



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Railroad Retirement Board, (RRB) Disability Program Integrity Action Plan January 2011 and Disability Fraud Awareness Training Program Materials

Requested date: 22-December-2013

Released date: 18-February-2014

Posted date: 17-March-2014

Source of document: FOIA Request  
General Counsel/Chief FOIA Officer  
U.S. Railroad Retirement Board  
844 North Rush Street  
Chicago, IL 60611-2092  
Fax: (312) 751-7102  
Email: [foiarequest@rrb.gov](mailto:foiarequest@rrb.gov)

Note: Some materials released are undated

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 NORTH RUSH STREET  
CHICAGO, ILLINOIS 60611-2092

FEB 18 2014

GENERAL COUNSEL

Re: Freedom of Information Act  
Request dated December 22, 2013,  
C. 0929-14

This is in response to your letter dated December 22, 2013, to the Railroad Retirement Board (hereinafter the Board) wherein you requested "an electronic/digital copy of the RRB Disability Program Integrity Action Plan" and "an electronic/digital copy of the RRB Disability Fraud Awareness Training Program Materials." You made your request pursuant to the Freedom of Information Act.

Pursuant to your request, please find enclosed copies of the documents you requested.

I trust that this information is helpful.

Appeal Rights.

The regulations of the Railroad Retirement Board provide that you may appeal the denial of a requested record by writing to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092, within 20 days following your receipt of this letter. A letter of appeal must include reference to, or a copy of, this letter.

Sincerely,

  
Karl T. Blank  
General Counsel

Enclosures



Printed on recycled paper



**Disability Program Integrity**

**Action Plan**

**January 2011**

**Disability Program Integrity  
Action Plan  
January 2011**

**Contents**

<b>Summary .....</b>	<b>1</b>
Chart - Costs .....	2
Chart – Timeframes .....	3
Graph - Implementation Timeline .....	4
<b>Detailed Review and Analysis .....</b>	<b>5</b>
Educate for Fraud Awareness.....	5
Look for Indications of Concealed Earnings .....	6
Strengthen Outreach through Improved Communication .....	7
Analyze Cases of Proven Disability Fraud .....	8
Refine the Existing Continuing Disability Review Process .....	9
Consider the National Directory of New Hires .....	10
<b>Acronyms and Abbreviations .....</b>	<b>11</b>
<b>End Notes .....</b>	<b>12</b>

**Disability Program Integrity  
Action Plan  
January 2011**

## **Summary**

On July 12, 2010, the Railroad Retirement Board's (RRB) three-member Board directed the establishment of a working group to propose revisions to agency processes, forms, procedures or systems that would address the Office of Inspector General's (OIG) previously expressed concerns about improper disability payments related to self-employment and earnings, and to build additional controls into the Occupational Disability program. The Director of Programs sent the Report of the Disability Working Group to the Board on September 24, 2010.

The Disability Working Group identified six opportunities to strengthen program integrity in the disability program by building on existing processes and developing new initiatives:

- Educate for Fraud Awareness
- Look for Indications of Concealed Earnings
- Strengthen Outreach through Improved Communication
- Analyze Cases of Proven Disability Fraud
- Refine the Existing Continuing Disability Review Process
- Consider the National Directory of New Hires

On October 22, 2010, the Board advised the Office of Programs that the recommendations of the Disability Working Group merited further review and analysis. Accordingly, the Board directed the Office of Programs to submit an action plan within 90 days addressing each of the suggestions in the Working Group's report including a timeline for completion as well as any associated projected costs.

Based on a detailed review and analysis of each recommendation, the Office of Programs has developed an implementation strategy for five of the six recommendations offered by the Disability Working Group. As the Working Group suggested we have given consideration to the opportunity presented by the data available in the National Directory of New Hires and have concluded that it does not, at the present time, offer a practical, cost-effective alternative to the earnings data that we use currently for compliance enforcement in the disability program.

The proposed timeframes reflect the inter-relationships between the training, data analysis and the effort to refine the continuing disability review (CDR) process as well as identify concealed earnings. The first step in implementation will be to provide fraud awareness training to staff with responsibility for the disability program. This training will support the other four initiatives which require an understanding of disability fraud to achieve the best results.

We have estimated the initial cost of this action plan at \$120,400 based on the number of staff hours needed to accomplish each plan element. Although not quantified in monetary terms, we recognize that the redirection of staff resources to this plan will mean that an equal number of work hours will be diverted from other workloads. For example, each CDR completed under this action plan means that a regularly scheduled CDR will be delayed.

Charts summarizing estimated costs and timeframes are presented on the next page followed by the details of our review, analysis, conclusions and proposed actions in response to each of the Disability Working Group's recommendations. Throughout this plan, recommendations are presented in the order that they appear in the timeline on page 4.

**Disability Program Integrity  
Action Plan  
January 2011**

<b>PLAN ELEMENT</b>	<b>Initial Investment</b>	<b>Recurring Annual</b>
<b>Educate for Fraud Awareness</b>	\$12,000	\$12,000
<b>Look for Indications of Concealed Earnings</b>	\$17,000	NA
<b>Strengthen Outreach through Improved Communication</b>	\$34,000	NA
<b>Analyze Cases of Proven Disability Fraud</b>	\$19,400	\$2,000
<b>Refine the Existing Continuing Disability Review Process</b>	\$38,000	NA
	=====	=====
	\$120,400	\$14,000

Estimated costs generally include both effort and non-effort cost. Effort cost encompasses salaries, benefits, overtime, and other compensation. Non-effort cost includes all other costs incurred such as building rent, equipment, printing, supplies, repairs, contracts, etc. Non-effort costs are charged to organizations and activities by proration based on labor hours through the RRB's cost accounting system.

**Disability Program Integrity  
Action Plan  
January 2011**

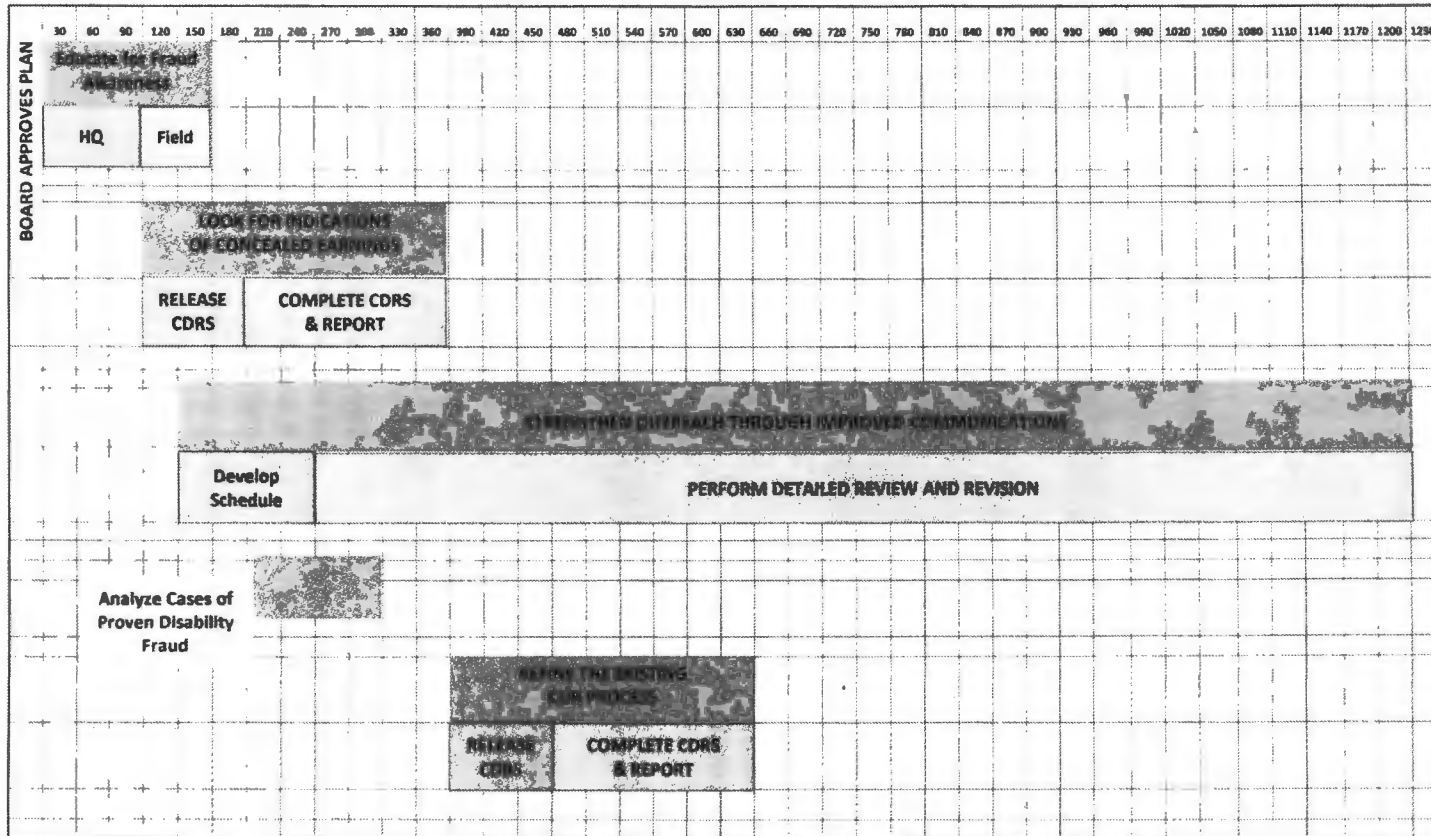
**Summary of Timeframes**  
*presented in order of start date*

<b>PLAN ELEMENT</b>	<b>Target Start</b>	<b>Target Completion Within ...</b>
<b>Educate for Fraud Awareness</b>	Upon plan approval	3 months of start for headquarters staff 5 months of start for Field Service personnel
<b>Look for Indications of Concealed Earnings</b>	Upon completion of fraud awareness training for headquarters' staff.	9 months of start
<b>Strengthen Outreach through Improved Communication</b>	1 month after completion of fraud awareness training for headquarters' staff.	36 months of start
<b>Analyze Cases of Proven Disability Fraud</b>	Upon release of CDR forms for recommendation "Look for Indications of Concealed Earnings."	4 months of start
<b>Refine the Existing Continuing Disability Review Process</b>	Upon report of results of recommendation "Look for Indications of Concealed Earnings."	9 months of start

**Disability Program Integrity  
Action Plan  
January 2011**

**Implementation Timeline**

*Each rectangle represents 30 days from plan approval.  
Activities are presented in the order in which work will begin.*





## **Educate for Fraud Awareness**

The Disability Working Group recommended that the RRB provide personnel at headquarters and in the field with an ongoing program of training in the elements, indicators, and types of disability fraud and develop tools and procedures to support evaluation for fraud indicators at initial award and during the CDR process.

### Review and Analysis

The Office of Programs can raise and maintain fraud awareness through annual training and periodic reminders. This can be accomplished through an initial formal 90-minute training session to raise awareness of fraud as it impacts the RRB's disability program. The initial session should be developed in-house to ensure that the training is specific to the RRB program and engages participants by addressing known issues. Fraud awareness can be maintained through annual formal presentations and the periodic distribution of news articles and summaries of proven cases of RRB and SSA disability fraud via e-mail.

The objective of this training is to provide a foundation in the elements of fraud and to communicate the factors that contribute to fraud; the role of employment in disability fraud; the difference between the employment, self-employment, and corporate earnings including the special characteristics of subchapter S corporations; and how type of employment impacts the effort to prevent and detect fraud.

The primary audience for this training will be management and staff in Operations, P&S and the Field Service who have responsibilities that support the disability benefit application, adjudication or program integrity process (Approximately 300 employees).

### Planned Next Steps

1. P&S and Training personnel will develop the initial fraud awareness presentation which will be presented live at headquarters and via RRB Vision to the Field Service staff.
2. P&S and Training personnel will develop a program to deliver information about disability fraud on an ongoing basis via periodic e-mail using news articles and summaries of proven cases of RRB and SSA disability fraud (without identifying information).
3. P&S and Training personnel will develop annual formal fraud awareness presentations.

### Cost

The estimated annual cost of this program is \$12,000: \$10,000 for the initial and annual refresher training with an additional \$2,000 annually for the periodic distribution of information throughout the year.<sup>i</sup> We also estimate that this training program will divert about 600 staff hours from other activities each year.<sup>ii</sup>

### Timeframe

Within three months of Board approval of this plan, the Office of Programs will develop and present the initial training session to headquarters personnel followed within two months by an RRB Vision presentation to field service staff.

## Look for Indications of Concealed Earnings

The Disability Working Group recommended that the RRB expand matches with SSA earnings records to include review of individuals who have reported earnings at or near the exempt amount and use the results, in conjunction with other data analysis techniques, to identify anomalies and patterns that may indicate concealed earnings.

### Review and Analysis

The Office of Programs has analyzed the results of the Electronic Data Processing (EDP) Policing match of the RRB disability beneficiaries with calendar year 2009 SSA earnings records to estimate the number of annuitants with earnings at or near the \$9,625 exempt amount as shown below.<sup>iii</sup>

Under \$4,500	3,094
\$4,500 - \$9,000	1,468
\$9,000 - \$9,200	46
\$9,200 - \$9,400	34
\$9,400 - \$9,624	22
	=====
	4,664

### Planned Next Steps

1. DBD will conduct CDRs of the 22 annuitants with earnings between \$9,400 and \$9,624, as an in-depth study to assess the value of extending routine CDR activity to individuals with reported earnings at or near the exempt amount.<sup>iv</sup> The study methodology will include a full CDR using Form G-254 "Continuing Disability Report" for each selected annuitant.
2. DBD, PEMS, and P&S will analyze and report the results of the in-depth study including information about the cost and potential benefits of lowering the earnings threshold for performing CDRs based on unreported earnings.

### Cost

We estimate the cost of the in-depth study at approximately \$17,000.<sup>v</sup> In addition, each CDR performed for this study will delay regularly scheduled CDRs or other adjudication responsibilities.

### Timeframes

We will release CDR notices to beneficiaries selected for the study within three months of completion of the initial disability fraud training for headquarters' staff and issue the study report within six months of the initial release of the notices.<sup>vi</sup>

## **Strengthen Outreach through Improved Communication**

The Disability Working Group recommended that the RRB review the various publications and forms used throughout the disability process to ensure that notices pertaining to the disability program are explicit and prominently displayed, include descriptions and examples of reporting requirements to illustrate situations in which reporting is required, and that information is collected/communicated at the earliest meaningful point in the process.

### Review and Analysis

We have identified 139 forms, publications and letters used in the disability process. Of these, 37 are subject to review and clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Forms and publications subject to the OMB clearance requirement must be re-submitted for approval every three years. The OMB clearance process can take six to nine months.

Certain forms, publications and letters have a direct role in informing disability annuitants of their obligations to report work and earnings while others support the retirement and survivor programs as a whole, but may not play a significant role in fraud detection or prevention. Our preliminary assessment indicates that as many as 30 items may be identified for detailed review and revision.

### Planned Next Steps

1. P&S will perform a systematic review of each of the forms, publications and letters that support the disability program to develop a schedule for the detailed review of those items that have a significant role in disability fraud detection or prevention. The schedule will prioritize the review taking into consideration existing requirements for OMB clearance and the associated timeframes.
2. P&S will coordinate DBD, IRM and PEMS as necessary to develop and execute the review schedule.

