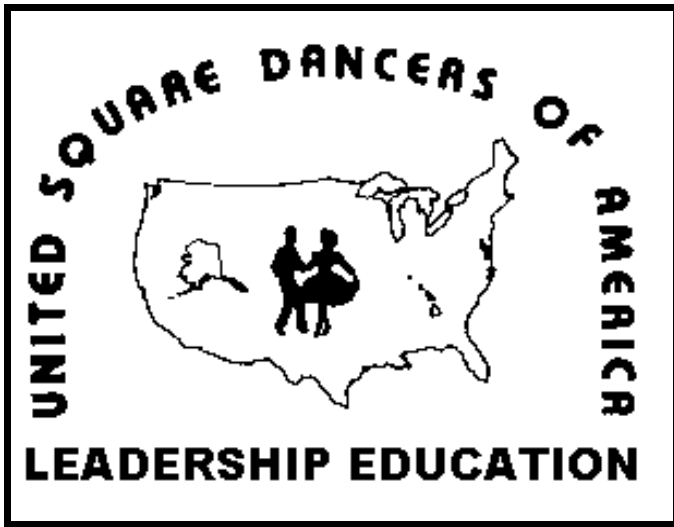


# **CLUB INCORPORATION**



**This Pamphlet was developed by the Education Committee of the UNITED SQUARE DANCERS OF AMERICA, INC. and provides information concerning the Incorporation of Dance Clubs and Associations.**

## INTRODUCTION



What would you, as a dancer and member of a club, do if someone sued your Square Dance Club? Have you ever thought about it? Well, you should! You say it will never happen to your club? Ha, it has already happened several times in recent years. If someone should sue your non-incorporated Club for liability in excess of your insurance coverage, for breach of contract or for civil damages, you and each member of your club could be held separately and jointly responsible. What that means is, if the court finds against your club and there isn't enough money in the Club Treasury, then the balance comes out of your pocket.

Fortunately, there is something that you can do to avoid finding yourselves footing the bill and that is — INCORPORATE your Club.



# Live Lively –



# Square Dance!

Why should you incorporate as a nonprofit club/association? Because every member of a non-incorporated organization may become a litigant in the event of a lawsuit. Believe me, this means that everything each member owns, his personal assets such as his house, automobile, boat, jewelry, bank accounts may be seized or taken away in a judgment against your club or association. However, if you are incorporated as a nonprofit entity, in a judgment against your club, only the club's treasury and the assets of the club (usually only a coffee pot) may be attached. Nothing your individual members own may be touched and are protected from seizure by creditors or plaintiffs.

Except in cases where personal negligence is a factor, it is the corporation that gets sued and must pay court-ordered penalties. Incorporation does not take the place of insurance, it only protects your members. All clubs need both incorporation and insurance.

An organization that owns real property should incorporate if for no other reason than to hold title to the property. A club having some high risk activity, such as a clubhouse or a club bus that could be involved in an accident creating a liability suit upon the club and its members definitely should consider incorporation.

This pamphlet provides background information concerning "The Corporation," Corporate History, Life of the Corporation, how to Form a Corporation, Board of Directors and a general Summary.



## **THE CORPORATION**

In the eyes of the Internal Revenue Service and the rest of the Government, the operation of Square, Round, Clogging, Contra, and Folk Dance Clubs is a business organization. The three most basic forms of business organizations are the "proprietorship," "partnership," and the "corporation."


The single proprietorship is a business organization managed by one person.

The partnership consists of a contractual agreement between two or more persons, which sets forth the amount of capital to be supplied by each partner and defines the general framework of business operation. Typically, the partners own and manage the enterprise. The non-incorporated Club could be considered "partners" with the

member dancers.

The corporation is the dominant form of business organization in the Western World. Thus, it has become one of the most important institutions of modern times. In addition, the corporate form of organization has been widely employed for public purposes and in private activities of a nonprofit nature.

