



ANSWERS TO OFTEN-ASKED CMSA CHAPTER QUESTIONS

I. Questions about the Chapter as a Nonprofit Corporation:

Our chapter, for purposes of this discussion, is located and operated in the hypothetical state named the State of Happiness. Our chapter is registered as a nonprofit corporation with the State of Happiness Secretary of State Office (in some states, such as Virginia, this office is called the State Corporation Commission), for which we pay a fee of \$25/year.

Our chapter also is registered as a nonprofit trade association in the District of Columbia, for which we also pay a fee.

Why do we also need to be registered in D.C. if none of our officers live in D.C.? Can we withdraw from D.C.?

Answers:

1. The Two Different “Registrations” of the Chapter As a Nonprofit Corporation:

- a. Basic Registration, in the District of Columbia: The Chapter’s Status As a “Domestic Corporation” in D.C.: Historically, when your chapter was formed, it was incorporated in D.C., just the same as all of the other CMSA chapters. Because your chapter is incorporated as a nonprofit membership corporation in D.C. (which some persons may refer to as being “registered” in D.C.), your chapter is referred to as a “domestic corporation” with respect to D.C. This “registration” is not expressly as a “nonprofit trade association”. The CMSA national organization (whose executive office is located in Little Rock, AR) also was similarly incorporated in D.C. (prior to the formation of any of the CMSA chapters) and thus also is referred to as a “domestic corporation” with respect to D.C.
- b. Secondary Registration, in the State of Happiness: The Chapter’s Status as a “Foreign Corporation Authorized To Conduct Affairs” in the State of Happiness: Your chapter also is “registered” with the State of Happiness’ Secretary of State Office (as noted earlier, in some states this office is called the State Corporation Commission) as a “foreign corporation”. This “registration” is not based strictly upon being a nonprofit corporation. Rather, your “registration” was sought, and accomplished, as follows.

Your chapter applied for, and was granted, a “Certificate of Authority To do Conduct Affairs (or “To Do Business”) As A Foreign Corporation” in this state since your chapter, as a corporation, is present and regularly operating in the state, although it is not incorporated there (hence it is called a “foreign”, rather than “domestic”, corporation as to the state).

This same process applies to commercial business (“for-profit” or “stock/shareholder ownership” corporations) and also nonprofit corporations, and parallel requirements for such a “foreign corporation certificate of authority” are set forth in the general Business Corporation Act and the Nonprofit Corporation Act and the Nonprofit Corporation Act of the State of Happiness.

Once your chapter received this Certificate, it possessed the right and privilege to legally operate in the State of Happiness, and to enjoy all the legal benefits and protections associated with that operation.

One of those benefits, as a nonprofit corporation, is to apply for, as appropriate, a state sales tax exemption, so that the chapter need not pay state sales tax on the procurement of chapter supplies, hotel meetings and conference room arrangements, and other support items relating to chapter dinners, seminars, conferences and programs.

Another significant benefit is to enjoy generally, as a corporation in the course of conducting its affairs and business in the state, the “due process of law” protections provided by all the laws and courts of the state.

Your chapter obtained the Certificate (which some persons may refer to as being “registered” in the state) after submitting proof to the Secretary of State Office, along with the application for the Certificate, that your chapter was validly incorporated in another jurisdiction, D.C., and that your chapter is in “good standing” in that jurisdiction. In the application for the Certificate, your chapter also needed to specify, as required by the State of Happiness’ Nonprofit Corporation Act, the name of a statutory registered agent located in the state, and the address of a statutory registered office in the state, to receive various legal notices from the State of Happiness and various legal documents, such as any subpoenas and court filings (complaints, summons, etc.) from the State and other parties.

To maintain and renew the Certificate from year to year, and thus to remain in “good standing” as a “foreign corporation”, your chapter needs to pay a small fee each year to the State of Happiness.

