

# **Non-Profit Incorporation**

## ***To Incorporate or to Not Incorporate?***

### **Youth Sports Today**

Amateur sports organizations are springing up everywhere. Look around your community. You'll notice young athletes of both sexes from 5 to 18 years of age occupying nearly every baseball diamond, basketball court, football and soccer field, gymnasium, golf course, driving range, ice arena, and swimming pool in sight. If you continue to look, you'll notice new amateur sport's facilities under construction and older facilities being upgraded and expanded. It's abundantly clear: the youth of our nation, and their parents, are turned-on to recreational and competitive amateur sports in a big way.

This enthusiasm for sports has produced large numbers of youth sports clubs staffed by a large number of volunteers. In the United States, there are now more than 100,000 nonprofit, all-volunteer youth sports clubs offering team competition within leagues in nearly every conceivable sports activity. It's not unusual to find some leagues consisting of over 300 individual teams. These youth sports organizations are popular with the kids and their parents. The kids learn valuable sports skills from coaches, many of whom were athletes in high school or college, and some of whom are retired professional athletes. The kids' parents enjoy the social interaction with each other in club volunteer activities and, of course, they raise money for the club, attend the games, and cheer for their kid's team.

While amateur youth sports organizations offer a fun activity for the entire family, the kids quickly become serious competitors urged on by competitive parents, some of whom view their child as a potential professional athlete. But, as competition intensifies, the risk of kids getting injured at practice or during a game increases. The competitive nature of sports activities and the desire to win also affects parental behavior. In recent years, lawsuits have increased at an alarming rate against youth sport's organizations and their organizers. In spite of the occasional "ugly" parent behavior, most parents and their kids enjoy the spirited competition of the games and take winning and losing in stride. Apart from the coaching, playing, and officiating of games, there is, of course, the matter of club organization and operation.

### **Protecting the Organization and its Volunteers, Staff, and Board of Directors**

Contrary to what some may believe, the legal organization and responsibilities of an amateur sports league or team is anything but a "simple" matter. This is especially true when an organization may consist of 10, 50, 100 or more teams. Yet, nevertheless, the vast majority of youth sport's organizations operate as loosely-organized, unofficial "non-profit" volunteer organizations with little awareness of the liability risk to both their organization and to themselves as volunteer members.

In all likelihood, if an operating amateur youth sports organization chooses not to incorporate under state law as a nonprofit corporation, it will be considered an Unincorporated Association. Accordingly, volunteer board members and directors would be jointly and individually liable for unpaid club debts, obligations, and lawsuits.

In our firm's experience, we have encountered many forms of amateur sports club organization. Some organizations are incorporated under state law as nonprofit corporations. Many of these organizations operate as if they were tax-exempt organizations, although no application for tax exemption was ever filed with the Internal Revenue Service. Still other clubs have not incorporated at all and operate as committees not comprehending that they are legally classified as Unincorporated Associations. Many of these clubs also operate as if they were tax-exempt organizations, although they are not so qualified. Moreover, many of the non-profit incorporated clubs have filed "bare" articles of incorporation lacking liability limiting provisions and qualifying provisions in support of exempt status. Few such organizations, even though incorporated, actually operate as an incorporated entity. And, while most amateur youth sports organizations that we have seen are capably operated by their volunteer staff, very few of these organizations appreciate the potential risk of liability to their volunteers.

KNPUSA recommends that your organization protect itself and its volunteers in four ways: (1) by means of incorporation as a non-profit corporation, (2) by requiring adult and children's waivers of liability, (3) by obtaining insurance, and (4) requiring criminal background checks for all volunteers and staff that will be in contact with children.

## **Non-Profit vs. Tax Exempt**

Many sports organization administrators confuse the terms "Non-Profit" and "Tax-Exempt" as being one in the same, when in fact they are not. In short, all tax exempt organizations are non-profits, but not all non-profits are tax exempt. If you have incorporated your non-profit organization in your state, you are then legally classified as a non-profit corporation. However, you are not yet tax exempt. In fact, until you apply for IRS tax exempt status, you are still liable for federal income taxes.

Organizations of all sizes stand to benefit from the additional step of incorporating in their journey to becoming tax exempt. The additional costs and paperwork are minimal compared to the additional liability protection and peace of mind offered to your volunteers. For more information on this service, please [click here](#).