The reasons that the corporation has become the dominant form of organization are as follows:

- a. The corporation is generally the most practical form of a business organization.
- b. The corporation provides continuity of the organization and its assets. It is inconceivable to have an organization that automatically terminates with the death of one owner or manager. Accordingly, the dancers' corporation with its limitless life-span, regardless of changes in the officers or members who make it up, is the necessary type of organization for the square dance activity.
- c. The corporation provides an independent management. This modern enterprise could not expect all members to participate in the management of the organization. Therefore, there is a separation between the members and management. The management has the most active concern with the operations of the corporation.
- d. The corporation provides limited liability for the dancers and the officers. One of the most important characteristics of any corporation is that its members enjoy limited liability. The debts of the dance corporation are the debts of the separate legal "person" that is the corporation, and therefore the individual dancer members are not legally responsible for them under ordinary circumstances.
- e. The corporation is an entity. The management of a dancer

organization must be able to carry on its business not as a number of individuals but as one whole unit. The concept of the corporation as a legal person is essential.

- f. The corporation provides operational freedom to management. The management of a Club or Association must have a great deal of freedom and flexibility to operate if it is going to deal adequately with the various associated dance-related organizations. The corporation, with its separation of members from management and its ability to act as an independent unit, provides this required operational flexibility.

## **CORPORATE HISTORY**

There were only six business corporations in colonial America. There was a rapid increase, however, in incorporation in the years following the ratification of the Constitution.

By 1800, the corporate form had come into common use mainly in the fields of transport, utilities, and finance. There were 219 turnpikes, bridge, and canal companies; and 36 corporations providing dock facilities or furnishing water and fire protection; and 67 bank and insurance companies. Only six manufacturing concerns were organized as corporations.

Although the United States experienced rapid growth in the first half of the 19th century, it was still predominantly concerned with agriculture, forestry, and fishing. The typical business enterprise was small. The fundamental problem in American corporate development was the overcoming of great distances.

Incorporation in those days was frequently cumbersome, costly, and a time-consuming process as it customarily took a special legislative act to grant a corporate charter. However, as the demands of business men increased, state legislatures gradually substituted general incorporation laws for the special statute. In 1795, North Carolina offered the first corporation law. By 1875, most states had developed laws for general corporations.

The association of dancers in pursuit of a common objective is as old as history. However, the dancer's corporation has evolved into a collective entity which is separate and distinct from the individual dancers who constitute it.



## CORPORATION LIFE

Although the individual dancer members of a club may change, the life of a corporation is normally perpetual unless limited by its charter or voluntarily dissolved by its members. An example of limited corporation life is seen by the National Square Dance Conventions. The organizations that sponsor the annual National Square Dance Convention incorporate for a limited time - until a set date after their convention. The purpose of that limited corporation is to plan and conduct the national convention and then the corporation is dissolved. Corporate dissolution usually occurs when either the purpose of the organization has been fulfilled or the organization is in financial difficulties and does not appear to have expectations of becoming financially successful or solvent. Upon dissolution of the Corporation, the club properties, both real and personal, owned by the Corporation are disposed of in accordance the club Bylaws to pay all club debts.

## FORMING A CORPORATION

Incorporation is relatively easy to achieve. It can be accomplished in less than four hours. The hardest part of the incorporation process might well be the act of getting all the club officers together with a notary public for the required signatures. To form a corporation, the incorporators first must

obtain a charter, which is in effect a contract between the government and your organization. This charter, which may be modified by the state or federal government, represents a grant of certain powers from the government. It expresses the relationship between the government and the organization. Usually the Secretary of State of a state government, State Commissioner of Corporations or local county governing officials issues the charter under the authority of a general incorporating act.



Contact your Secretary of State or local county government by phone or in person and request information and copies of the required forms to incorporate a nonprofit square dance organization. Also get a copy of the "Not-For-Profit Corporation Guide" for your own information. The guide is easy reading and tells you how to fill out the forms.