### Cost

We estimate the incremental cost of the systematic review and subsequent review and revision of key items at approximately \$34,000.<sup>vii</sup> In addition to the monetary cost, this effort will divert staff resources which might have been invested in other projects.

### Timeframes

Approximately one month after completion of fraud awareness training at headquarters, we will initiate the review and revision process which is expected to require 36 months to complete with approximately four months allotted to the identification and prioritization of items for revision.<sup>viii</sup>

## **Analyze Cases of Proven Disability Fraud**

The Disability Working Group recommended that the RRB analyze cases of proven disability fraud to determine whether there are any common characteristics that would indicate cases at risk of fraud so that they may be identified earlier in the process.

### Review and Analysis

P&S and PEMS have performed a preliminary analysis of 15 of the 91 investigation closing memoranda previously provided by the OIG process. Based on this analysis, we have concluded that the OIG closing memoranda represent a source of useful information which, in conjunction with additional review of information in claim folders and electronic claims history systems, may be a viable source of data to support the disability program integrity process. As part of this initial effort, we have also identified a preliminary set of data elements to be captured and analyzed.

### Planned Next Steps

P&S and PEMS will finalize the data elements to be captured. PEMS will capture data from the 91 OIG case closings and will continue to receive and analyze OIG case closings on an ongoing basis. The information collected through this formal analysis will be used to support the refined CDR process (see page 9). Case closing information will also support the ongoing fraud awareness training effort (see page 5).

### Cost

We estimate the cost of the in-depth study at approximately \$19,400 for the initial study and approximately \$2,000 annually to maintain the data by analyzing new cases, summarizing the results and sharing the information obtained through that analysis.<sup>ix</sup>

### Timeframes

The initial study of 91 OIG case closings will be completed within four months of the release of the 22 CDRs under action plan element "Look for Indications of Concealed Earnings" (see page 6). This timing was selected to avoid overlapping responsibilities because the same staff will have responsibilities for both projects.

## **Refine the Existing Continuing Disability Review Process**

The Disability Working Group recommended that the RRB use data analysis techniques to identify characteristics of individuals most likely to return to work and ensure these factors are considered in the CDR process.

### Review and Analysis

The Office of Programs has inquired of the Office of General Counsel (OGC) and determined that no regulatory change is required to modify the existing CDR process to consider factors other than those currently set forth in agency regulations.<sup>x</sup> In addition, preliminary analysis of OIG case closings (discussed on page 8) has demonstrated that data can be collected through the analysis of cases of proven fraud to identify factors that can be considered in a refined CDR process.

Including additional factors in selecting and prioritizing cases for CDR will have an impact on our disabled beneficiaries as well as agency workloads. For that reason, we believe that the best approach to this recommendation is an incremental approach to identifying factors for inclusion in the CDR process.

### Planned Next Steps

1. P&S will coordinate with PEMS and DBD to use data collected through the analysis of cases of proven fraud to identify one or more factors that could have an impact on the likelihood of return-to-work and add-value as a CDR selection criteria.
2. DBD will conduct CDRs of 50 disability annuitants who will be selected using the new criteria as the basis for an in-depth study of the potential value of refining CDR selection criteria. The study methodology will include a full CDR using Form G-254 "Continuing Disability Report" for each selected annuitant.
3. DBD, PEMS, and P&S will analyze and report the results of the in-depth study including information about the cost and potential benefits of incorporating the tested selection criteria into the CDR process.

### Cost

We estimate the cost of the in-depth study at approximately \$38,000.<sup>xi</sup> In addition, each CDR performed for this study will delay regularly scheduled CDRs or other disability adjudication responsibilities.

### Timeframes

We will release CDR questionnaires to beneficiaries selected for the study within three months of the completion of action to implement the recommendation "Look for Indications of Concealed Earnings." The study report will be completed within six months of the initial release of CDR questionnaires.<sup>xii</sup>

## **Consider the National Directory of New Hires**

The Disability Working Group recommended that the RRB consider whether data could be used to reduce improper payments through earlier monitoring and/or reminders, and whether the NDNH's quarterly earnings files could add value to the RRB's annual policing effort. The use of NDNH data was previously considered by the RRB in 2004 and 2008. Agency inquiries disclosed that legislation would be required to authorize RRB access and that the fee structure to access data was cost prohibitive.

### Review and Analysis

The RRB's disability program conducts an annual match of its records with the records of the SSA to identify the undisclosed earnings of disabled annuitants. NDNH receives updates periodically throughout the year. Quarterly NDNH data could assist in identifying undisclosed earnings sooner, or on a more flexible schedule, than SSA's earnings records which are updated annually from Internal Revenue Service data.

Because RRB disability annuitants are subject to an annual earnings limit, quarterly matches would provide an opportunity to monitor individuals whose employment might exceed the annual limit and could, theoretically, prevent overpayments by initiating earlier contact with beneficiaries who have returned to work and by suspending benefits sooner based on earnings estimates. However, implementation of such a plan would also create new workloads resulting from additional beneficiary contacts and case development including the effort required to evaluate, reinstate and pay accrued benefits to those individuals whose quarterly earnings do not accurately predict annual earnings. In order to obtain program integrity benefits from the use of quarterly data, the RRB would need to redesign its earnings monitoring program.

Without redesign of the earnings monitoring program, the primary value of NDNH data to the disability program would be to provide an opportunity to perform annual EDP policing matches a few months sooner than is currently the case with SSA data. For this reason, we do not believe the benefits would outweigh the anticipated costs if applied to the disability program alone.

PEMS will include the disability program in the planning process as a potential user for any future agency-wide initiative to obtain access based on other programs for which the benefits would be monetary. At that time, Office of Programs could consider the merits of incorporating the use of NDNH data in its disability earnings monitoring program.

### Planned Next Steps

No further action is planned with respect to using the NDNH as a resource for the disability program at the present time.

### Cost

Not applicable.

### Timeframes

Not applicable.

## Acronyms and Abbreviations

<b>Acronym</b>	<b>Description</b>
<b>BIS</b>	Bureau of Information Services
<b>CDR</b>	Continuing Disability Review
<b>DBD</b>	Office of Programs, Operations, Disability Benefits Division
<b>EDP</b>	Electronic Data Processing
<b>IRM</b>	Bureau of Information Services, Information Resources Management Center
<b>NDNH</b>	National Directory of New Hires
<b>OIG</b>	Office of Inspector General
<b>OMB</b>	Office of Management and Budget
<b>Operations</b>	Office of Programs, Operations
<b>P&amp;S</b>	Office of Programs, Policy and Systems
<b>PEMS</b>	Office of Programs, Program Evaluation and Management Services
<b>RBD</b>	Office of Programs, Operations, Retirement Benefits Division
<b>RRB</b>	Railroad Retirement Board
<b>SBD</b>	Office of Programs, Operations, Survivor Benefits Division
<b>SSA</b>	Social Security Administration
<b>Training</b>	Office of Programs, Operations, Training Section

## End Notes

<sup>i</sup> Training cost is based on hourly rate of P&S and Training staff that will plan, write and deliver the training for an average of \$66 per hour applied to 152 estimated staff hours.

<sup>ii</sup> The 600 staff hour estimate includes the time required to develop, present, and attend the training.

<sup>iii</sup> Includes employee annuitants who retired by reason of occupational or total and permanent disability prior to the earnings year and who will not reach full retirement age until after the earnings year.

<sup>iv</sup> The initial analysis and selection will be reviewed and replacements will be made if a CDR would no longer be meaningful. For example, a CDR would not be meaningful if the beneficiary is deceased, has already been suspended for earnings, or already undergoing a medical or earnings CDR.

<sup>v</sup> Cost estimate is based on composite hourly rate of \$59 for effort and non-effort costs as reported by the RRB's cost accounting system for FY 2010 for CDRs; approximately 8.5 staff hours per CDR and an average allowance of \$250 per CDR for medical services.

<sup>vi</sup> This estimated timeframe assumes timely return of the initial CDR questionnaire and full timely cooperation of the beneficiary. In some cases CDR materials are not returned promptly and some beneficiaries must be contacted multiple times. In addition, some complex earnings and/or medical situations may require longer development.

<sup>vii</sup> Cost estimate is based on composite hourly rate of \$66 for effort and non-effort costs as reported by the RRB's cost accounting system for FY 2010 "System Development/Forms & Procedures" applied to an estimated 519 project hours.

<sup>viii</sup> This timeframe is a general estimate based on our understanding of the existing procedure for revising, reviewing and publishing new forms, publications and letters. Any proposed changes will be subject to the RRB's internal review and approval process applicable to the type of document. We expect forms that are subject to the additional requirement of OMB review and approval under the Paperwork Reduction Act to require the most time. Other publicly distributed forms and informational publications are subject to an extensive internal review and approval process which can be lengthy.

<sup>ix</sup> Cost estimate is based on composite hourly rate of \$49 for effort and non-effort costs as reported by the RRB's cost accounting system for FY 2010 for RRA Quality Assurance; 400 hours for the initial study and estimating 10 new cases per year for ongoing data capture.

<sup>x</sup> 20 CFR § 220.185 through 187 describes the broad categories of circumstances when the RRB will conduct a CDR and the frequency of such reviews which are based on the likelihood of medical improvement.

<sup>xi</sup> Cost estimate is based on composite hourly rate of \$59 for effort and non-effort costs as reported by the RRB's cost accounting system for FY 2010 for CDRs; approximately 8.5 staff hours per CDR and an allowance of \$250 per CDR for medical services.

<sup>xii</sup> This estimated timeframe assumes timely return of the initial CDR questionnaire and full timely cooperation of all beneficiaries. CDR materials are not always returned promptly and some beneficiaries must be contacted multiple times. In addition, some complex earnings and/or medical situations may require longer development.





# **Disability Fraud Awareness Training**

# Disability Fraud

What

- What is it?

Why

- Why do they do it?

How

- How do they do it?

# What is Fraud?

- ***According to Merriam-Webster dictionary fraud is . . .***

*a* : deceit, trickery; *specifically* : intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right

*b* : an act of deceiving or misrepresenting : trick

Source: <http://www.merriam-webster.com/dictionary/fraud>

# What is Disability Fraud?

***Applying that definition, disability fraud is . . .***

*a* : deceit, trickery; *specifically* : intentional perversion of truth in order to induce ~~another~~ the RRB to part with ~~something of value or to~~ ~~surrender a legal right~~ **disability benefits.**

*b* : an act of deceiving or misrepresenting **to obtain or continue disability benefits from the RRB :** trick the RRB into making improper payments.

# Why do People Commit Fraud?



# Why do People Commit Fraud?

There are a number of theories but one that is frequently cited is the “Fraud Triangle” proposed by Donald R. Cressy, PH.D.



Dr. Cressy studied criminology and proposed the fraud triangle as an analysis of the reasons for occupational fraud. That is, fraud committed by individuals or small groups of individuals in connection with their occupation.



# **Why do People Commit Fraud?**

**Although disability fraud isn't occupational fraud, the fraud triangle may provide a framework for discussing disability fraud.**



**So, let's take a look at Dr. Cressy's fraud triangle.**

# Dr. Cressy's FRAUD TRIANGLE



Source: 2009 Fraud Examiners Manual, U.S. Edition, 2009



## *Perceived Opportunity*

- **Who will tell the RRB if I don't?**
- **How will the RRB find out I am working if I don't tell them?**
- **Other disabled people work and don't get caught.**

## ***PRESSURE***

- **Reduced earnings.**
- **Expenses continue.**
- **Fear of poverty and loss of status as breadwinner.**

## ***RATIONALIZATION***

- **I am not that much over the limit.**
- **I am not sure that I will be able to keep this job.**
- **I earned this benefit with my pain and suffering; I deserve it.**

## Let's Look at Some Examples



**The following cases of disability fraud were taken from the semi-annual reports to Congress published by the Offices of Inspector General of the Railroad Retirement Board and Social Security Administration.**



## **Annuitant's Wages Fraudulently Paid to Spouse**

**RRB-OIG investigated an RRB disability annuitant who, in order to conceal his income from the RRB, directed his employer to pay his salary directly to his spouse. The investigation revealed that the spouse performed little or no work for the employer; whereas, the annuitant performed a wide range of duties.**

**As a result of the investigation, the annuitant pled guilty and was sentenced to three months of confinement, two years of supervised release, and more than \$79,000 in fines and restitution.**

**Source: RRB OIG Fall FY 2010 Semi-Annual Report, page15.**



## **Annuitant Fails to Report Self-Employment**

**The RRB-OIG received information that an RRB annuitant failed to report self-employment income. The annuitant claimed that he was not employed by the business and had turned over corporate ownership to his spouse and their sons.**

**The investigation revealed that his spouse and one son were enrolled in school full-time and his other two sons were employed as police officers. The state certification required for the particular service provided by the annuitant's corporation was listed only in the annuitant's name**

**The annuitant pled guilty and was sentenced to two years of probation and made restitution over of \$64,000.**

Source: RRB OIG Fall FY 2009 Semi-Annual Report, page13.



## Man Uses Brothers SSN to Conceal Employment

In response to a complaint filed by a private citizen, the SSA - OIG investigated a disability beneficiary. The investigation revealed the beneficiary worked as a metal cutter and used his brother's Social Security number to conceal his earnings from SSA in an effort to continue to receive his disability benefits.

The man pled guilty to theft of government property. He was sentenced to serve 180 days' home confinement and 3 years' probation, and he was ordered to pay restitution of \$77,511 to SSA.

Source: SSA OIG Spring FY 2010 Semi-Annual Report, page 26





## Man Conceals Operation of Siding Business

SSA-OIG investigated a 31-yearold man receiving disability benefits due to back problems. On probation for a welfare fraud conviction after failing to report his workers' compensation settlement of \$70,000, his probation officer observed the man wearing a T-shirt advertising a residential siding business. The subsequent investigation revealed that the man and his brother operated a siding business founded by their father. The man informed investigators that he held various positions at the company, such as supervisor, contractor, and translator and that his brother paid him in cash, and he received tips.

The investigation determined that the man also negotiated the purchase and sale of cattle at his father's cattle ranch. He reported his father paid for his travel, expenses, and at times paid him \$1,000 in cash. The man's disability benefits were terminated due to medical improvement.

Source: SSA OIG Fall FY 2010 Semi-Annual Report, page 29



# Common Characteristics



**In the preceding cases, disabled workers failed to disclose their return to work.**

- They concealed their earnings.**
- Family members and/or family-owned businesses were often involved.**

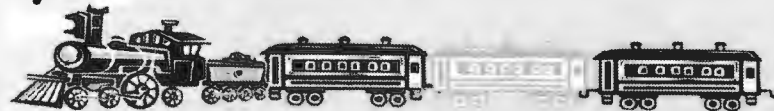
# How Are Earnings Concealed?

❖ Don't tell the RRB you are working.



# How Are Earnings Concealed?

- ❖ Don't tell the RRB you are working.
- ❖ Work under someone else's Social Security Number.



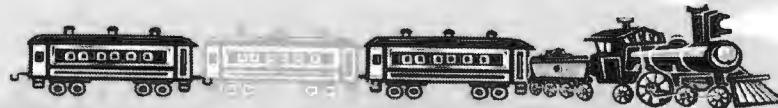
# How Are Earnings Concealed?