It should be noted that, to legally conduct “limited or isolated” instances of business in a different state (such as a chapter board of directors meeting, or a chapter membership program and related activities and dinners “just across the border” at a location in a state neighboring the State of Happiness, or perhaps at a location in a more distant state, such as in Nevada, Florida, or some other attractive venue) your chapter should not need to also obtain (subject to the point noted immediately below, and other possible provisions of that state’s Nonprofit Corporation Act) a Certificate of Authority to Conduct Affairs as a Foreign Corporation in that other state as well.

To obtain an exemption from that other state's sales tax, in connection with the chapter's "limited or isolated" activity there, it might possibly prove necessary, under that state's tax laws, for the chapter first to register as a "foreign corporation" in that state so it could then proceed with an application for a sales tax exemption for procurement in that state.

2. Advantages of the Incorporation in D.C.: Several advantages arise from the CMSA chapters and the CMSA national organization all using D.C. as the common legal jurisdiction for basic incorporation.
 - a. Uniformity and Stability: The most important advantage is that the chapters and the national organization are all subject to the same corporation statute, the D.C. Nonprofit Corporation Act, which governs in the same way, under the same governmental rules and binding court case precedents, the interpretation and application of the articles of incorporation and the bylaws of each of the various chapters as well as the national organization (including the bylaws provisions and membership policies of the national relating to the affiliation of the various chapters with the national).

With the same corporation statute governing the corporate procedures and operations of all the chapters as well as the national, the chance for possible conflicts, confusion and misunderstanding between the various chapters (and their members) and the national regarding legal matters becomes minimized.

- b. Members' Rights and Duties: Further, since all the CMSA members are members not only of a chapter but also of the National, the membership rights and duties of all the individual persons who participate in CMSA are legally established and defined by the D.C. Nonprofit Corporation Act (as well as by the bylaws, and articles of incorporation, of each chapter and of the National, the provisions of all of which must be in compliance with the D.C. Nonprofit Corporation Act). Utilizing one common corporation statute of the National and all the chapters also serves the further purpose of facilitating the fair and equal treatment of all CMSA's individual members, by utilizing one common legal standard applicable to everyone as members in CMSA.
 - c. Business Management Analogy: From a business management standpoint in looking at the chapters under "the National's umbrella", the "one corporation statute approach" creates advantages analogous in certain respects to the advantages created when a parent commercial business corporation, and all its divisions which are structured as subsidiary corporations, are all incorporated under the same state's corporation statute. Although the different laws which govern the different states in which the various subsidiaries actually operate also continue to play an important role as to the legal rights, duties and liabilities of the subsidiary divisions, the one common incorporation statute which is shared by the parent and all the subsidiaries serves as a unifying "law of the corporation"

and vastly facilitates overall corporate operations and planning.

- d. Chapter/Membership Services: A very significant overall advantage, from a Chapter and Membership services standpoint, is that use of the same corporation statute for all the CMSA chapters as well as the national organization helps enable the National office to help you in drafting your bylaws (and any amendments) and in generally setting up and operating your chapter, as well as provides the foundation for a uniform administrative and legal approach in the National's treatment of all the chapters.

If all the chapters were incorporated in different states, the National Office would be less able to provide support to your chapter, due to the difficulty of keeping up with changes in all the different states' laws and rules, and also the further difficulty which would result if different states' laws govern all the various chapters and increase the chance that the National Office would need to treat various chapters differently in light of the different state laws.

3. "Good Standing" as a "Domestic Corporation" as to D.C.: Since your chapter is incorporated in D.C., your chapter needs to maintain "good standing" (some persons also refer to this, as well, as being "registered") from year to year as a D.C. "domestic corporation". This is done by periodically filing a very brief corporate report (D.C. recently changed this from an annual to a two-year report filing) and paying a small related fee to the D.C. Corporations Division, just as any other corporation would need to do in its state of incorporation.

