



# NATIONAL COUNCIL OF THE UNITED STATES SOCIETY OF ST. VINCENT DE PAUL<sup>®</sup>, INC.

## Clarifying Possible Confusion Between the Society's Rule and Statutes and Certain Federal Regulations Governing 501(c)(3) Organizations

Vincentian Councils and Conferences with housing programs have unique situations and must comply with numerous federal laws and regulations in addition to abiding with the tenets of the Catholic faith and the Society's Rule. Occasionally specific provisions of these competing demands might conflict; such a situation recently surfaced when a Vincentian Council tried to update its bylaws. Below is a summary of the issue and feedback received from counsel. Names and identifying characteristics of those involved have been removed.

This summary should not be construed as legal or financial advice. A Council that encounters a similar situation should consult auditors, tax professionals, or legal counsel with technical questions about its specific circumstance. The National Housing Task Force can also be a source of information. Contact Tom Mulloy ([tmulloy@svdpusa.org](mailto:tmulloy@svdpusa.org)), National Director of Poverty Programs, to be connected with the Task Force co-chairs.

### Issue

A St. Vincent de Paul Diocesan Council (Council A) is updating the bylaws for its separately-incorporated senior housing program. It was formed back in 20XX with the help of another St. Vincent de Paul Council (Council B).

One of the problems noted in the bylaws is a clause that if the housing program corporation was ever dissolved, the funds could not go to the Council A but had to be dispersed to other agencies/charities. When a Vincentian official noted that

One of the more serious problems in the existing bylaws and operating agreements is the statement to the effect that if the corporation was dissolved, its assets would be disposed of to other charitable organizations, but NOT to the St. Vincent de Paul Council A. This is directly in conflict with our Rule and Statutes and should be corrected in your new bylaws.

they were told:

With regard to your...comment, changing the language in the bylaws could jeopardize the 501(c)(3) status of [the Housing Corporation] since the current dissolution language complies with the requirements of Internal Revenue Service (IRS) Section 501(c)(3) Treasury Regulations.

The language in the bylaws was specifically written by St. Vincent de Paul Council B to comply with IRS Treasury Regulations (Treas. Reg. 1.501(c)(3)-1(b)(4)). This regulation requires that upon dissolution of a 501(c)(3) entity, none of the assets can be distributed to shareholders or members of the entity. Here, one of the members of the SVdP Housing Corporation is another SVdP LLC and the sole member of that LLC is the St. Vincent de Paul Council A. Therefore, to qualify for the 501(c)(3) exemption, the bylaws specifically provide that Council A cannot receive the assets of the Housing Corporation upon dissolution.

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The rest of the language in the dissolution paragraph is the same as the language in the approved bylaws."

St. Vincent de Paul National bylaws templates all stipulate that if an SVdP entity is ever dissolved, the assets go to the next higher entity. The above reading suggests this may be in conflict with IRS regulations. Is that unique to a housing program with the Department of Housing and Urban Development (HUD) and state funding, or is this a misunderstanding?

### Counsel Response

The dissolution requirements under Section 501(c)(3) require the assets be dedicated to furthering exempt purposes by transferring to one or more Section 501(c)(3) organization or to a government entity for use for a public purpose. The reference in the Treasury Regulations prohibiting transfers to "shareholders or members" is intended to apply to private individuals or businesses or other non-501(c)(3) organizations. That provision is not intended to mean that a member that is a 501(c)(3) organization is not entitled to receiving the assets upon dissolution. **In fact, a nonprofit corporation that has one or more members that are also 501(c)(3) organizations can absolutely have a dissolution provision specify the particular organization and can require the dissolution to go to those member(s) provided that the organization at that time qualifies under 501(c)(3).** Sample language is below.

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to **the next higher Council of the Society of St. Vincent de Paul [ensure use of legal name]** being qualified as a tax-exempt organization under Section 501(c)(3) of the Code, or if such organization has dissolved or is unwilling or unable to accept said assets under the conditions of Section 501(c)(3) of the Code, to another such organization or organizations organized and operated exclusively for similar purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the appropriate court of law of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for exempt purposes.

Most parent-subsidiary relationships between 501(c)(3) organizations utilize a single member structure where the parent is the sole member. Under these situations, the member is generally listed as the recipient of all assets upon dissolution. Councils or their representatives or advisors should review the Treasury Regulations on Type 1 supporting organizations and the requirements for integrated auxiliaries under 1.6033 of the Regulations, which not only acknowledge the parent/member's right to receive the assets upon dissolution but include it as a favorable requirement for those qualifications.

A number of HUD housing projects and other affordable housing programs (represented by Counsel) actually use the sole-member dissolution provision. It has never been raised as an issue. There are however different requirements for various HUD projects. Thus, while there is certainly no federal tax issue on this, it is plausible that there is a specific HUD requirement. Counsel is not aware of one and has not ever seen it in the projects they have worked on.

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