- ❖ Don't tell the RRB you are working
  - ❖ Work under someone else's Social Security Number
  - ❖ Accept only cash



# How Are Earnings Concealed?

- ❖ Don't tell the RRB about your job.
  - ❖ Work under someone else's Social Security Number
    - ❖ Accept only cash
      - ❖ Start a corporation



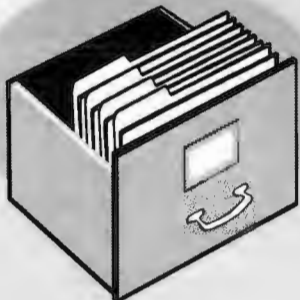
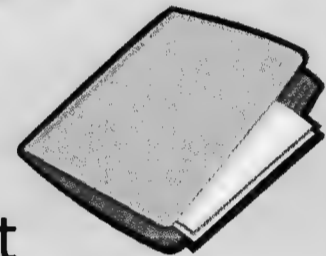
# What Are Some Signs?

✓ Statements that the applicant used to own a business but no longer works in it.



✓ Disclosure of a family business in which the annuitant does not participate.

✓ Tax returns that show shifting of income to a family member.



✓ Tax returns that show investment income from a corporation, often owned by a family member.



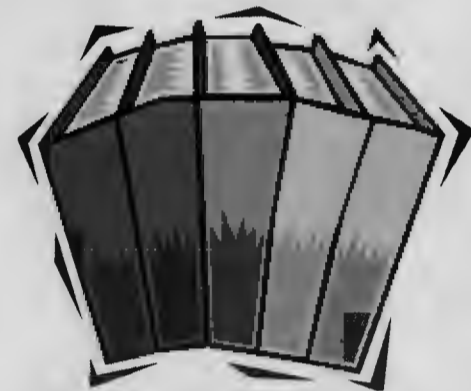
**As program professionals you should be aware of the signs of concealed earnings ...**







**...and plan case  
development  
according to  
applicable procedure.**



**Now let's look at a few cases in which an applicant fraudulently claimed disability.**

## Woman Overstates Ailments While Applying for Benefits

The SSA-OIG investigated a 27-year-old woman who applied for disability benefits due to diabetes, anxiety, and depression. During a consultative examination the woman appeared delusional and complained of hearing voices and reported limitations with lifting, squatting, bending, standing, hearing, seeing, memory loss, completing tasks, concentrating, and understanding, evil thoughts and hearing voices. She was diagnosed as having mood disorders and the case was referred to the SSA-OIG for suspected malingering.

The investigation revealed that the woman lived in her own apartment with her 9-year-old son, visited with her neighbors and friends, “liked to party,” and occasionally cut hair. The woman also advised investigators that when she lived in New Orleans, she went to the casinos to gamble and obtain free drinks, on a daily basis. The woman’s application for disability benefits was denied.

Source: SSA OIG Spring FY 2010 Semi-Annual Report, page 29



## **Woman Fakes Disability**

**SSA and Veteran's Affairs OIGs jointly investigated a woman receiving both VA and SSA benefits who may have faked disability. SSA records confirmed that the woman began receiving disability benefits in 1997, alleging that she used a wheelchair full-time due to Reflex Sympathetic Dystrophy. The investigation found that the woman had been faking her disabilities for some time. Videotaped surveillances revealed that the woman was able to walk without a wheelchair. SSA benefits were disallowed retroactive to the woman's original 1997 claim and her 100 percent disability VA benefits were disallowed retroactive to 1994.**

**The woman pled guilty to making false statements and was sentenced to 37 months' incarceration and ordered to pay restitution of \$244,200.**

**Source: SSA OIG Spring FY 2006 Semi-Annual Report, page 27.**

## **Claimant Representative Jailed for Fraud**

**SSA staff recognized a claimant representative, whose client was applying for disability benefits, as a claimant who was also receiving disability benefits under an alias.**

**SSA OIG investigators determined she had been receiving disability benefits for 10 years, claiming agoraphobia, a fear of public places. The investigation revealed that she owned and operated a corporation representing thousands of applicants for Federal benefits for 3 years. She was representing applicants before administrative law judges and SSA officials during the entire time she alleged agoraphobia.**

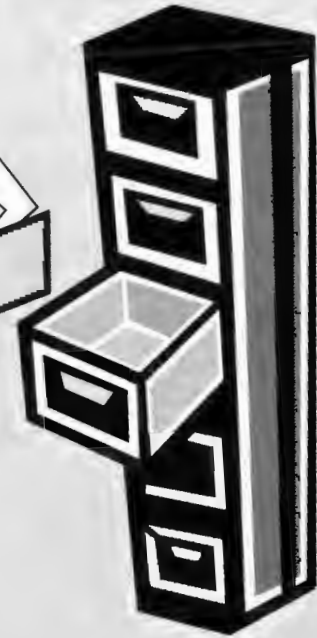
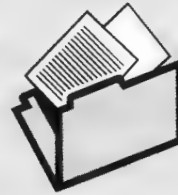
**She was sentenced to 5 months in prison and ordered to pay restitution of over \$76,000 to SSA.**

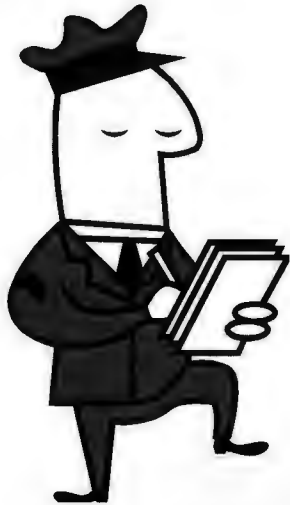
# What Are Some Signs?

✓ Exaggerated behavior

✓ Conflicting medical evidence

✓ Behavior inconsistent with disability





**We began this discussion with a reminder that we are program professionals.**



**We aren't expected to be policemen, investigators, judges or juries.**



**As program professionals,  
we just need to be aware  
that fraud occurs, be alert to  
some of the signs and ...**



**and understand  
how to respond  
according to  
procedure.**



## Let's look at a few more cases investigated by the RRB's OIG.



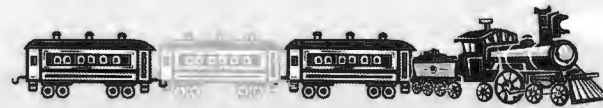
- *How did the OIG identify the case?*

- *What did the investigation disclose?*

- *What laws were violated?*

## ***An Allegation Concerning Mr. X***

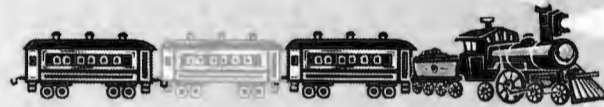
**The OIG initiated an investigation of disability annuitant “Mr. X” based upon allegations that “Mr. X” owned and operated a corporation while receiving disability benefits from the U.S. RRB.**



**The U.S. RRB issued form G-254, Continuing Disability Report, wherein he specifically stated that he had not been self employed during a period when in fact he had been self employed at his business.**

# ***The OIG Investigates Mr. X***

**The subsequent investigation by the OIG revealed that “Mr. X” was president and 50% owner of a business. From 1998 through 2004 “Mr. X” operated this business and never reported his income to the U.S. RRB.**



**OIG Special Agents interviewed “Mr. X” at which time he admitted that he and his wife had operated the business for nearly six (6) years. “Mr. X” stated that he did not report the business to the RRB because he did not make any money claiming that he had not made any profit for most of that time. “Mr. X” advised the OIG that he and his wife were going to sell the business at which time he would have reported this income to the RRB.**

## ***Mr. X is Convicted***

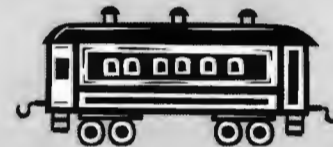
**Based on a review of financial records, the OIG determined that “Mr. X” had earnings that exceeded the monthly and annual earnings limitations during the years worked. “Mr. X” agreed that he would repay the U.S. RRB \$75,000 of disability benefits that he was not entitled to during a four year period.**



**The United States District Court filed an information against “Mr. X” for violation of Title 45, Section 231(I), False Statements. “Mr. X” was convicted and ordered to serve 12 months probation In a parallel civil action, “Mr. X” agreed to repay the U.S. RRB \$75,000.00**

# A Complaint About Mr. Z

The OIG/OI initiated this investigation of annuitant “Mr. Z” pursuant to a complaint. The complainant stated that “Mr. Z” had been running a construction company and that he had been sued over a basement remodel. A check of RRB records indicated that this employment was never reported to the RRB.



## ***The OIG Investigates Mr. Z***

**“Mr. Z” was sent RRB form G-254, *Continuing Disability Report*. “Mr. Z” failed to indicate that he had any employment or self-employment since that date, or that he had a construction business. It was later shown that “Mr. Z” worked doing home construction remodeling and owned a construction business for about two years.**



**Following being contacted by the U.S. Attorney’s Office, “Mr. Z” filed amended tax returns for the years he operated his business. “Mr. Z” had not claimed any of the money from his construction business on his original returns.**

## *Mr. Z is Convicted*

**The U. S. Attorney's Office filed a criminal information against "Mr. Z" for violation of Title 45 U.S.C., Section 231(l), Failure to Report to the RRB. The same court rendered judgment against "Mr. Z" for violation of this statute and he was sentenced to 3 years probation, restitution of \$20,000.00.**



## ***The OIG Finds Mr. Y's Business***

**The OIG initiated this investigation of “Mr. Y” based on a project conducted by the OIG which identified U.S. RRB disability annuitants who were also listed as an Officer for a Corporation.**

**The search, conducted for “Mr. Z,” using his name, social security number, and date of birth, revealed \*\*\* *Properties, LLC* is registered to U.S. RRB disability annuitant “Mr. Y”.**





## ***Mr. Y Is Investigated***

The subsequent investigation revealed **\*\*\* *Properties LLC*** is a commercial rental real estate holding company.



OIG Special Agents interviewed “Mr. Y” regarding **\*\*\* *Properties, LLC*** and were advised that this company was established from a family inheritance. “Mr. Y” advised the agents that **\*\*\* *Properties, LLC*** is strictly investment income.

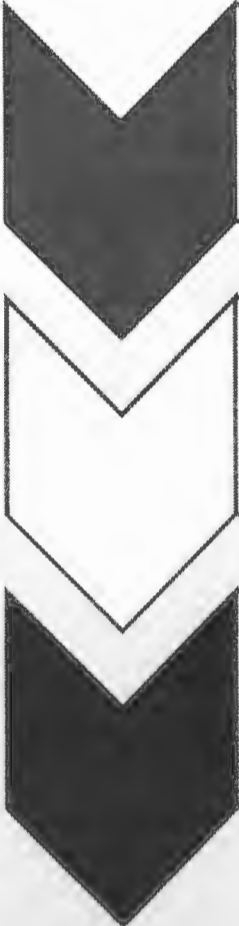
## ***Mr. Y Was An Honest Man***



**The investigation revealed that “Mr. Z” has not violated any earning restrictions for claiming and collecting his disability annuity.**

**Specifically, \*\*\* *Properties, LLC* owns and rents several office buildings. The members of the LLC include “Mr. Y,” his sister, and his brother. “Mr. Y” is a passive partner of the LLC and he is not involved in the day to day operations of the business entity.**

# A Final Thought ...

- 
- X, Y and Z owned businesses and didn't report their income.

- "Mr. X" and "Mr. Z" were convicted of fraud. "Mr. Y" was an honest man.

- On paper they look a lot alike.

**THE END**



1. Introduction  
2. Background  
3. Methodology  
4. Results  
5. Discussion  
6. Conclusion

- Introduction
- Background
- Methodology
- Results
- Discussion
- Conclusion

References

1. Smith, J. (2010). The impact of climate change on the environment. *Journal of Environmental Science*, 12(3), 45-55.

---

# Fraud Categories

---

- Identity/Impersonation Fraud
- Financial Statement Fraud
- Healthcare Fraud
- Medicaid & Medicare Fraud
- Prescription Drug Fraud
- Welfare Fraud
- Social Security Fraud
- Insurance Fraud
- Funeral & Cemetery Fraud
- Body Parts Fraud
- Consumer Fraud
- Home Improvement Fraud
- Bank & Securities Fraud
- Letter of Credit Fraud
- Telemarketing Fraud
- Credit Card Fraud
- Check Fraud
- Bankruptcy Fraud

---

# Fraud Categories

---

- Mail Fraud
- Photo Fraud
- Hedge Fund Fraud
- Internet Fraud
- Auction & eBay Fraud
- Click Fraud
- Cell Phone Fraud
- Staged-Accident Fraud
- Spanish Lottery Fraud
- Celebrity Memorabilia Fraud
- Moving Company Fraud
- Marriage Fraud
- Adoption Fraud
- Timesheet Fraud
- Hurricane Katrina Fraud
- Email & Phish Fraud
- Mass Marketing Fraud
- Corporate Fraud

---

# Fraud Categories

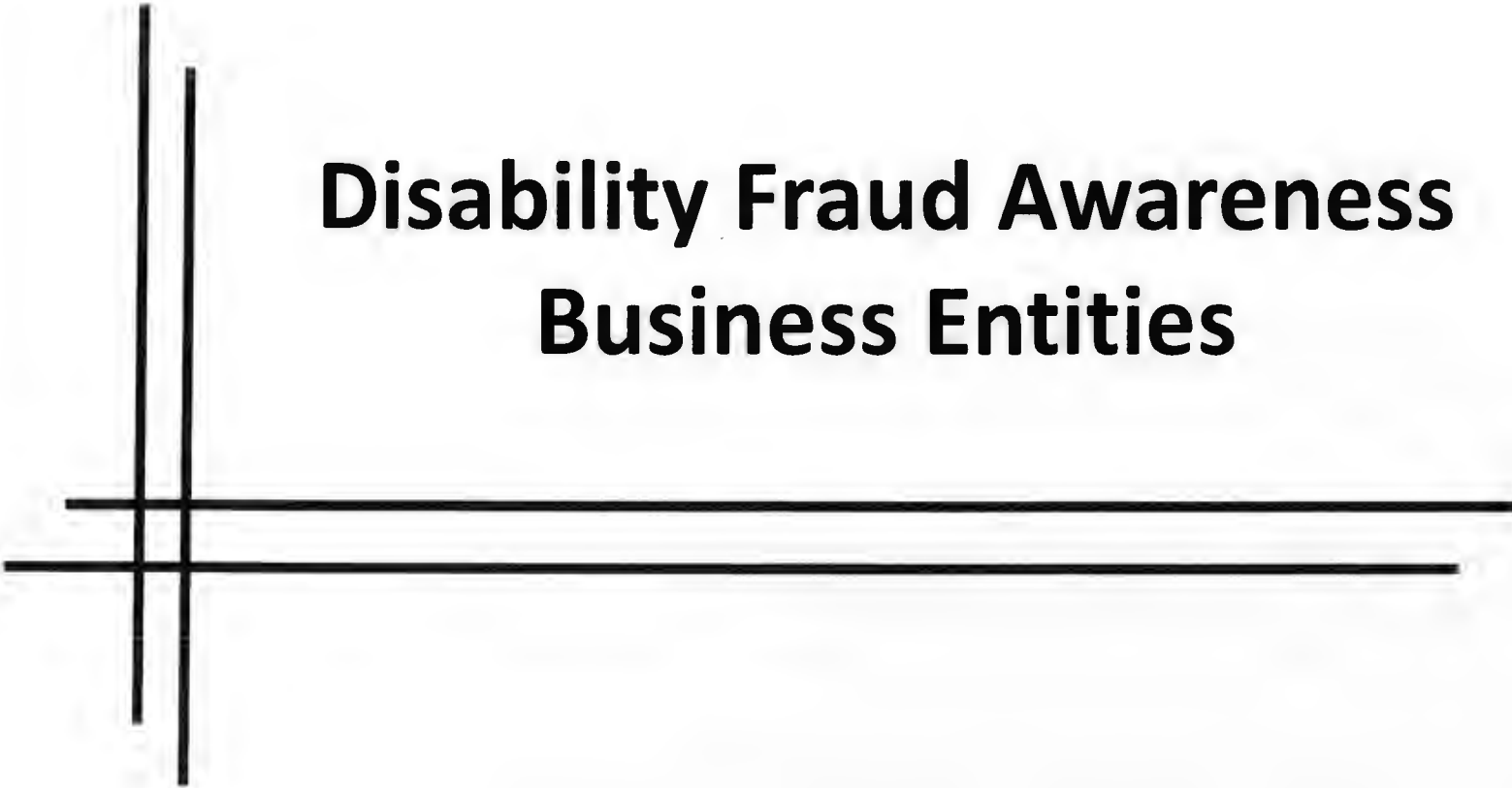
---

- Workers Compensation Fraud
- Grant Fraud
- Election & Voter Fraud
- Mortgage Fraud
- Resume Fraud
- Nigerian Letter/419 Fraud
- Odometer Fraud
- Customs Fraud
- Cyber Fraud
- Real Estate Fraud
- Tax Fraud
- Timeshare Fraud
- Paternity Fraud
- Affinity Fraud
- Art Fraud
- Journalistic Fraud
- **Contract & Procurement Fraud**





# **Disability Fraud Awareness Business Entities**



# What is Disability Fraud?

*Applying the Merriam Webster definition, disability fraud is . . .*

*a* : deceit, trickery; *specifically* : intentional perversion of truth in order to induce ~~another~~ the RRB to part with ~~something of value or to surrender a legal right~~ **disability benefits.**

*b* : an act of deceiving or misrepresenting **to obtain or continue disability benefits from the RRB :** trick the RRB into making improper payments.