As part of maintaining "good standing" in your chapter's jurisdiction of incorporation, your chapter also needs to maintain a statutory "registered agent" and statutory "registered office" in D.C. All the CMSA chapters, and the National, currently use "Corporation Service Company" (also d/b/a as "CSC" and "United States Corporation Company"), a nationwide administrative services corporation with a business office in virtually every state, including D.C., for this purpose. Your chapter's articles of incorporation designate the identity of your "registered agent" and the address location of your "registered office", as required by the D.C. Nonprofit Corporation Act. Every state has a similar statutory requirement, for a corporation to maintain a registered agent and registered office location in the state of incorporation.

If your chapter fails to maintain "good standing" in D.C., the chapter becomes subject to potential involuntary dissolution of the corporation by the D.C. Government (as would also be the case in any other state of incorporation), which would terminate the chapter's legal existence.

Following the above "good standing" procedures is the means by which every state of incorporation, and also the jurisdiction of D.C., basically "keeps track" of its "domestic" corporations (which, as noted above, by their incorporation in that

jurisdiction, can claim all the benefits and protections of that jurisdiction's relevant laws, including the incorporation statute).

Also, through the identification of the designated statutory registered agent, and the registered office address, the "good standing" reporting and filing procedures in the public records of the D.C. Corporations Divisions (this is the governmental office which performs the function in D.C. of a state's Secretary of State Office) establish the legal basis and physical means by which "service of legal process" (i.e., service of subpoenas, court summons, and other legal notices or reports from the D.C. government or other parties) can occur through referencing a specific physical contact point, namely the registered agent and registered office, for the corporation in the jurisdiction.

4. Chapter Officers Not Resident in D.C.: The above information explains why your chapter is "registered" in D.C. (as that term may be used by some). As the above explanation shows, the fact that none of your chapters' officers live in D.C. does not mean that your chapter should not be incorporated in D.C., and does not affect your chapter in maintaining "good standing" in D.C. as a D. C. "domestic corporation".
5. "Withdrawal from D.C. or Dissolution?" In light of the above reasons why your chapter originally was incorporated and now maintains "good standing" in D. C., it follows that it is unlikely that your chapter would want to "withdraw from D.C." as a corporation. "Withdrawal from D.C." would mean dissolving the chapter as a D.C. "domestic corporation" and instituting a new corporation in some other state to serve as the legal entity for the chapter. In general, no good reason would exist for such an action.
6. Your Chapter's Federal Tax-Exemption: Please also keep in mind that all the CMSA chapters fall under the federal group tax exemption which has been obtained by the National as a benefit for the chapter corporations. As a result, each chapter does not need to file with the I.R.S. to seek federal tax-exempt status (each chapter, as a corporation, still needs to file its own I.R.S. Form 990 annual information return as a nonprofit). The legal corporate affiliation of each chapter corporation with the National, and the common shared direction which each chapter receives from the National, are important elements of maintaining this group tax exemption.

Utilizing one common incorporation statute for all the chapters and the National plays a role in this tax-exemption planning. Reliance on one central statute, the D.C. Nonprofit Corporation Act, facilitates the common direction and mission of CMSA and its chapters, and the administration by the National of the underlying nationwide CMSA chapter affiliation process and system. Each of these considerations is part of the basis for the group tax exemption with the I.R.S.

II. Questions about the Chapter's Appointed Registered (Statutory) Agent.

Our chapter pays a fee for the United States Corporation Company (as noted above, also d/b/a “Corporation Service Company” and “CSC”) to act as our appointed registered agent and registered office in the State of Happiness as well as our appointed registered agent and registered office in the District of Columbia.

Why do we need this company to act as our agent? What is its role? Can one of the officers of the chapter be the agent, at least in the State of Happiness?

