CORPORATION FORMATION MANUAL SERIES

## PI KAPPA PHI FRATERNITY

- VI. Tax Exemption Considerations and Application
  - A. Introduction: tax exemption background
  - B. Application for Federal income tax exemption
  - C. Common tax exemption filing errors
  - D. Application for state income tax exemption

### VI. TAX EXEMPTION CONSIDERATIONS AND APPLICATION

#### A. Introduction: Tax Exemption Background

Please be cautioned that the information presented in this manual is accurate only as of the publication date of this manual set forth on page 1, and is subject to change from time to time without notice.

The benefit of income tax exemption is substantial. It exempts organizations from having to pay income tax on their net income. The following section is a survey of tax exemption information applicable to local housing corporations. Most corporations and chapters related to the Fraternity are exempt under section 501©(7). This section applies to “social clubs.” Income tax does not apply to most income from ordinary fraternal sources. The code does require, however, that an “unrelated business income tax” be paid on certain types of nonmember derived income. Under normal conditions, local housing corporations usually don’t derive income from those sources. The only general exception is investment income.

COMMENT: This manual does not address taxability of investment income; see Operations Manual IV—Financial Management for further information.

The most desirable code section for tax exemption is section 501©(3). It ordinarily permits tax deductibility of donations to contributors, one of only two classifications generally permitting that. The category, however, is limited to organizations that are “religious, educational, literary, charitable, etc.” and does not encompass fraternal organizations. The Fraternity is not in itself a “charitable” nor “educational” organization, and its related organizations do not qualify under that section.

COMMENT: An “educational” purpose per the IRS definition is different than would be assumed by the average person. The IRS defines “educational” organizations as those offering a regular course of

instruction, i.e. like a university, and not those that are merely university-related.

The IRS routinely weeds out collegiate fraternity housing corporations applying under section 501©(3) and denies exemption. If any should slip through, upon discovery later it would be presumed to be due to a “misrepresentation” in the exemption application; the IRS could assess back taxes on donations received by the corporation and the individuals who took the deductions.

A next-best section would be section 501©(10). It would not permit deductibility of contributions to donors, but at least investment income would not be taxed. Collegiate fraternities do not qualify under this section. As with organizations applying under section 501©(3), the IRS routinely weeds out collegiate fraternity housing corporations applying under this section and denies exemption.

Tax deductibility for contributions can usually be obtained only through a fraternity foundation such as the Pi Kappa Phi Foundation, or by an extraordinarily difficult process through creating a local scholarship fund.

For many years, local housing corporations also were being recognized under section 501©(2) as “title holding corporations.” The latter section was not really applicable to local housing corporations, but due to an inconsistency in the tax regulations the Internal Revenue Service was not then enforcing literal conformance with its requirements.

COMMENT: This code section really was written to give exemption to corporations organized to hold title to church properties on behalf of their congregations, which generally are unincorporated associations. It requires all income from properties owned to be turned over to a “parent” organization every year. Local housing corporations do not have such a “parent” to whom they could turn over such income, and thus would not be entitled to exemption under that section. Until 1982 the income did not actually have to be turned over to any other organization,

making exemption under that section favorable.

Presently we are recommending that no new housing corporations apply for exemption under section 501©(2). Existing corporations which obtained exemption under that section should reapply as described above to change the exemption to 501©(7), indicating that the organization has changed during the current year to include social events for members as one of its principal activities.

#### B. Application for Federal Income Tax Exemption

Your corporation is interested in obtaining a determination from the Internal Revenue Service that the corporation is entitled to exemption from Federal income taxation. This is called an “exemption letter”. It must be applied for using forms supplied by the IRS. Two forms are used in connection with obtaining Federal income tax exemption. They must be filed with the Internal Revenue Service in accordance with the instructions on each. Copies of the blank forms can be obtained from the same telephone ordering number that is used to obtain personal income tax forms.

1. Form SS-4-- Application for Employer Identification Number—The form is an application for an Employer Identification Number (EIN) which is used to route and locate all returns and forms filed with the Internal Revenue Service. It’s needed even if the corporation has no employees and has no intention of hiring any. The corporation will need the number in order to open a bank account or make an interest- earning investment.

An example of a completed form is available from the Fraternity’s Administrative Office and is revised from time to time. To obtain a copy, write to the Administrative Office at the address shown on the back page of this manual.

**CAUTION!** An existing housing corporation that is being reinstated or revived should not file this form unless it has no record at all of its previous employer identifier. If you do, you will be assigned a new number, even if you state the old employer identification number the corporation possessed. You will automatically be reclassified as a taxable corporation until a new application for exemption is filed. A more convenient approach would be to simply file a completed Form 990 within the required time period after the corporation’s current fiscal year end (even if the form is blank except for the name, EIN, and mailing address, due to the corporation being below the minimum gross income to require filing the form).