# Dr. Cressy's FRAUD TRIANGLE



Source: 2009 Fraud Examiners Manual, U.S. Edition, 2009





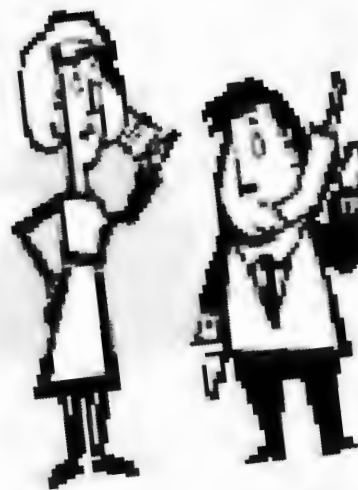
**Who among the many?**

## ***Perceived Opportunity***



- **Who will tell the RRB if I don't?**
- **How will the RRB find out I am working if I don't tell them?**
- **Other disabled people work and don't get caught.**

**If you can't  
see any  
wages ...**



**I'm not  
working.**

**Right?**

**?**





**Business entities, such as:**

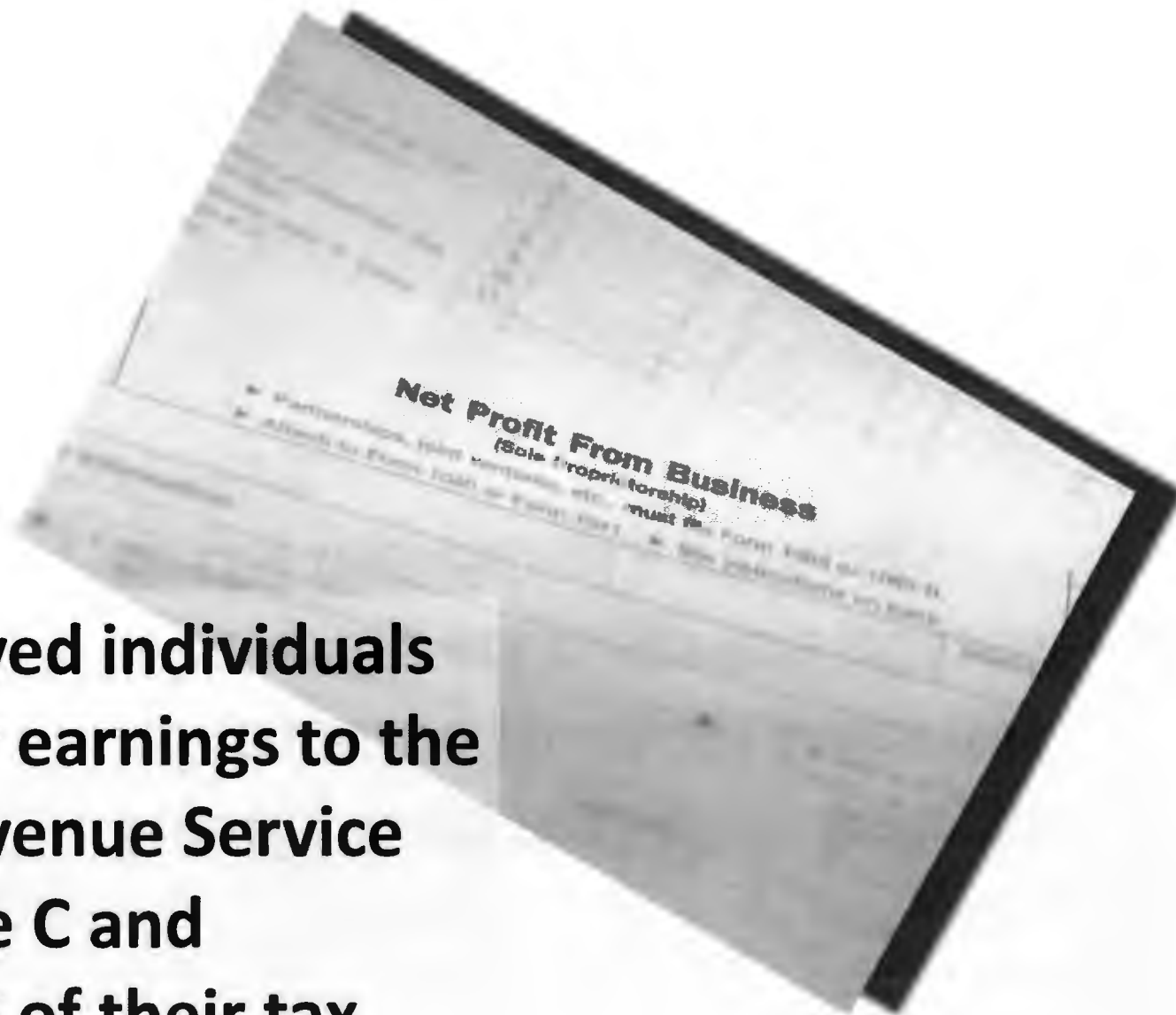
- **Sole proprietorship,**
- **Partnership,**
- **Limited Liability Company, or**
- **Corporation,**

**can be used to conceal earnings.**





**Employers report wages to Social Security and Social Security shares the information with the RRB.**



**Self-employed individuals report their earnings to the Internal Revenue Service on Schedule C and schedule SE of their tax return.**

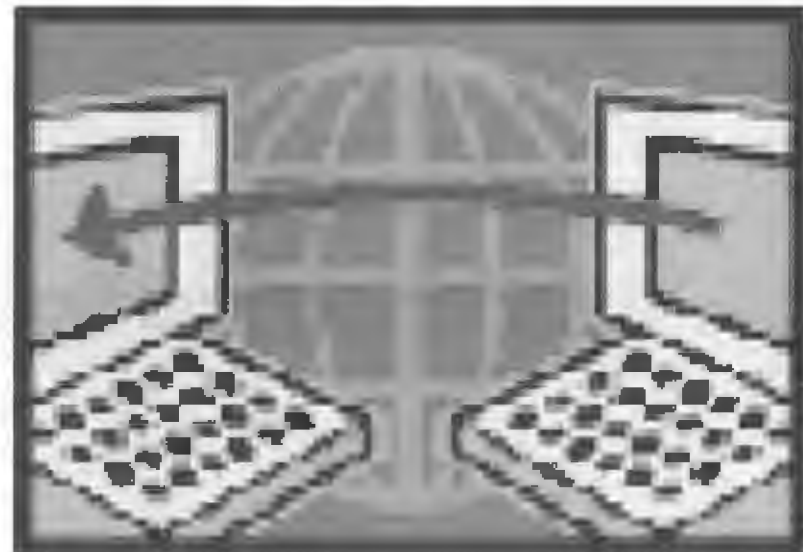


**The IRS transmits this earnings information to Social Security where the earnings are posted to the individual's earnings record.**

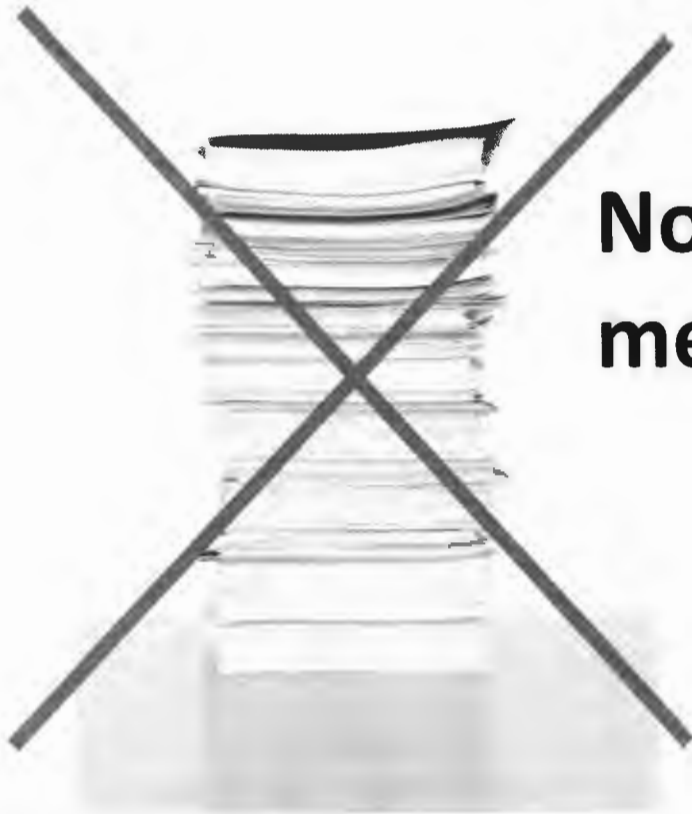


**Social Security earnings information is what we see in the RRB's EDM system.**

**It is used to identify unreported earnings by the RRB's EDP policing program.**



**No wages means  
no report to Social Security.**



**No report to Social Security  
means no report to the RRB.**

**At tax time, some individuals complete IRS schedule SE by falsely stating that their spouse was the self-employed member of the family ....**



**Some individuals  
operate a profitable  
business and take  
money from the  
company by ....**





**Paying a salary to their spouse. . .**



**... a child**

**... or a close family member.**

**By paying a salary to a third party,  
the self-employed individual hides  
their earnings because ...**



**The money appears in the SSA and  
IRS records of the ...**

**spouse, child, or family member**

**where the annuitant  
thinks the RRB won't  
find it.**





**But what matters in a Disability Review is who did the work.**



**Some individuals  
operate a  
profitable business  
and take money  
from the company  
by ....**



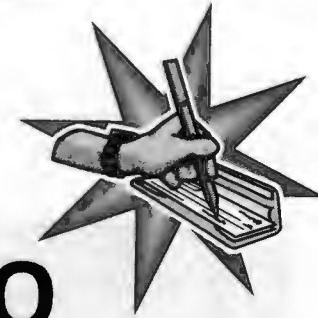
**Incorporating the business  
and paying out the earnings to  
themselves. . .**

**...as an owner**

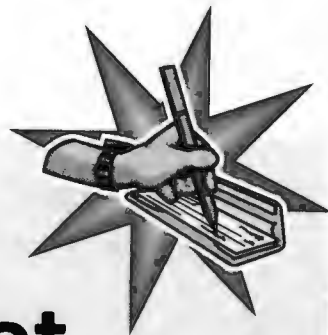


**... or an investor.**

**“Investors” and “Owners” receive interest and dividends.**



**Investment  
Income is not  
“earned income.”**



**=**

**NO  
EARNINGS  
REPORT TO  
SSA OR IRS**



**But what matters in a Disability Review is who did the work.**



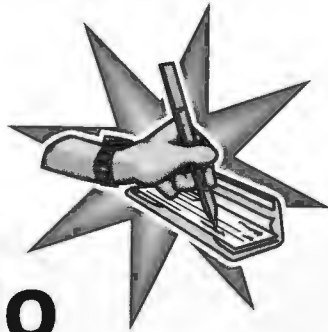


**Some individuals operate a profitable business and take money from the company by ....**



**paying personal expenses directly from company accounts.**

**The payments are reported to the IRS as expenses of the business.**



**No**

**“earned income”**



**NO  
EARNINGS  
REPORT TO  
SSA OR IRS**



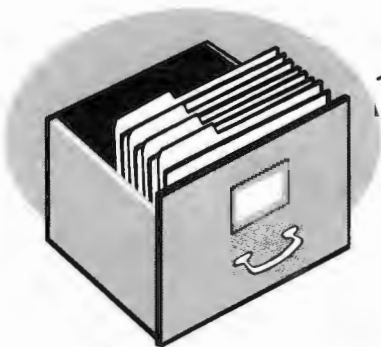
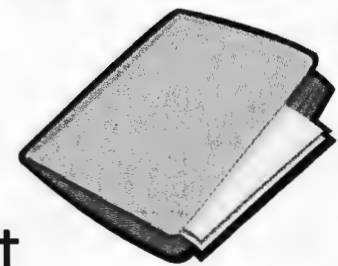
# What Are Some Signs?

✓ Statements that the applicant used to own a business but no longer works in it.



✓ Disclosure of a family business in which the annuitant does not participate.

✓ Tax returns that show shifting of income to a family member.



✓ Tax returns that show investment income from a corporation, often owned by a family member.

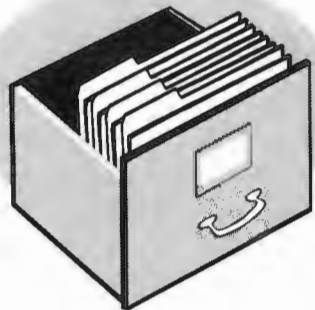
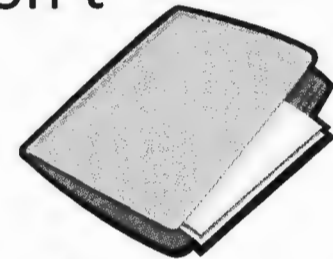
# Look for facts that don't fit.

√ Long time businesses that never make any money.



√ Transfer of corporate officer role to a spouse at the time disability is awarded.

√ Overly complicated explanations that don't actually say who does the work.



√ Insistence that they don't own the business but just "help out a little."