Answer:

As explained above, since your chapter is registered as a “foreign corporation” in the State of Happiness, and also is incorporated in the District of Columbia (hence a “domestic corporation” in D.C.), your chapter is required under the Nonprofit Corporation Act of the State of Happiness, and also under the D.C. Nonprofit Corporation Act, to appoint and specify, in the chapter’s corporate filings respectively with the State of Happiness as well as the District of Columbia:

The name of a resident of the jurisdiction, or of a corporation authorized to do business in the jurisdiction and having the specified corporate power to serve as a “registered agent” for another entity, who will serve as the registered agent of your chapter corporation (for the purposes explained earlier above); and

A street address physically located in the jurisdiction, which will serve as the “registered office” location for your chapter (again, for the purposes explained earlier above).

United States Corporation company currently serves, from its business office address in D.C., as the appointed statutory registered agent and appointed statutory registered office for all the CMSA chapter corporations and also for the CMSA national corporation in D.C. (where all these corporations are “domestic corporations”).

As briefly noted earlier, United States Corporation Company is a nationwide administrative services company with offices in D.C. and in the capital of virtually every state, including the State of Happiness and the State of Arkansas, and is authorized, in its corporate powers, to act on behalf of other entities as a registered agent and registered office in D.C. and in these other jurisdictions.

Since it is “listed of public record” with the governments of these jurisdictions as the statutory registered agent and registered office of all the CMSA –related corporations, United States Corporation Company is authorized to receive legal notices and reports from all the jurisdictions’ government offices which are addressed to all these corporations and to promptly forward such notices and reports to a clearly designated person associated with the given corporation for information and action as appropriate.

With a clear receipt of such documents “for the record” by United States Corporation Company, and then the prompt transmittal by United States Corporation Company of the documents on to a clearly specified individual, the danger is minimized as to possible confusion later whether such documents ever were actually “received by the corporation”, and actually subsequently brought to the attention of “the most appropriate individual” of the chapter corporation for action by the chapter corporation.

United States Corporation Company, whose “of public record” identity and office address as “registered agent” and “registered office” for the chapter corporation also can be readily obtained by any private person or other party requesting this information from the D.C. Corporations Division (or a given state’s Secretary of State Office or similar office serving the same function) where a specific CMSA chapter corporation is “registered” as a “foreign corporation”, thus also acts as a “publicly visible” and clearly authorized contact point, as required under the D.C. Nonprofit Corporation Act and the other states’ nonprofit corporation statutes, to receive service of legal process (subpoenas, court summons, complaints, etc.) not only from the D.C. Government and the governments of those other states, but also from any other party.

By using United States Corporation Company on an ongoing basis for these purposes, the chapter avoids the need, from time to time as the identity of the chapter’s officers and leaders may change (or these individuals move their personal and business addresses), to repeatedly select, then publicly designate (by corporate resolution of the chapter board of directors), and then file with the D.C. corporations Division and also with the other state’s Secretary of State Office (where the chapter is “registered” as a “foreign corporation”), the official notice papers establishing the identity and address of the person and the office address location legally eligible under the D.C. Nonprofit Corporation Act and also the other state’s nonprofit corporation statute, to serve as a “registered agent” and a “registered office” in the two jurisdictions.

The use of United States Corporation Company, rather than some other private person involved with a chapter for the above purposes, also relieves some other such person from the burden of always being available to correctly perform these statutory responsibilities. In addition, the use of United States Corporation Company also relieves some other such person from being directly exposed and dealing, face-to-face, with potentially adverse third parties who may be seeking to serve “legal process” on the chapter corporation for some hostile purpose. United States Corporation Company, by serving as the publicly-disclosed “registered agent” for the chapter corporation, thus can help serve as a practical “buffer” or intermediary for the chapter corporation and its leaders as to these possible legally sensitive situations, and help minimize the risk, from a liability standpoint for the chapter corporation and those individuals, of possible legally-disadvantageous verbal admissions by such individuals.

* The above information is being provided by the CMSA National Office on an informational basis only, and should not be construed as legal advice and guidance being

provided by the National. For legal advice and guidance in specific matters, a chapter corporation should retain appropriate legal counsel. The National, who maintains outside legal counsel on a regular basis, can assist chapters in obtaining legal assistance as appropriate.

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