Corporations are creatures of state law, with each state establishing its own requirements for incorporating. The laws pertaining to nonprofit corporations vary from state to state. To incorporate requires the incorporators to complete the nonprofit corporation forms provided by your Secretary of State or local court house setting forth the required information about the proposed corporation. It is common for these government organizations to provide copies of a nonprofit incorporation petition that has recently been filed in your county/state that may be used as samples to assist you. Because your proposed Articles of Incorporation will become the club charter, it is important that it be carefully worded.

It is customary for the incorporators to seek broad powers for the corporation to provide substantial latitude in its undertakings. In addition to a statement of the purpose of the corporation, the Articles of Incorporation will usually contain the official name of the organization, the location or address, a list of the initial officers who are to conduct the business of the



corporation, the manner of selection of officers, how elected, and the signature of the initial individuals requesting the incorporation. The initial incorporators may hold office only a very short time until the documents are in place and then the regular elected officers may assume control of the new incorporated organization.

Submit the required forms by mail or deliver them personally to the appropriate state or local county office. They will review and process the forms. The Articles of Incorporation constitute a club's proposal to incorporate, and approval by the State of such Articles of Incorporation constitutes a charter which creates the corporation. After receiving the Charter, Certificate of Incorporation, or the approved Articles of Incorporation, they must be filed with the office of the Recorder of Deeds of the County in which the registered office of the corporation is located. This recording must be within 15 days after the Secretary of State has mailed these items to you, or as soon thereafter as practicable. There may be a small filing fee.



Any change in the corporation name, duration, or purpose will require that the Articles of Incorporation be amended, using the proper form. Also, should the corporation need to report a merger, dissolution, or reinstatement, it should use the proper form. All forms for these reports are available from the Secretary of State or local county government and should be filed upon the occurrence of the particular event. There will

probably be another small fee. Some clubs have incorporated their clubs and associations in less than four hours and for less than \$50.00. They walked the papers through their Circuit Judge or Probate Judge of their local County Government.

They prepared and processed the documents themselves with the assistance of their local county government.

USDA is not attempting to give legal advice regarding incorporation. We urge you to consult with local counsel who has experience in non-profit corporation matters before finalizing any plans in this regard. This is a specialized legal area. Be sure to inquire before engaging legal services whether or not they have experience, want to represent your organization and what fees and costs apply. The engagement of services should be in writing, spelling out the scope of representation and its cost.

The small amount of effort and the modest investment to incorporate will provide enormous protection from what otherwise could be a financial disaster.

### BOARD OF DIRECTORS

The direct link between the dancers and club management is the director or club officer. In the broadest sense the Director is a member of the Club or Association Board of Directors or a trustee appointed by the club dancers to guide their organization in their best interest. The Board of Directors is the representative of the Corporation. The Board of Directors has the general management and control of the business and affairs of the organization, and exercises all the powers that may be exercised or performed by the organization as an entity, subject to the limitations contained in the club's Articles of Incorporation, Constitution and By-Laws.

When the Board makes decisions, undertakes contracts, or conducts any business, it is the corporation that acts. The power of the Board belongs to the Board as a whole, not to individual Directors.

The powers of the Board of Directors or officers usually are such that they may determine the policies of the club, association or corporation (within the limits of the Articles of Incorporation and By-Laws), conduct elections, execute contracts, and exercise any other powers granted them by the bylaws or the Articles of Incorporation. Misuse of his powers, negligence, and at times merely failure to use good judgment may expose them to a suit for recovery of damages if the corporation should sustain losses.

Legally, the dancers' corporation is an artificial person. It can act and contract; sue and be sued; and manage and convey property.



*Square Dancing*

*Is Fun!*



## **SUMMARY**

Questions and Answers:

1. What is a Club?

A Club is an association of individuals who come together with a common bond in mind to perform a function.

2. Is a Club a Corporation?

Not unless they have applied to their Secretary of State or

their county government where the Club resides to become a corporation.