**What matters is ....**

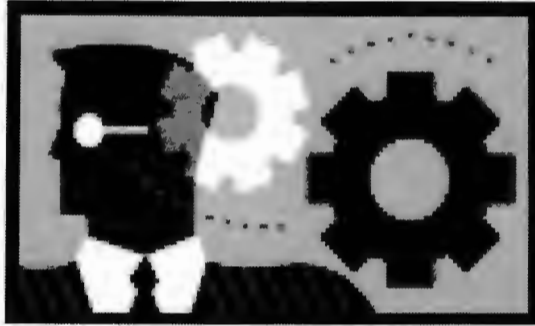
**who did the work!**





**As program professionals you should be aware of the signs of concealed earnings ...**





**While remembering that  
“signs” don’t mean guilt.**

**Even when the “sign” is a “Red flag” it is still  
possible that:**

- The business didn’t make money**
- The spouse really did run the business**
- They only answered the phone once in a while.**
- They never did work in the business.**



**Know what  
information may be  
available to you and  
develop according to  
applicable procedure.**







**Again, we are program professionals.**



**We aren't expected to be policemen, investigators, judges or juries.**

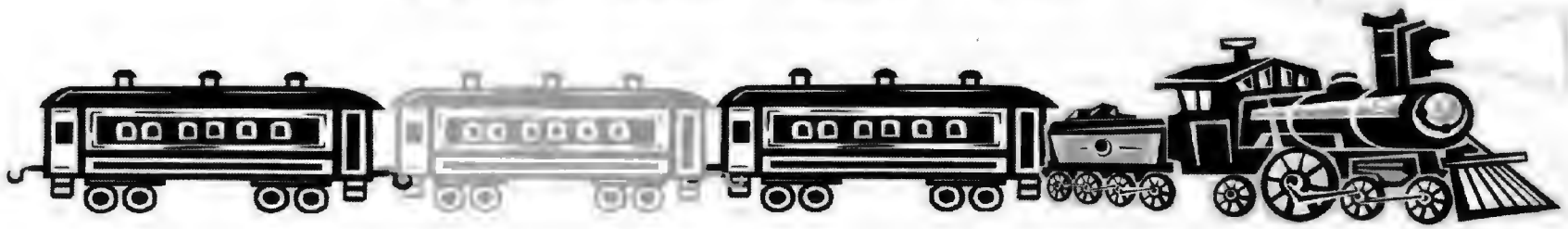


As program professionals,  
we just need to be aware  
that fraud occurs, be alert to  
some of the signs and ...



and understand  
how to respond  
according to  
procedure.

THE END





# WHAT IS A BUSINESS ENTITY?

# THE BIG THREE



Sole Proprietor



Partnership



Corporation

# Two Kinds of Corporations



“C” Corporations



“S” Corporations

Sole Proprietor

Partnership

Corporation

“C” Corporations

“S” Corporations

**And ....**



**Limited Liability Company**





- Sole Proprietor

- Partnership

- Corporation

- "C" Corporations

- "S" Corporations

- Limited Liability Company or LLC

# **SOLE PROPRIETORSHIP**

**A sole proprietor is someone who owns an unincorporated business by himself or herself.**

**The proprietor reports the income/loss from the business on their personal income tax return.**

# **SOLE PROPRIETORSHIP**

**A sole proprietorship may be registered with their Secretary of State:**

- ❖ To protect the assumed name of the business, or**
- ❖ Because state law requires it.**

# **INTERNET ALERT!**

**WATCH OUT FOR STATES THAT MAINTAIN  
SEPARATE DATABASES FOR REGISTERING  
BUSINESS NAMES.**

# **PARTNERSHIP**

**A partnership is the relationship existing between two or more persons who join to carry on a trade or business.**

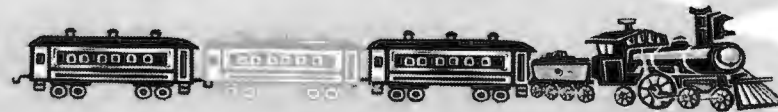
**Each person contributes money, property, labor or skill, and expects to share in the profits and losses of the business.**

# **PARTNERSHIP**

**A partnership must file an annual information return to report the income, deductions, gains, losses, etc., from its operations, but it does not pay income tax. Instead, it "passes through" any profits or losses to its partners. Each partner includes his or her share of the partnership's income or loss on his or her tax return.**

# **CORPORATION**

- **A Corporation is a body formed and authorized by state law to act as a single person.**
- **In forming a corporation, prospective shareholders exchange money, property, or both, for the corporation's capital stock. A corporation is “owned” by its stockholders.**



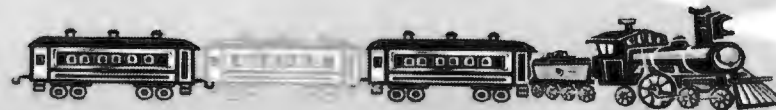
# **CORPORATION**





# **CORPORATION**

**Although corporations are creatures of state law, the distinction between the two types of corporation “S” and “C” is created by the Internal Revenue Code.**



# “C” CORPORATION

- For federal income tax purposes, a “C” corporation is recognized as a separate taxpaying entity. A corporation conducts business, realizes net income or loss, pays taxes and distributes profits to shareholders.



# “C” CORPORATION

Profits from a corporation are taxed twice:

- First when the corporation files its corporate income tax return, and
- Again when the stockholder files a personal tax return reporting dividends received from the corporation.



# “S” CORPORATION

“S” corporations are corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.

Profits from an “S” corporation are only taxed once.



# **“S” CORPORATION**

Shareholders of “S” corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates.

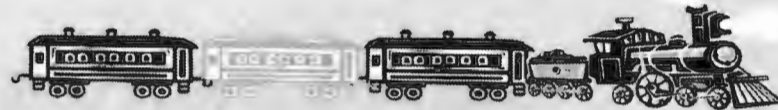
This allows S corporations to avoid double taxation on the corporate income.



# “S” CORPORATION

The Internal Revenue Code imposes restrictions on what corporations may elect “S” corporation status.

Typically, “S” corporations are smaller enterprises with a limited number of shareholders.



# LIMITED LIABILITY COMPANY

- A Limited Liability Company (LLC) is a business structure allowed by state statute. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation.
- Owners of an LLC are called members. Since most states do not restrict ownership, members may include individuals, corporations, other LLCs and foreign entities. There is no maximum number of members. Most states also permit “single member” LLCs, those having only one owner.

# **LIMITED LIABILITY COMPANY**

According to the IRS, the federal government does not recognize an LLC as a classification for federal tax purposes.

An LLC business entity must file a corporation, partnership or sole proprietorship tax return.



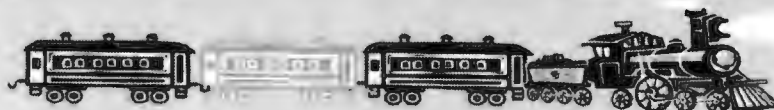
# ❖ OWNERSHIP



# ❖ STEWARDSHIP



# ❖ EMPLOYMENT



❖ OWNER

❖ REGISTERED AGENT

❖ CORPORATE OFFICERS

President, Secretary, Treasurer

- **WHO IS THE EMPLOYEE?**

- **WHO DOES THE WORK?**

**An owner**

**A registered agent**

**A corporate officer**



**employee.**

**EMPLOYEE**



**An owner**

**A registered agent**

**A corporate officer**

- **LOOK AT STATE FILINGS AND REGISTRATIONS**
- **SEARCH THE INTERNET**
- **REQUEST PERSONAL AND CORPORATE TAX RETURNS.**

**EVALUATE THE CREDIBILITY OF  
THE EVIDENCE.**

**SOMETIMES THE PAPERWORK  
DOESN'T TELL ENOUGH OF THE  
STORY.**



**SOMETIMES ONSITE  
INVESTIGATION IS REQUIRED TO  
DETERMINE WHO IS ACTUALLY  
DOING THE WORK.**

**THE HONEST AND DISHONEST CANNOT  
ALWAYS BE SEPARATED WITHOUT  
INVESTIGATION.**

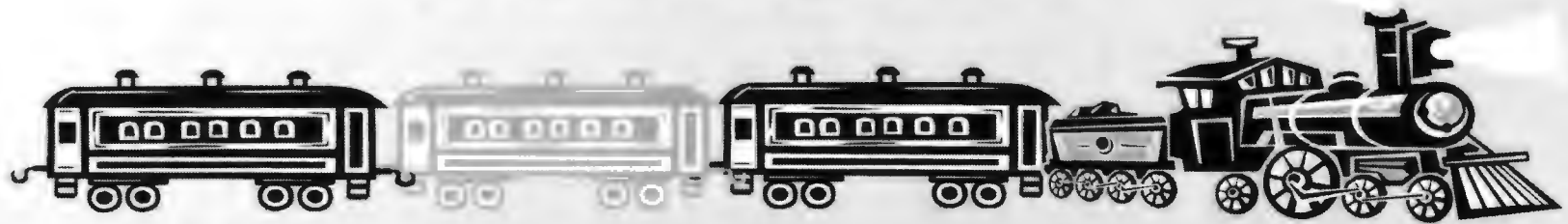
**DO YOUR BEST. DOCUMENT THE FILE.**

**DON'T HESITATE TO REQUEST TAX RETURNS.**

**YOU CAN MAKE AN OIG REFERRAL WITHOUT  
SAYING :**

**“FRAUD”**

**THE END**





# **DISABILITY FRAUD AWARENESS BUSINESS ENTITIES**



## DISABILITY FRAUD AWARENESS BUSINESS ENTITIES

### U. S. INTERNAL REVENUE REQUIREMENTS

When beginning a business, you must decide what form of business entity to establish. The form of business determines which income tax return form you have to file.

The most common forms of business are:

- Sole Proprietorship,
- Partnership,
- Corporation, and
- S Corporation.

The Limited Liability Company (LLC) is a relatively new business structure allowed by state statute but not recognized by the Internal Revenue Service (IRS).

Legal and tax considerations enter into selecting a business structure.

Following pages provide an overview of the major types of business entities and a summary of the IRS filing requirements. Notice that in every case the IRS requires that earnings be reported and employment taxes be paid. The IRS may also establish qualifying requirements that determine whether the IRS will recognize (agree with) the type of business entity.

#### NOTE:

The source of this information is the IRS's public website at <http://www.irs.gov> current as of October 2012. This information is provided as background for a discussion of disability fraud and is not intended as a guide to forming a business or reporting income taxes. Anyone planning to form their own business should seek the independent advice of an attorney, accountant and/or appropriate tax professionals.

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

**Sole Proprietorships**

*Below is the IRS' description of a sole proprietorship followed by a list of tax filings that are applicable to that type of business entity. Notice that in addition to filing Schedule SE to report Social Security and Medicare taxes for themselves, the sole proprietor must pay payroll taxes (for Social Security and Medicare) on earnings paid to its employees.*

=====

A sole proprietor is someone who owns an unincorporated business by himself or herself. However, if you are the sole member of a domestic limited liability company (LLC), you are not a sole proprietor if you elect to treat the LLC as a corporation.

If you are a sole proprietor use the information in the chart below to help you determine some of the forms that you may be required to file.

IF you are liable for:	THEN use Form:
Income Tax	<u>1040, U.S. Individual Income Tax Return (PDF) and Schedule C (Form 1040), Profit or Loss from Business (PDF) or Schedule C-EZ (Form 1040), Net Profit from Business (PDF)</u>
Self-employment tax	<u>Schedule SE (Form 1040), Self-Employment Tax (PDF)</u>
<u>Estimated tax</u>	<u>1040-ES, Estimated Tax for Individuals (PDF)</u>
Social security and Medicare taxes and income tax withholding	<u>941, Employer's Quarterly Federal Tax Return (PDF)</u> <u>943, Employer's Annual Federal Tax Return for Agricultural Employees (PDF)</u> <u>944, Employer's Annual Federal Tax Return (PDF)</u>
Providing information on social security and Medicare taxes and income tax withholding	<u>W-2, Wage and Tax Statement (PDF) (to employee)</u> and <u>W-3, Transmittal of Wage and Tax Statements (PDF) (to the Social Security Administration)</u>
Federal unemployment (FUTA) tax	<u>940, Employer's Annual Federal Unemployment (FUTA) Tax Return (PDF)</u>
Filing information returns for payments to nonemployees and transactions with other persons	See <u>Information Returns</u>
Excise Taxes	Refer to the <u>Excise Tax</u> web page

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

**"C" Corporations**

*Below is the IRS' description of a "C" corporation followed by a list of tax filings that are applicable to that type of business entity. Notice that in addition to the corporate income tax return, a "C" corporation must pay payroll taxes (for Social Security and Medicare) on its payrolled employees.*

=====

In forming a corporation, prospective shareholders exchange money, property, or both, for the corporation's capital stock. A corporation generally takes the same deductions as a sole proprietorship to figure its taxable income. A corporation can also take special deductions.

For federal income tax purposes, a C corporation is recognized as a separate taxpaying entity. A corporation conducts business, realizes net income or loss, pays taxes and distributes profits to shareholders.

The profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends. This creates a double tax. The corporation does not get a tax deduction when it distributes dividends to shareholders. Shareholders cannot deduct any loss of the corporation.

If you are a C corporation, use the information in the chart below to help you determine some of the forms you may be required to file.



**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

Corporations that have assets of \$10 million or more and file at least 250 returns annually are required to electronically file their Forms 1120 for tax years ending on or after December 31, 2007. For more e-file information, see References/Related Topics listed below.

**“C” Corporation Filing Requirements**

<b>If you are a C corporation you may be liable for...</b>	<b>Use Form...</b>
Income Tax	1120, U.S. Corporation Income Tax Return (PDF)
Estimated tax	1120-W, Estimated Tax for Corporations (PDF)
Employment taxes: <ul style="list-style-type: none"> <li>• Social security and Medicare taxes and income tax withholding</li> <li>• Federal unemployment (FUTA) tax</li> </ul>	941, Employer's Quarterly Federal Tax Return (PDF) or 943, Employer's Annual Federal Tax Return for Agricultural Employees (PDF) (for farm employees) 940, Employer's Annual Federal Unemployment (FUTA) Tax return (PDF)
Excise Taxes	Refer to the <a href="#">Excise Tax</a> Web page

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

**S Corporations**

*Below is the IRS' description of an "S" corporation followed by a list of tax filings that are applicable to that type of business entity. Notice that in addition to the corporate income tax return, a "S" corporation must pay payroll taxes (for Social Security and Medicare) on earnings paid to its employees.*

*Also notice that "S" corporations do not pay taxes like a "C" corporation but serves as a pass-through entity. The shareholders pay taxes on the corporate profits. Look at the special requirements to hold "S" corporation status; they are relatively small and some types of businesses are excluded.*

=====

S corporations are corporations that elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes.

Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income.

To qualify for S corporation status, the corporation must meet the following requirements:

- Be a domestic corporation
- Have only allowable shareholders
  - including individuals, certain trust, and estates and
  - may not include partnerships, corporations or non-resident alien shareholders
- Have no more than 100 shareholders
- Have one class of stock
- Not be an ineligible corporation i.e. certain financial institutions, insurance companies, and domestic international sales corporations.

In order to become an S corporation, the corporation must submit [Form 2553 Election by a Small Business Corporation](#) (PDF) signed by all the shareholders.