2. Form 1024-- Application for Exemption from Income Tax—Local housing corporations should apply for income tax exemption under section 501©(7) of the Internal Revenue Code. That exemption applies to organizations classed by the Internal Revenue Service as “social clubs.” Requirements for 501©(7) status include a need for members as the principal source of the corporation’s revenues, and that the corporation sponsor social events for their benefit as an integral part of your corporation’s operations.

An additional requirement for tax exempt status in that classification imposes limits on nonmember derived income. A newly organized housing corporation doesn’t generally contemplate significant amounts of nonmember income. However, under some circumstances an unintentional error will be committed that can result in exemption denial. This problem is discussed later under “Common Tax Exemption Filing Errors”.

Another requirement for section 510©(7) exempt status is nondiscrimination. The tax codes prohibit exempt status for organizations that practice discrimination on racial, ethnic or religious backgrounds in selection for membership. The Fraternity has no discriminatory policies in effect, and it’s presumed that local housing corporations will not experience problems with this requirement.

As mentioned previously, the tax exemption when granted does not enable income tax deductibility of contributions made by alumni members.

An example of a completed form is available at the Fraternity’s Administrative Office and is revised from time to time. To obtain a copy, write to the Administrative Office at the address shown on the back page of this manual.

Income tax exemption, once granted, remains in force until there is a “significant change in the character or method of operation” which would no longer justify exemption.

A copy of the exemption application and the IRS determination letter should be kept with the corporation’s permanent records.

**COMMENT:** In the event that the corporation is audited, the exemption letter should be available to be produced. In recent years the IRS seems to have been doing more evaluations of a local corporation’s operations as compared with representations made in the original exemption application. Having a copy in the records would be essential to preparing any sort of

defense should a problem arise.

### C. Common Tax Exemption Filing Errors

In completing the budget schedule to the application form, local corporation officers sometimes inadvertently make the following errors which could delay or preclude exemption:

1. All income is interest. Assume that a corporation is being placed in operation for a chapter that is not yet chartered, or otherwise is not fully operational. It currently has no foreseeable dues income being generated. All income shown in the exemption application is budgeted to come from interest on a small savings account representing unexpended cash raised when the corporation's organization meeting was held. The organization will not qualify for exemption because more than 35% of its income will come from investments. (The 35% rule is discussed in Operations Manual IV—Financial Management).
2. Most income is from a "fund raising project". Expressing the source of income in those words creates a problem. It could be interpreted to mean that the corporation will be soliciting funds from the general public, rather than from its own members. The organization cannot derive more than 15% of its financial support from the general public (The 15% rule also is discussed in Operations Manual IV—Financial Management). If it appears that most income could be derived from nonmember sources the Internal Revenue Service will deny exemption. You probably mean that the corporation will fund raise among its members; a better description should be selected.
3. A significant portion of income is "contributions from members" or "building fund contributions". The Internal Revenue Service will hold up the exemption application to ask "Since donations are not tax deductible, how does the organization plan to get donations?" The reason that we are able to get contributions is that we are a membership organization and provide direct benefits to members justifying their contributions; we do not need the incentive of tax deductibility as does a charitable organization. Because members expect benefits, even though they are not immediate, it is more accurate to refer to the contributions as "dues." It is recommended that they be presented as "dues from members" or "building fund dues" instead. Those descriptions will not hold up the exemption application.

### D. Application for State Income Tax Exemption

1. State tax exemption may be required separately from the Federal filing. (This was to have been determined in Formation Manual II—Preliminary Groundwork.) If so, and not already done, the state exemption application filing should be done no later than this point.

### ADDITIONAL REFERENCES

Godfrey, Howard. Handbook on Tax Exempt Organizations. Englewood Cliffs, N.J.: Prentice-Hall, c1983.

Covers all aspects of tax exempt organizations. Strongest sections deal with IRS audits and subsidiaries and support organizations.

Lashbrooke, E. C., Jr. Tax Exempt Organizations. Westport, Cn.: Quorum Books, c1985.

Another good general work on exempt organizations. Covers a wide range of subjects including meetings, quorums, and other corporate matters, tax exemption, filings, unrelated business income tax, etc. Many common matters are listed in tables by state for quick reference. For example, a chart on p. 199 lists the states that tax unrelated business income (as of 1985) and the applicable state tax statutes.

Oleck, Howard L. Nonprofit Corporations, Organizations, and Associations, 4<sup>th</sup> ed. Englewood Cliffs, N.J.: Prentice-Hall, c1980.

The most comprehensive work available today covering all classes of nonprofit organizations, tax exemption, state laws and requirements, etc. Specific problems of 501©(7) organizations are not discussed enough due to the work's scope. The work also covers the other topics in this sources list beyond corporate operations alone.