3. Is it hard to become a Corporation?

No. Some states may have different requirements which you will be able to obtain from the Secretary of State or local county government.

4. What are the basic requirements for becoming a Corporation?

Articles of Incorporation, By-Laws and/or Constitution of the Club.

5. What must the Articles of Incorporation contain?

The Name of the Corporation.

The purpose for which the Corporation will be established.

The address of the Corporation. This will usually be an officer of the Corporation where the annual corporation fee (if any) will be sent by the State.

How the assets of the Corporation are to be disposed of in the event of dissolution of the Corporation. In the case of a nonprofit Corporation, any funds, remaining after payment of all liabilities, are disbursed to charity.

The signatures and mailing address of the incorporators. These are the names of the individuals signing the Articles of Incorporation, and in many cases, are the members of the Board of Directors.

6. What is the fee for incorporating?

The fee varies from State to State. In some States the amount may be \$20.00, while in others it may be \$50.00 or more.

The annual corporation fee (if any) varies from State to State. Any time the Articles of Incorporation are amended, there is a fee charged, which in most cases, may be equal to the incorporation fee.

7. What does becoming a Corporation do for me?

It limits the liability. In other words, the Club can be sued, but not the individual dancers in it.

It establishes continuity. In other words, is ongoing.

A Corporation is to be considered as an individual person under the law. Therefore, the acts of the Corporation are the same as acts of an individual, i.e., it can sue and be sued.

8. Does the Club have to obtain a tax identification number?

Normally yes. If the Club has a checking account, savings, or other interest-bearing funds, and if you apply for a tax exempt status from the Internal Revenue Service.

9. Does a Club have to maintain records?

Yes. Minutes of Board of Directors and Annual Meetings and Treasurer's Records.

10. If a Club is operated by a Caller or Cuer, are the dancers responsible for any liabilities?

No. That is the responsibility of the Caller or Cuer.

11. What is corporate perpetual existence?

Unlike other entities, the corporation does not cease or dissolve when there is a change in relation among the officers or members caused by one ceasing to be associated with the carrying on of the business of the Club.

Perpetual existence makes for Club stability and continuity.

## 12. What is legal entity?

The Corporation is an artificial person, separate and distinct from its members (nonprofit Corporation), holds property in the corporate name, is sued and sues in the corporate name, and operates under the corporate name.

The incorporation of any Club, Association or Federation is an essential protection for the members and officers and certainly should not be ignored. By the simple act of completing the Incorporation procedures, the group becomes a legal entity, thereby relieving the individual dancers and officers from liability that can be financially damaging.

## 13. What is Corporate Duration?

Generally, statutes require the duration of the corporation to be expressed in the Articles of Incorporation. A corporation has perpetual existence, unless the statute of the Articles of Incorporation provides to the contrary.

## 14. Define Incorporators?

Incorporators are those people who sign the Articles of Incorporation. The charter is issued by the state to the incorporators authorizing them to do business as a corporation. Most statutes provide for a minimum number of incorporators, usually three.

Since incorporation is contractual in nature, the incorporators must have legal capacity to contract. The names and addresses of the incorporators must be stated in the Articles of Incorporation.

In the absence of incorporation, if your organization is sued for a physical injury at a dance (in excess of insurance coverage), for breach of contract, or for moral damage, all the officers and

members may become part of the lawsuit. That means every registered member of the club can be named in the suit and must share the legal expenses as well as the judgment (if the court finds against the organization).

Both officers and members of clubs/associations would do well to see that their organization is incorporated.

**Live Lively -**



**Square Dance!**

## **NOTES**



**IT IS HIGHLY RECOMMENDED THAT  
EVERY CLUB AND ASSOCIATION  
INCORPORATE - FOR YOUR  
PROTECTION AND PEACE OF MIND!**



For additional information concerning  
Club or Association Incorporation,  
contact the  
**UNITED SQUARE DANCERS OF AMERICA**  
Education / Publications Committee.

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