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

**“S” Corporation Filing Requirements:**

<b>If you are an S corporation then you may be liable for...</b>	<b>Use Form...</b>	
Income Tax	<a href="#">1120S</a> (PDF) <a href="#">1120S Sch. K-1</a> (PDF)	
Estimated tax	<a href="#">1120-W</a> (PDF) (corporation only) and 8109	
Employment taxes: <ul style="list-style-type: none"> <li>• Social security and Medicare taxes and income tax withholding</li> <li>• Federal unemployment (FUTA) tax</li> <li>• Depositing employment taxes</li> </ul>	<a href="#">941</a> (PDF) ( <a href="#">943</a> (PDF) for farm employees) <a href="#">940</a> (PDF) 8109	
Excise Taxes	Refer to the <a href="#">Excise Tax</a> web page	
<b>If you are an S corporation shareholder then you may be liable for...</b>	<b>Use Form...</b>	<b>Separate Instructions...</b>
Income Tax	<a href="#">1040</a> and <a href="#">Schedule E</a> (PDF)	<a href="#">Instructions for Schedule E (Form 1040) Supplemental Income and Loss</a> (PDF)
Estimated tax	<a href="#">1040-ES</a> (PDF)	

**Chart 2 - S Corporation Shareholders**

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

**Partnerships**

A partnership is the relationship existing between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor or skill, and expects to share in the profits and losses of the business.

A partnership must file an annual information return to report the income, deductions, gains, losses, etc., from its operations, but it does not pay income tax. Instead, it "passes through" any profits or losses to its partners. Each partner includes his or her share of the partnership's income or loss on his or her tax return.

Partners are not employees and should not be issued a Form W-2. The partnership must furnish copies of Schedule K-1 (Form 1065) to the partners by the date Form 1065 is required to be filed, including extensions.

If you are a partnership or a partner (individual) in a partnership, use the information in the charts below to help you determine some of the forms that you may be required to file.

**Filing Requirements for Partnerships and Partners**

<b>If you are a partnership then you may be liable for...</b>	<b>Use Form...</b>
Annual return of income	1065, <a href="#">U.S. Return of Partnership Income (PDF)</a>
Employment taxes:	941, <a href="#">Employer's Quarterly Federal Tax Return (PDF)</a> and 943, <a href="#">Employer's Annual Federal Tax Return for Agricultural Employees (for farm employees) (PDF)</a>
• Social security and Medicare taxes and income tax withholding	940, <a href="#">Employer's Annual Federal Unemployment (FUTA) Tax Return (PDF)</a>
• Federal unemployment (FUTA) tax	8109-B, <a href="#">Federal Tax Deposit Coupon (PDF)</a>
• Depositing employment taxes	
Excise Taxes	Refer to the <a href="#">Excise Tax Web page</a>
<b>If you are a partner (individual) in a partnership then you may be liable for...</b>	<b>Use Form...</b>
Income Tax	1040, <a href="#">U.S. Individual Income Tax Return (PDF)</a> and <a href="#">Schedule E (Form 1040), Supplemental Income and Loss (PDF)</a>

**DISABILITY FRAUD AWARENESS  
BUSINESS ENTITIES**

**U. S. INTERNAL REVENUE REQUIREMENTS**

<b>If you are a partner (individual) in a partnership then you may be liable for...</b>	<b>Use Form...</b>
Self-employment tax	1040, U.S. Individual Income Tax Return (PDF) and Schedule SE (Form 1040), Self-Employment Tax (PDF)
Estimated tax	1040-ES, Estimated Tax for Individuals (PDF)

## **DISABILITY FRAUD AWARENESS BUSINESS ENTITIES**

### **U. S. INTERNAL REVENUE REQUIREMENTS**

#### **Limited Liability Company (LLC)**

A Limited Liability Company (LLC) is a business structure allowed by state statute. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation.

Owners of an LLC are called members. Since most states do not restrict ownership, members may include individuals, corporations, other LLCs and foreign entities. There is no maximum number of members. Most states also permit "single member" LLCs, those having only one owner.

A few types of businesses generally cannot be LLCs, such as banks and insurance companies. Check your state's requirements and the federal tax regulations for further information. There are special rules for foreign LLCs.

According to the IRS, the federal government does not recognize an LLC as a classification for federal tax purposes. An LLC business entity must file a corporation, partnership or sole proprietorship tax return.

An LLC that is not automatically classified as a corporation can file Form 8832 to elect their business entity classification. A business with at least 2 members can choose to be classified as an association taxable as a corporation or a partnership, and a business entity with a single member can choose to be classified as either an association taxable as a corporation or disregarded as an entity separate from its owner, a "disregarded entity." Form 8832 is also filed to change the LLC's classification.

## Information on Missouri Business Entities

### ***I. General Missouri Business Corporations***

A corporation's existence begins when its articles of incorporation are filed with the Secretary of State. The articles of incorporation of a general business corporation must provide the information required by **Section 351.055**, RSMo. The Secretary of State's office provides a **blank form** that may be used to comply with the statutory requirements.

It is important to calculate incorporation fees properly. Under **Section 351.065**, RSMo., the fee is based upon the dollar value of authorized shares. The filing fee (incorporation fee) is \$50 for the first \$30,000 of authorized shares with an increase of \$5 for each additional \$10,000 (or fraction thereof) of authorized shares. The dollar amount of authorized shares is calculated by multiplying the number of total authorized shares by the par value of a single share. "No par" shares are assessed at \$1 per share. In addition, there is a \$3 fee for issuing the certificate of incorporation and an additional \$5 for the Technology Trust Fund.

#### **a. Close Corporations**

Missouri law allows for the creation of close corporations under **Sections 351.750**, RSMo. *et. seq.* Missouri's close corporation law is designed to make it easier for a corporation with a small number of shareholders to operate. Under this law, a close corporation can choose not to have a board of directors, annual meetings or bylaws if so stated in its articles of incorporation.

#### **b. Foreign Corporations**

Foreign corporations "transacting business" in Missouri must first register with the Secretary of State. Because a foreign corporation has already filed its articles of incorporation in another jurisdiction, it does not file articles of incorporation in Missouri; instead, it obtains a certificate of authority to do business in Missouri. There is a fee of \$155 to obtain a certificate of authority.

The application must be accompanied by a certificate from the Secretary of State or other equivalent office of the jurisdiction where the foreign corporation is incorporated stating that the corporation is an existing corporation and is in good standing. The certificate must not be more than 60 days old.

### ***II. Nonprofit Corporations***

Nonprofit corporations may be organized under **Chapter 355**, RSMo. for a variety of purposes. Common examples include churches, civic associations, political groups and trade organizations.

All nonprofit corporations registered to do business in Missouri are required to be designated as either "public benefit" or "mutual benefit" corporations. See **Section 355.881**, RSMo. for more information.

If you intend to apply for IRS federal tax exemption as a charitable organization, your articles of incorporation must contain a required purpose clause and a dissolution of assets provision. Valuable information on 501(c)(3) qualification is on the IRS website [www.irs.gov](http://www.irs.gov). It includes sample articles of incorporation. Click the "Charities and Nonprofits" link and then the Life Cycle of a Public Charity link.

Please note that the Office of the Secretary of State does not grant tax-exempt status to nonprofit corporations. Nonprofit corporations seeking tax-exempt status must apply directly to the Internal Revenue Service and the Missouri Department of Revenue.

### ***III. Professional Corporations***

Professional corporations are formed under **Chapter 356 RSMo.** Only those persons licensed to practice certain professions are eligible to be shareholders in this corporate entity. Those professions which may organize under this chapter include: accountants; architects or engineers; attorneys at law; chiropodist-podiatrists; chiropractors; dentists; optometrists; physicians, surgeons, doctors of medicine or doctors of osteopathy; psychologists; veterinarians; registered nurses; any natural person licensed as a real estate salesperson; and physical therapists.

=====

SOURCE: Missouri Secretary of State  
on the web at <http://www.sos.mo.gov/business/corporations/startBusiness.asp>  
as viewed January 26, 2013

## Information on Missouri Business Entities

### **IV. Sole Proprietorship/General Partnership**

Sole proprietorships and general partnerships can be formed or created without the involvement of the Secretary of State. In fact, the Secretary of State does not receive or accept filings related to the creation of these business types.

However, Missouri law requires any person or business entity which transacts business in the state under a name other than their own "true name" to register that business name with the Secretary of State's Office as a Fictitious Name Registration.

Online registration of a fictitious name with the Office of Secretary of State can be accomplished at <https://www.sos.mo.gov/BusinessEntity/BusinessEntitiesOnline/Fictitious/>.

Pursuant to **Sections 358.440**, RSMo. *et seq.*, however, a Missouri general partnership may elect to become a limited liability partnership. Limited liability status affords certain protections against liability for the partnership's partners. The application must include, among other items, the name of the partnership and the number of partners in that partnership as of the date of the application. An initial application by a partnership to register a limited liability partnership expires one year after the date of registration unless renewed. Thereafter, a renewal is required annually.

The fee for an initial application is \$55 if there are two partners, \$80 if there are three partners, and \$105 for four or more partners. The basic fee for each subsequent renewal is \$105, plus an additional \$50 for each new partner added up to a maximum fee of \$205.

### **V. Limited Partnerships**

In order to form a limited partnership, a certificate of limited partnership must be filed with the Corporations Division. See **Section 359.091**, RSMo. All foreign limited partnerships doing business in Missouri are also required to register with the Corporations Division. See **Section 359.501**, RSMo.

The fee for filing both an original certificate of limited partnership and for registering a foreign limited partnership is \$105.

#### **a. Limited Liability Limited Partnerships**

A Missouri limited partnership may elect to become a limited liability limited partnership pursuant to **Section 359.172**, RSMo. by filing an application with the Corporations Division. The fee for the initial application to become a limited liability limited partnership is calculated in the same manner as for a limited liability partnership. However, fees are based on the number of general partners, not on all partners. Thus, if there is only one general partner, the initial application fee is \$30. This initial application expires one year after the date of issuance unless renewed. Thereafter a renewal is required annually. The fee for each subsequent renewal is also calculated as with a limited liability partnership.

### **VI. Limited Liability Companies**

A limited liability company is formed by filing articles of organization with the Corporations Division. **Section 347.039**, RSMo. sets forth the information that must be provided in the articles of organization. A limited liability company may designate one or more "managers" to operate its business or it may choose to operate under the direction of its members. Foreign limited liability companies must register with the Secretary of State in order to conduct business in the state of Missouri.

=====

SOURCE: Missouri Secretary of State  
on the web at <http://www.sos.mo.gov/business/corporations/startBusiness.asp>  
as viewed January 26, 2013



## Entity Names: Availability & Requirements

### ***I. Availability***

The name of a new business entity must be distinguishable from the name of any other foreign or domestic business entity registered under any law of this state. If the proposed name is already in use or reserved, it must be changed to make the desired name distinguishable from the name of that other business entity.

The availability of a corporate name may be checked by telephone; however, telephone name searches are only preliminary and *do not guarantee the availability of the name*. Upon reserving a name in writing and receiving confirmation of that reservation, that name may be used in forming the corporation.

If a foreign corporation finds that its name is reserved or in use in Missouri as a corporate name, the foreign corporation must adopt an assumed name for use in this state and indicate that name on its application. The assumed name shall then be deemed to be the corporate name of the foreign corporation in this state. The assumed name need not be registered as a fictitious name, provided that the foreign corporation's actual name shall be used together with its assumed name on documents filed with the Secretary of State. See **Section 351.584**, RSMo.

**Search existing corporate names** to find out if a name is still available for reservation or registration.

### ***II. Other Requirements***

The name of every Missouri for profit corporation must contain the word "corporation", "company", "incorporated" or "limited" or end with an abbreviation of one of those words.

A person intending to organize a corporation in Missouri, a Missouri corporation intending to change its name, a foreign corporation intending to apply for a certificate of authority to transact business in this state, or a foreign corporation authorized to do business in this state and wanting to change its name may reserve that name by filing an application in writing in the Office of Secretary of State and paying a fee of \$25. Upon receipt of this filing and a finding by the Secretary of State that the name is available, it will be reserved for a period of 60 days. See **Section 351.115**, RSMo. A person may not reserve a name for more than 180 days.

### ***III. Other Business Entities***

Similar rules apply for all other foreign and domesticated business entities in this state, including LLC's and limited partnerships. For instance, a desired name for any such entity may be reserved in advance, and all names must be distinguishable from other names already in use or reserved. Further, the appropriate business entity designations must also be used for each of these other entities.

## Fictitious Name Filings

Missouri law requires any person or business entity which transacts business in the state under a name other than their own "true name" to register that business name with the Secretary of State's Office as a Fictitious Name Registration.

Online registration of a fictitious name with the Office of Secretary of State can be accomplished at <https://www.sos.mo.gov/BusinessEntity/BusinessEntitiesOnline/Fictitious/>.

=====

SOURCE: Missouri Secretary of State  
on the web at <http://www.sos.mo.gov/business/corporations/startBusiness.asp>  
as viewed January 26, 2013



My office provides this booklet to assist you in the process of forming your own corporation, a procedure that sometimes can be complicated. The booklet provides detailed guidelines for filing the Articles of Incorporation, as well as information on filing fees, government agencies you must contact and legal obligations you will assume after incorporation.

Because some of the terminology used in this booklet may be new and confusing, I encourage you to consult with an attorney to learn your exact legal obligations at each step of the organization process.

If you have further questions about organizing your corporation, please contact my office's Department of Business Services, Corporations Division, at 217-782-9522.

*Jesse White*

**Jesse White**  
Illinois Secretary of State

# A Guide For Organizing Domestic Corporations



JESSE WHITE  
Illinois Secretary of State



**A GUIDE FOR ORGANIZING  
DOMESTIC CORPORATIONS**

**TABLE OF CONTENTS**

**Introduction** .....1

**Department of Business Services** .....1

**Articles of Incorporation** .....1

    Article One: Corporate Name .....2

    Article Two: Registered Agent and Registered Office .....3

    Article Three: Corporate Purpose.....3

    Article Four: Authorized Shares .....4

    Article Five: First Board of Directors.....7

    Article Six: Allocation Factor .....7

    Other Articles: Optional Provisions .....8

    The Incorporators: Signatures .....9

**Filing the Articles of Incorporation**

    Where to File/Expedited Service .....9

    Filing Fees .....10

**Organizing the Corporation** .....11

**Professional Service Corporations** .....11

**Medical Corporations** .....13

**Close Corporations**.....14

**Reasons Submitted Documents Are Returned** .....15

**Other Filings** .....16

**Corporate Forms and Fees** .....19

**Addresses and Telephone Numbers**.....20

Unless otherwise indicated, all Section (§) references are to the Illinois Business Corporation Act of 1983, Illinois Compiled Statutes 1992, Chapter 805, Act 5 et seq.

***WWW.CYBERDRIVEILLINOIS.COM***



Printed on recycled paper

Printed by authority of the State of Illinois. December 2011 - 2.5M - C 179.20



## INTRODUCTION

Businesses may be organized in many ways. The most common forms today are sole proprietorship, partnership, limited partnership, limited liability company and corporation. This guide assumes you have selected "corporation" as the form of business organization most suited to your objectives.

These guidelines should not serve as a substitute for statutory analysis or professional advice. To be sure you understand the legal, business, tax and financial obligations and consequences that may result from incorporating your business, you may want to consult an attorney and an accountant.



