

LAWYERS FOR THE CREATIVE ARTS (LCA)

Meeting of February 1, 2010 with Bill Ratner

Articles of Incorporation and Filings

Mark Vadik (former LCA attorney) developed the original Articles of Incorporation and filed them on **February 19, 2004 (IMPORTANT DATE)**. Matt Yde was listed as Registered Agent when organized and incorporated. It was changed to Fred Anzevino as Registered Agent in 2005 and the address was changed on September 11, 2009.

The original IRS Letter of Determination is lost. Fred has what the IRS sent when he requested a copy of the original. He received a) an Advance Ruling November 10, 2008 and b) a Permanent Ruling August 7, 2009. Original dated May 20, 2005, so keep these letters on file.

Previously, an organization would only get a five-year period. New regulations changed process so renewal no longer required.

Secretary of State Annual Report. Last two years, Fred Anzevino listed as President with three other names. State can't dissolve you.

Fill out form. The deadline was missed, but it is only a \$3 penalty for a \$10 fee.

Tax Returns

Filing IRS tax return. Until 2008, you didn't have to file a return if revenues were under \$25,000; now file E-Postcard if under \$25,000. Starting in 2008, a 990 now has to be completed. If gross receipts are under \$500,000 in 2009, only need to complete 990EZ; goes down to \$250,000 in gross receipts in 2010. Did not need a 990 in 2008, only 990EZ. Starting for ask for more information on 990, so use 990EZ (much simpler). For Theo Ubique:

- Use 990EZ for 2009 return.
- No fiscal year stated on 2008 990, so IRS assumes Theo Ubique is on a calendar year.
- If we change our fiscal year in 2010, we file a short year return, i.e. if changing fiscal year to start July 1, we would complete a return for January 1-June 30, 2010 in addition to a notification form. Pick a fiscal year that makes sense in terms of operations and have tax returns follow season.
- Name on 990 and Letter from IRS different. Articles of incorporation list the company name as Theo Ubique Theatre (no company) as does the letter from the IRS. "Company" added to name on 990. Need legal clean up of name and use it consistently on all documents.

Board of Directors

Articles of Incorporation initiated a self-perpetuating Board. Names listed in the Articles of Incorporation are the initial Board of Directors for Theo Ubique. The Board replaces itself and fills its own gaps, and bylaws lay out the process for adding and removing directors. Without bylaws, "it's not the report you file with the state, it's the 'doing' of it."

Theo Ubique has self-perpetuated its Board "de facto," as such:

- Started with three directors in 2004: Matt Yde, Fred Anzevino and Beverle Bloch
- Matt Yde left in 2005, so the Board was down to two directors.
- Two more directors were added in 2008: David Heimann and Jeremy Trager
- Three more directors were added in 2009: Joe Moore, Lorraine Dostal and Richard Moran

Minutes must be kept of all Board meetings and the Board of Directors must meet regularly. Minutes must also include a start and end time, who attended, where attended and each director sign at bottom of approved minutes.

Bill recommends setting out a true history of what has been done in past where no minutes were kept and sign off.

At this point of maturity, Theo Ubique needs a Board with a lot of business talent.

The Board appoints officers, who serve at the pleasure of the Board. Thus, the Board appoints the Artistic Director and Managing Director.

Officers for a Board are Chairman and Secretary, who keeps records of the Board meetings and activities. President/Chief Executive Officer executes the rules set by the Board. You don't have a President of a Board. Thus, the Annual Report to the Secretary of State includes CORPORATE officers and DIRECTORS of the Board. If an officer serves as a director, then you list the title and director. For example, Fred Anzevino is President and Director and Beverle Bloch is Treasurer and Director.

Need to file Articles of Amendment to Articles of Incorporation for a not-for-profit. Then copy and send to the IRS a letter (no form available) with a stamped copy of the change with the EIN and copy of actual amendment. This is for change in legal name and fiscal year.

Insurance (similar to car insurance)

Who? We need a good agent who can sort through our needs and unique situation. It needs to cover the cost of an attorney if we get hit with a lawsuit. Paczolt is the one the city recommends, but Bill has had several complaints about them. Ask Jeff Marks for a recommendation. LCA is also putting together a list.

General Liability Insurance (to third parties): Need sufficient amount to cover lawyer to defend the theatre in a law suit, medical, loss of time, property damage.

Comprehensive Insurance: Also need (think car analogy) to protect our people, property, and public.

If owner of No Exit Café has insurance, check into ability to become “an additional insured.” Insurance company will determine if they will allow this. They usually don’t, but it’s worth asking for.

Also need a provision in the rental agreement of the space of who covers what. Sidewalk is the landowner’s responsibility.

Unemployment Insurance: Even if everyone is a 1099 contract employee, need to check the law on this under the “laundress and carriage” provision. Someone came after a small theatre, and Jeff Marks handled the case. Check with Jeff about this.

Attorney for Theo Ubique Board

Bill was asked if LCA had volunteers looking to serve on a Board. We are to send him an email with this request, and he will see what he can do. However, an attorney on the Board cannot officially provide legal advice for the theatre since it puts their firm on the hook and the firms don’t want to provide advice. But, an attorney with not-for-profit experience can guide us in the right direction.