U. S. Department of the Treasury, Internal Revenue Service. Tax Exempt Status for Your Organization. Publication 557. Washington, D.C.: Government Printing Office, [irregularly updated].

The preceding is a free Internal Revenue Service publication that can be ordered from the same IRS telephone number where ordinary income tax forms are ordered. The IRS might be expected to describe tax exemption matters explicitly, but these fail to do so. The circular tries to cover all the different types of nonprofit organizations with the same text, which makes them very general and difficult to apply to specific situations. Many

public libraries also carry this circular in a multiple volume annual publication that includes tax forms and other IRS publications.

U. S. Department of the Treasury, Internal Revenue Service. Information for Business Taxpayers (Business Taxes, Identification Numbers, Recordkeeping. Publication 583. Washington, D.C.: Government Printing Office, [irregularly updated].

As with the preceding, this is a free Internal Revenue Service publication that can be ordered from the same IRS telephone number where ordinary income tax forms are ordered. The publication provides a good nutshell description (with examples) of recordkeeping systems, and additionally covers employment taxes that a local corporation would have to pay if it has employees.

[Sample 4]

[Completed Form SS-4--Application for Employer Identification Number]

3. This requests the corporation's fiscal year end. Housing corporations will want to select a year-end that falls during a low point in their business cycle, which typically is during the summer months. A June 30<sup>th</sup> fiscal year end is often used; in that case "June" would go in the blank.

CAUTION! Be careful in selecting the fiscal year end month. The month must match the end of the business year for which the corporation's financial statements are prepared. The IRS will set up their records to expect filings of Form 990 based on a due date of four and a half months from this date, and will charge penalties for failure to file if not complied with. The fiscal year end can only be changed with IRS permission. If a change is needed use IRS Form 1128.

5. Use the corporation president's name if known; otherwise use the name of the principal incorporator.

6. The chapter house address is the principal place of business. Box 7 must be filled in with a separate mailing address. Use a permanent post office box, or the address of an alumnus who isn't likely to be moving soon (preferably a senior alumnus officer or incorporator).

13. Use the date that the articles of incorporation were filed or the certificate of incorporation granted.

[Form 1024 - Application for Exemption from Income Tax]

[The exemption application requires that certain exhibits be attached for a 501©(7) applicant. The following is a sample of those presently required. The following statement example is based on the articles of incorporation and bylaws in other appendices in this manual]

[Enter name of housing corporation here, e.g.:

OMEGA OMEGA OF THE PI KAPPA PHI FRATERNITY HOUSING CORPORATION, INC.]

Form 1024 - Exemption Application

Attachments

Page 1

Part III.

7. Statement (Members).

Persons eligible to become members must be members in good standing of The Pi Kappa Phi Fraternity, a national college fraternity. Such persons may be either student members (currently enrolled at a collegiate institution) or alumni members (all other non-enrolled persons) of the fraternity.

There are to be two classes of members: i.) Alumni members; and ii.) Student members. The two classes would differ in the following respects:

On all matters to be voted on except the election of directors, the voting rights would be equal on matters brought before the members.

On the election of directors, Student members, as a class, would separately elect [enter number, e.g. one] director. Alumni members, as a class, would elect the remaining [enter number, e.g. six] directors.

With respect to dues, Students would pay a low annual dues rate such as \$5.00; alumni would pay a higher rate such as \$20.00. The figures represent a best-guess allocation of the cost incurred in providing member benefits under the programs contemplated by the corporation.

[This is an example of the budget attachment, based on a typical budget for a newly organized housing corporation. Of course, your own situation probably will differ from this example. You should customize the budget to reflect your own situation.]

[Enter name of housing corporation here, e.g.:

OMEGA OMEGA OF THE PI KAPPA PHI FRATERNITY HOUSING CORPORATION, INC.]

Form 1024 - Exemption Application

Attachments

Part IV.

#### PROJECTED BUDGETS

	First	Second	Third
	Year	Year	Year

#### Income

Member income:

Dues (general)

Building fund dues

Social charges

Investments income:

Interest

**Total income**

#### Expenses

Social program:

Social events costs

Supporting expenses:

Postage & miscellaneous

**Total expenses**

*Net income*

Net income should be set aside for future operating shortfalls, repair and renovation needs and housing purchases. Such expenditures would be budgeted for in the years that they are needed and would not be included as income from operations.

**HOUSING CORPORATION FORMATION MANUAL SERIES**  
**THE PI KAPPA PHI FRATERNITY**

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The key organizer of each local housing corporation affiliated with The Pi Kappa Phi Fraternity is authorized to make copies of individual manuals for distribution to the members of his incorporation committee only.

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The Pi Kappa Phi Fraternity  
Administrative Office  
P. O. Box 240526  
Charlotte, NC 28224

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