## DEPARTMENT OF BUSINESS SERVICES

The Secretary of State's Department of Business Services serves as an approval and record-keeping office for corporations in Illinois. Information on corporate filings is available by telephone, letter or over the counter at offices in Springfield and Chicago. Standard forms also are available at [www.cyberdriveillinois.com](http://www.cyberdriveillinois.com). **Legal, financial and business advice is not provided by the Department of Business Services.** (See page 20 for addresses, telephone numbers and hours.)



## ARTICLES OF INCORPORATION

### Drafting the Articles of Incorporation

**All Articles of Incorporation must be submitted in duplicate (*one original and one true copy*).** When using the standard Form BCA 2.10, the first four Articles must be fully completed (required provisions), and all responses must be typed or printed in black ink.

Corporate existence begins only when the Department of Business Services has "filed" the Articles of Incorporation.

The Articles of Incorporation must set forth the following: corporate name; initial registered agent and registered office; corporate purpose; authorized shares; initial issued shares and the consideration to be paid therefor. The next few pages outline these provisions and highlight some of the optional provisions. For convenience, the discussion follows the order of the standard form.

## Article One: Corporate Name §4.05

### A. Restrictions

**Distinguishable:** The Business Corporation Act of 1983 provides that you may choose a name **so long as it is distinguishable upon the records of the Secretary of State** from the corporate name or assumed corporate name of any existing Illinois corporation, or of any foreign corporation authorized to transact business in Illinois, or any limited liability company name, or a name that is currently reserved or registered.

***NOTE:** Acceptance of a name is made without regard to the names of sole proprietorships, partnerships, trade names and the like. If you are uncertain about your rights and liabilities in a name, consult your attorney before using the name chosen.*

**Corporate Designator:** The name must contain, separate and apart from any other word or abbreviation, the word "CORPORATION," "INCORPORATED," "COMPANY," "LIMITED" or an abbreviation of one of these words.

**Restricted Words:** The name may not contain any word or phrase that indicates or implies that the corporation is organized for the purposes of insurance, assurance, banking or a fiduciary.

**Permitted Letters and Characters:** The name must consist of letters of the English alphabet, Arabic or Roman numerals and/or only those symbols capable of being reproduced by the Department of Business Services.

**Business Name:** The name shall be the name under which the corporation shall transact business in Illinois, unless the corporation shall also elect to adopt one or more assumed corporate names.

***NOTE:** A divisional designation or a trade name is not considered an assumed corporate name if the true corporate name is clearly and fully disclosed every time such divisional designation or trade name is used.*

### B. Professional Service Corporations - Name (see page 11)

### C. Medical Corporations - Name (see page 13)

### D. Name Availability

Before submitting the Articles of Incorporation, you can determine if the name you have chosen **appears** to be available and acceptable for use by writing to the Department of Business Services in Springfield or by calling the special NAME AVAILABILITY NUMBER at 217-782-9520. Be prepared with alternative names. A preliminary check also may be done on the Business Services page at [www.cyberdriveillinois.com](http://www.cyberdriveillinois.com).

***NOTE:** A preliminary name availability determination DOES NOT guarantee that the name will be available at a later date. The Department of Business Services reserves final determination of availability until a Name Reservation, Articles of Incorporation or Assumed Corporate Name Application is filed.*

**E. Name Reservation §4.10**

A name may be reserved for 90 days for a \$25 fee by filing Form BCA 4.10 or writing a letter stating the name to be reserved, a brief corporate purpose, and the name and address of the applicant.

**ARTICLE TWO: REGISTERED AGENT AND REGISTERED OFFICE**

**A. Function of the Registered Agent and Registered Office**

Each corporation is required by the Business Corporation Act of 1983 to have and maintain a registered agent and a registered office in Illinois to provide a public record of the name and address of a person upon whom all process on the corporation may be served. In addition, the Department of Business Services sends all official correspondence to the registered agent at the registered office on record.

**B. Who May be a Registered Agent?**

The registered agent must be either:

- a person who resides in Illinois, OR
- a corporation **specifically authorized** by its Articles of Incorporation to act as a registered agent and which has an office in Illinois.

***NOTE:** The corporation should not name someone as its registered agent until that person has agreed to act in that capacity. The agent also may be an incorporator, director, officer or employee of the corporation, unless the Articles or by-laws provide otherwise.*

**C. Location of Registered Office**

The registered office must:

- be located in Illinois; AND
- have a street or road address or rural route and box number; AND
- be identical with the business office of the registered agent.

**ARTICLE THREE: CORPORATE PURPOSE § § 2.10(A), 3.05**

The purpose clause is the statement of the character of the business objectives of your corporation. The Business Corporation Act of 1983 permits Illinois corporations to be formed for any lawful purpose permitted by this act except banking or insurance.

Your Articles of Incorporation may list one or more specific corporate purposes and/or a general statement of corporate purpose. The language authorized for the general purpose is as follows:

**The transaction of any or all lawful purposes for which corporations may be incorporated under the Illinois Business Corporation Act of 1983.**

**A. Restrictions**

In addition to the requirements of the Business Corporation Act of 1983, other statutes, rules and regulations can influence the wording of your corporate purpose. Many businesses and professions may be restricted as to permissible corporate purposes or may be required to use precise language. If you are in doubt about your situation, consult an attorney.

**B. Professional Service Corporations - Purpose** (see page 11)

**C. Medical Corporations - Purpose** (see page 13)

**D. Powers**

Corporation powers are different from corporation purposes. Purposes are the objectives of a corporation – what it is organized to do. Powers are the means by which the purposes may be achieved – the ways permitted by statute for a corporation to accomplish its objectives.

All corporations have all powers set forth in the Business Corporation Act of 1983. The Articles of Incorporation do not need to state powers. Do not state that your corporation has the powers of a natural person.

**ARTICLE FOUR: AUTHORIZED SHARES**

When drafting the Articles of Incorporation, you will need to make key decisions about the share structure of your corporation, including: classes and number of shares to be authorized and issued; limitation or denial of voting rights and/or cumulative voting rights; specifications of any preferences; and qualifications, limitations, restrictions or special rights.

**A. Paragraph 1:**

Paragraph 1 lists the name and number of shares of each class of stock your corporation will be authorized to issue.

**Class:** A class of shares is a group of shares having the same general characteristics. Typically, classes are termed “common” or “preferred” or are given a special designation.

“Common” shares are shares that have no preference over any other shares with respect to the payment of dividends or the distribution of assets on liquidation. This means that the holders of common shares are entitled to a pro rata division of profits or net earnings (*to the extent declared by the board of directors*) and to a pro rata distribution of the net assets of the corporation upon dissolution.

You may create more than one class of common shares through your Articles of Incorporation, provided you clearly set forth all differences in the terms of each class (see *Paragraph 2 on page 5*). Classes of common shares are usually denoted by letter (e.g., *Common, Common A, Common B*) or by description (e.g., *Voting Common, Non-Voting Common*).

“Preferred” shares are those that are entitled to priority in payment of dividends or the distribution of assets on liquidation of a corporation. You may create more than one class of preferred shares through your Articles of Incorporation, provided you clearly set forth the terms and special features of each (see *Paragraph 2 on page 5*). Classes of preferred shares are usually denoted by letter (e.g., *Preferred A, Preferred B*) or by description (e.g., *Cumulative Preferred, Non-Participating Preferred*).

**Series:** A series is a subunit of a class. Each series has the same general characteristics of the class but varies from other series in one or more specific



business terms. Only special and preferred classes may be divided into series [§6.10].

**NOTE:** When you provide for “series” of a class, the standard Form BCA 2.10, Articles of Incorporation, must be slightly modified. Simply insert the word “series” under Article Four between the words “Class” and “number of shares authorized.” List your series designations in Paragraph 2.

**Number to be Authorized:** The number of shares to be authorized means the number of shares within each class your corporation will have the power to issue. This number remains the same unless and until increased or reduced by amendment. Your corporation is not required to issue all its authorized shares, but some must be issued. The Business Corporation Act of 1983 sets no minimum requirements or maximum limits on the number of authorized shares. When deciding how many shares to authorize, you may want to consider not only your immediate needs but also how many shares your corporation will need for issuance in the foreseeable future.

**B. Paragraph 2:**

Paragraph 2 lists the terms, rights and special features of each class or series. This paragraph may be left blank only when you have just one class of shares, unless you desire to place some limitation or qualification on this class. **When there will be two or more classes, Paragraph 2 must be completed.**

**Common Shares:** When Paragraph 1 lists two or more classes of common shares, the differences between these classes must be described. For example, classes may vary with respect to voting rights (*e.g., one class may be voting shares and another may be non-voting*); management terms (*e.g., each class may elect only specific directors*); transferability rights (*e.g., one class may have no restrictions while another is subject to a right of first refusal*); or preemptive rights.

**NOTE:** No class of common shares may be given a preference over any other class of shares with respect to the payment of dividends or the distribution of assets on dissolution.

**Preferred Shares:** When Paragraph 1 lists one or more classes of preferred shares, all preferences, qualifications, limitations, restrictions and special or relative rights with respect to each preferred class must be described. The most usual preference is a right to receive dividends before any dividends are paid to the holders of the common shares; however, there are many terms and rights that qualify as “preferred” provisions. Some of these mentioned in the Business Corporation Act of 1983 include, but are not limited to, the following:

- Whether the corporation shall have the right to redeem shares at a price not exceeding that fixed by the Articles of Incorporation [§6.05(a)];
- Whether the rights to dividends are cumulative, partially cumulative or non-cumulative [§6.05(b)];
- Whether and to what extent any class shall have preference as to the payment of dividends [§6.05(c)];

- Whether and to what extent any class shall have a preference as to assets on liquidation [*§6.05(d)*];
- Whether shares of any class shall be convertible into shares of any other class or into shares of any series of the same or any other class; and the rate of such conversion right [*§6.05(e)*].

If the corporation has authorized either preferred or special classes of stock in its Articles of Incorporation, but it does not propose to issue any of these shares at the time of filing and is undecided as to the variations in the relative rights and preferences of these classes, the following statement must be entered in Paragraph 2:

**The Preferred or Special stock shall be issued in one or more series by authority vested in the Board of Directors, with such voting powers, designations, preferences, rights, qualifications, limitations or restrictions thereof as shall be set forth in a Statement of Resolution to be filed pursuant to Section 6.10 of the Illinois Business Corporation Act.**

**Other Share Provisions:** Other provisions that may be used for any class or series, whether common, preferred or otherwise, but which may only be fixed by the Articles of Incorporation, include:

- A provision limiting or eliminating the cumulative voting rights, in all or specified circumstances, of any class, classes or series or shares [*§7.40(b)*];
- A provision superseding any provision of the Business Corporation Act of 1983 that requires for approval of corporate action a two-thirds vote of the shareholders [*§2.10(b) (2) (v)*];
- A provision granting to shareholders the preemptive right to acquire unissued shares of the corporation, or securities of the corporation convertible into or carrying the right to subscribe to or acquire shares [*§6.50*];
- A provision limiting or eliminating voting rights or providing special voting rights as to any class, classes or series of shares [*§7.40(b)*];
- A provision setting requirements for a quorum of shareholders if other than a majority, but not less than one-third of the shareholders [*§7.60*];
- A provision authorizing the election of all or a specified number or percentage of directors by the holders of one or more classes or series of shares [*§. 8.10(f)*];
- A provision prohibiting the reissuance of shares acquired by the corporation;
- A provision making class voting applicable to certain amendments or other acts of the corporation that are to be voted upon by the shareholders [*§10.25*];
- A provision to elect to become a close corporation [*BCA 2A.10*] (see page 14).

### **C. Issued Shares**

Issued shares are shares that have been subscribed and paid for. The holders of the issued shares are deemed to be the owners of the corporation.

When a corporation is started, each owner of the business will normally be issued a number of shares that represents his/her proportionate interest in the

corporation. The total number of shares proposed to be issued initially should be stated in Article Four. Any or all of the authorized shares listed may be issued.

Itemize the shares to be issued by "class" and "series" (if any). (See Article Four on pages 4-7 for a discussion of these terms.) When the Department of Business Services files your Articles of Incorporation, all the shares proposed to be issued in Article Four will be considered to be issued, and no further report to the Secretary of State regarding these shares will be required.

**NOTE:** Plan carefully to avoid misstatements or errors. Mistakes can be corrected only by amending the Articles of Incorporation or, in certain instances, by filing a Statement of Correction.

#### **D. Consideration**

Consideration is what is paid into the corporation in exchange for the issued shares. Each holder of shares must exchange either cash, property, promissory notes, or a combination of these items for the shares the corporation issues to them. Under Article Four, state the value of the entire consideration to be received in U.S. currency.

The Business Corporation Act of 1983 does not set any minimum amount that must be paid in; however, the consideration cannot be zero (Ø). In the absence of fraud, the judgment of the board of directors or of the shareholders as to the value of the consideration shall be conclusive.

The consideration to be received (*less expenses of issuance*) is deemed to be the PAID-IN CAPITAL of the corporation.

#### **Other Articles: Optional Provisions**

Although completion of just the first four Articles will satisfy statutory requirements, there are many other provisions that may be included in the Articles of Incorporation. Some items may only be stated in the Articles, while others may be set forth in the by-laws or in separate agreements. Legal advice should be sought to help you decide whether or not to place any optional provisions in the Articles and to help you properly phrase these provisions.

### **ARTICLE FIVE: FIRST BOARD OF DIRECTORS**

#### **A. Optional Article — May be Left Blank**

The number of initial directors may be fixed either in the Articles of Incorporation or at the organizational meeting of the incorporators. The names and addresses of the persons who are to serve as the initial directors also may be set forth in the Articles. If you name the first board of directors in the Articles, you will not have to call an organizational meeting of the incorporators. As soon as the Articles are filed by the Department of Business Services, the board may proceed with the business of the corporation.

### **ARTICLE SIX: ALLOCATION FACTOR**

#### **B. Optional Article — May be Left Blank**

Items (a) through (d) are to be completed only if the corporation intends to own

property outside the state of Illinois and/or will transact business outside of Illinois.

Before a corporation can own property and/or transact business in another state, compliance with that state's laws pertaining to the licensing of a corporation incorporated in another state must be met.

This article is used to establish your corporation's initial "allocation factor" — the percentage of your corporation's property and business that is estimated to be in Illinois. ALL franchise taxes payable during your corporation's first taxable year are based on this percentage of the paid-in capital.

When Article Six is left blank, the Business Corporation Act of 1983 provides that all franchise taxes will be computed on the basis of the entire paid-in capital. Thus, 100 percent of the paid-in capital is taxable when all property and business are in Illinois or when Article Six is left blank.

#### **OTHER ARTICLES: OPTIONAL PROVISIONS**

If other provisions are to be added to the Articles of Incorporation, number them consecutively with the last article completed on Form **BCA 2.10** (*i.e., if Article Five was the last article completed, the next should be Article Six*).

Unless otherwise indicated, any of the following provisions may be added to the Articles or placed in the by-laws. This list is illustrative only and is not intended to be exclusive:

- Provisions with respect to managing the business and regulating the affairs of the corporation [*§2.10(b) (2) (i)*];
- Provisions with respect to defining, limiting and regulating the affairs of the corporation [*§2.10(b) (2) (ii)*];
- Provisions fixing the corporation's duration, if other than perpetual [*§2.10(d). By the Articles only.*];
- A provision reserving to the shareholders the power to make, alter, amend or repeal the by-laws [*§2.25. By the Articles only.*];
- A provision limiting or denying the power of the board of directors to provide that some or all of any or all classes and series of the corporation's shares shall be uncertificated [*§6.35*];
- A provision limiting or denying the authority of the shareholders to take action by written consent without a formal meeting [*§7.10(a). By the Articles only.*];
- Provisions defining qualifications for directors or limiting the authority of the board of directors to establish compensation to be paid to directors for services as directors, officers or otherwise [*§8.05(b) (c)*];
- Provisions fixing the number of directors, establishing a variable range for the size of the board, or setting "staggered" terms for directors [*§8.10(a) (b) (c)*];
- A provision authorizing the election of all or a specified number or percentage of directors by the holders of one or more specified classes or series of shares [*§8.10(f). By the Articles only.*];
- Provisions setting the size of quorums of the board of directors or prohibiting meetings of the board or committees of the board from being held through

the use of conference telephone or other telecommunications equipment [§8.15(a) (b) (c) (d)];

- Provisions authorizing the board of directors to create committees of the board and specifying the powers such committees may exercise [ §8.40(a) (c)];
- A provision specifically prohibiting the board of directors from acting by unanimous written consents without holding formal meetings [§8.45];
- Provisions authorizing indemnification of or the purchasing of insurance for present or former directors, officers, employees or agents of the corporation [§8.75];
- A provision entitling shareholders to dissent and obtain payment for their shares with respect to specific corporate actions that require the vote of the shareholders [§11.65(a) (4)].

## THE INCORPORATORS: SIGNATURES

### A. Who may be an Incorporator?

A corporation may be formed by one or more incorporators. An incorporator shall be either:

- a natural person (*age 18 or older*);
- a corporation (*domestic or foreign*).

### B. Signatures

Each individual acting as an incorporator must sign the Articles of Incorporation on the back page. **Print or type the incorporator's name below his/her signature.** Also, list an address for each incorporator.

If another corporation acts as an incorporator, the Articles must show its exact name and state of incorporation. The Articles of Incorporation must be signed by a duly authorized officer of the corporation acting as the incorporator. Print or type the officer's name and title under his or her signature.



## FILING THE ARTICLES OF INCORPORATION

### A. What to File

Deliver to the Department of Business Services:

- Articles of Incorporation (*in duplicate, one originally signed document and a second copy, which may be an original, a carbon or a photocopy*);
- *Check for payment of the initial fees (certified check, cashier's check, money order, Illinois attorney's check or certified public accountant's check).*

### B. Where to File/Expedited Service

All Articles of Incorporation, including fees, must be mailed to the Department of Business Services office in Springfield for review. The department offers the review and, if approved, the filing of Articles of Incorporation on an expedited basis within 24 hours of receipt in either the Springfield or Chicago office. Pursuant to the provisions of the Illinois Business Corporation Act, all requests for expedited service must be made **in person**, and accompanied by a separate expedited service fee of \$100, payable to Secretary of State, in

addition to the appropriate filing fee (*see paragraph C below*). Any Articles of Incorporation that is hand delivered to either the Springfield or Chicago office and not requesting expedited service will be reviewed on a routine (*non-expedited*) basis in the Springfield office.

When final approval has been given, the Articles of Incorporation will be stamped "filed" with the date thereof (*i.e., the date of incorporation*) and will be assigned an 8-digit "file number" by the Secretary of State's office. One copy of the Articles of Incorporation will be returned to the incorporators or their representative.

**FILING FEES**

There are two fees required at the time of filing. The initial franchise tax is based upon the "Consideration To Be Received" for the shares to be issued. The filing fee is a fixed amount.

**A. Franchise Tax [ §§ 15.35, 15.40, 15.45 ]**

The rate of the franchise tax is 15/100 of 1 percent of the Consideration To Be Received, with a **minimum** of \$25. You may compute the exact amount due by multiplying the Consideration To Be Received by .0015.

**B. Filing Fee [ §15.10 (a) ]: \$150**

**C. Fee Schedule**

Following is a schedule of the total fees due on incorporation (*franchise tax plus filing fee*). This schedule is applicable when all property and business will be in Illinois. THESE AMOUNTS ARE EXAMPLES ONLY. The exact amount due depends on the total Consideration To Be Received. If the exact consideration for your corporation is not represented on this schedule, you may have the fees computed by the Department of Business Services. Please call 217-782-9522 in Springfield or 312-793-3380 in Chicago.

FEE SCHEDULE (EXAMPLES ONLY)							
Consideration To Be Received	\$500	\$1,000	\$5,000	\$10,000	\$25,000	\$50,000	\$100,000
Total Fees Due	\$175	\$175	\$175	\$175	\$187.50	\$225	\$300



## ORGANIZING THE CORPORATION

There is much more to being a corporation than simply filing the Articles of Incorporation with the Secretary of State and the Recorder of Deeds. These first steps will technically create a corporation, but additional steps must be taken before your corporation will be entitled to recognition as a distinct legal entity. Consult your attorney if you have any questions about these formalities.



## PROFESSIONAL SERVICE CORPORATIONS

*Illinois Compiled Statutes 1992, Chapter 805, Act 10 et seq.*

A "professional service corporation" is one organized under the Professional Service Corporation Act **solely** for the purpose of rendering one category of professional service or related professional services. **Professional service** is any personal service that requires as a condition precedent to the rendering thereof the obtaining of a license from a state agency, the U.S. Patent Office or the Internal Revenue Service of the U.S. Treasury Service. **Related services** that are permitted are a combination of two or more professions as defined by Section 3.6 of the Professional Service Corporation Act [*§10/3.6*].

### OWNERS AND OFFICERS

ALL shareholder, directors, officers, agents and employees (*other than ancillary personnel or the corporate secretary*) **must** be licensed to render the same professional service or related professional services for which the corporation is organized [*§ § 10/7, 10/11*].

If the corporation has only one shareholder, it need have only one director who shall be the shareholder and who may also serve as president, secretary and treasurer. If the corporation has only two shareholders, it need have only two directors who shall be the shareholders, and they shall fill the offices of president, vice-president, secretary and treasurer between them [*§ 10/10*].

No shareholder shall enter into a voting trust agreement or any type of agreement vesting another person with the authority to exercise the voting powers of any of his or her stock [*§ 10/11*].

### INCORPORATION

A professional corporation may be incorporated by one or more persons licensed pursuant to the respective profession or an Illinois attorney by filing the Articles of Incorporation (*Form BCA 2.10*) with the Department of Business Services and by following the procedures for incorporation of businesses described in this booklet. (*see pages 1-10*).

### CORPORATE NAME

The name of the corporation must comply with all requirements of the Business Corporation Act of 1983 (*see Article One: Corporate Name on pages 1-2*), **except** that the name must **end** with one of the following words or abbreviations:

"CHARTERED," "LIMITED," "LTD." "PROFESSIONAL CORPORATION," "PROF. CORP.," or "P.C." (§ 10/9).

If the true corporate name does not include the name of one or more of the shareholders, or if the true corporate name continues to use the name of a deceased shareholder, the corporation must file under the Assumed Business Name Law with the County Clerk of the county where its principal place of business is located (§ 10/9).

Professional service corporations may adopt one or more assumed corporate names, in accordance with the provisions of the Business Corporation Act of 1983.

#### **PURPOSE CLAUSE**

The purpose clause in the Articles of Incorporation (*Article Three on Form BCA 2.10*) should be stated as follows [§ § 10/6, 10/12]:

PROFESSIONAL CORPORATION: To practice the profession of \_\_\_\_\_, rendering that type of professional service and services ancillary thereto.

PROFESSIONAL service will be rendered from the following address(es):  
\_\_\_\_\_

#### **SHARE PROVISIONS**

##### **A. Redemption**

If not provided for in the by-laws or a separate agreement, the Articles of Incorporation shall provide for the purchase or redemption of the shares of any shareholder upon his or her death or disqualification.

##### **LICENSE OR CERTIFICATE OF REGISTRATION**

**After** incorporating with the Secretary of State, the **corporation** must be registered with the appropriate regulatory authority of the state or federal government [§10/12].

##### **A. License**

For those professions licensed by the Illinois Department of Professional Regulation, deliver to that agency the following (*see page 22*):

- Completed **Application For a Medical or Professional Service Corporation License**;
- Photocopy of the Articles of Incorporation;
- **List** of all incorporators, shareholders, directors, officers;
- If the corporate name is a fictitious name, submit **evidence of filing** with the Office of the County Clerk in accordance with the Assumed Business Name Law; and
- **Check** for \$50 filing fee.

##### **B. Certificate of Registration (attorneys)**

For a corporation organized to practice law, deliver to the Illinois Supreme Court the following:

- Duplicate copies of completed **Application for Certificate of Registration to Engage in the Practice Of Law as a Professional Corporation**; and
- **Check** for \$50 filing fee.





## MEDICAL CORPORATIONS

*Illinois Compiled Statutes 1992, Chapter 805, Act 15 et seq.*

A "medical corporation" is one organized under the Medical Corporation Act **solely** for those individuals licensed pursuant to the Illinois Medical Practice Act.

### OWNERS AND OFFICERS

**ALL** shareholders, directors and officers of the corporation must be duly licensed pursuant to the Medical Practice Act. No person who is not so licensed shall have any part in the ownership, management or control of the corporation, nor may any proxy to vote the shares of the corporation be given to any person not so licensed [*§ 15/2, 15/13*].

### INCORPORATION

A medical corporation may be incorporated by one or more persons licensed pursuant to the Medical Practice Act or an Illinois attorney by filing Articles of Incorporation (*Form BCA 2.10 in duplicate*) with the Department of Business Services, and by following the procedure for incorporating businesses as described in this booklet (*see page 1*).

### CORPORATE NAME

The name of the corporation must comply with all the requirements of the Business Corporation Act of 1983 (*see Article One: Corporate Name on page 1*), **except** that the name must **end** with one of the following words or abbreviations: "CHARTERED," "LIMITED," "LTD.," "SERVICE CORPORATION," or "S.C." [*§15/4*].

If the true corporate name does not include the surname of any present or former shareholder, the corporation must record the true corporate name and the names of the shareholders with the Recorder of Deeds of the county in which the corporation is located or has its principal office (*§15/4*).

Medical corporations may adopt one or more Assumed Corporate Names, in accordance with the provisions of the Business Corporation Act of 1983.

### PURPOSE CLAUSE

The purpose clause in the Articles of Incorporation (*Article Three on Form BCA 2.10*) should be stated as follows [*§15/2*].

**MEDICAL CORPORATION:** To own, operate and maintain an establishment for the study, diagnosis and treatment of human ailments and injuries, whether physical or mental, and to promote medical, surgical and scientific research and knowledge; provided that medical or surgical treatment, advice or consultation will be given by employees of the corporation only if they are licensed pursuant to the Medical Practice Act.

### SHARE PROVISIONS

If not provided for in the by-laws, the Articles of Incorporation shall state a price or a method of determining a fixed price at which the corporation or its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation. In the absence of such a provision in either the by-laws or the Articles, the provisions of the Medical Corporation Act shall determine the price [*§15/6*].

## LICENSING

After incorporating with the Secretary of State, the **corporation** must be registered with the Illinois Department of Professional Regulation [§15/5]. You must submit to that agency the following (see page 21 for address):

- Completed **Application for a Medical or Professional Service Corporation License**;
- Photocopy of the Articles of Incorporation;
- **List** of all incorporators, shareholders, directors and officers;
- If the corporate name is a fictitious name, attach **evidence of filing** with the Recorder of Deeds;
- **Check** for \$50 filing fee.



## CLOSE CORPORATIONS

*Article 2A. of the Business Corporation Act.*

The term “close corporation” has both a common meaning and a statutory meaning. As commonly used, any corporation owned, controlled and managed by a small group of individuals may be called a **close corporation**. As used in the Illinois Revised Statutes, however, only corporations organized as or electing to become a close corporation are **close corporations** and are entitled to the benefits and exposed to the limitations of this section.

All provisions of the Business Corporation Act of 1983 apply to all close corporations organized under Article 2A, except insofar as Article 2A otherwise provides. Before you incorporate your business, consult your attorney about the pros and cons of being a close corporation.

## ARTICLES OF INCORPORATION

A close corporation is incorporated in the same manner as other corporations (see page 1), and the Articles of Incorporation must meet all the requirements of the Business Corporation Act of 1983 (2A.05). Form **BCA 2.10** may be used, but it must contain certain provisions required by Article 2A.

## HEADING

The Articles must contain a heading stating the name of the corporation and that it is being organized as a close corporation.

## OPTIONAL PROVISIONS

The Articles also may contain provisions setting forth:

- That the business of the corporation shall be managed by the shareholders rather than by a board of directors (2A.45);
- A provision granting to any shareholder, or to the holders of a specified number or percentage of shares of any class, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency (2A.50).

## WRITTEN SHAREHOLDER AGREEMENTS (2A.40)

Any phase of the affairs of the corporation may be the subject of a written agreement entered into by **all** shareholders, including, but not limited to:

- Management of the business of the corporation;
- Declaration and payment of dividends or division of profits;
- Who shall be directors or officers or both;
- Voting requirements of directors or shareholders, including a unanimity requirement;
- Restrictions on transfer of issued shares;
- Employment of shareholders by the corporation; and
- Arbitration of issues as to which shareholders or directors are deadlocked.



## REASONS SUBMITTED DOCUMENTS ARE RETURNED

### GENERAL — ALL DOCUMENTS

- A. All items or Articles on the document have not been completed. Incomplete documents cannot be approved.
- B. The fees and taxes submitted are not in the correct amount; the check is not signed, is more than 90 days old, and/or is not made payable to Illinois Secretary of State.
- C. The Department of Business Services is unable to decipher the signatures on the document, and the names have not been typed or printed below the signatures.
- D. The wrong document is submitted for the transaction being reported. **Forms printed before July 1, 1984, are obsolete.**
- E. The correct number of copies of the document is not submitted. **Make sure whether one or two copies are required.**

### NAMES — ARTICLES OF INCORPORATION, NAME RESERVATIONS

- A. The name chosen is not distinguishable from a name already on file and thus is not available for use.
- B. The corporate name contains a word that has a restricted use and that restriction has not been satisfied (i.e., the words "engineering," "trust").
- C. The name does not contain one or more corporate designators, i.e., Inc., Corp. (*not applicable to Assumed Corporate Names*).
- D. The name implies a professional service and the corporation is not organizing under the Professional Service Corporation Act or the Medical Corporation Act.

### ARTICLES OF INCORPORATION

- A. See all points above and on previous page.
- B. Registered Offices must be a street address (P.O. Box numbers alone are not acceptable).
- C. The purpose clause contains provisions that are not acceptable, i.e.:
  1. The purpose is too broad. **The broadest language authorized by statute must reference the Business Corporation Act of 1983** (*see page 3*).

2. The purpose indicates the practice of a profession. Professional services by corporations are governed by the Professional Service Corporation Act and the Medical Corporation Act (*see pages 11-14*).
  3. The purpose clause provides for the “designing of buildings,” which has been interpreted as the practice of architecture and engineering.
  4. The purpose clause provides for the “designing of structures, objects, or systems,” which has been interpreted as the practice of professional or structural engineering.
  5. The purpose clause provides for the “discounting of bills and notes or the buying and selling of bills of exchange.” Both acts are prohibited by statute.
- D. The number of shares to be issued is not listed, or the number of shares proposed to be issued of any class of stock is greater than the number of authorized shares of that class.
- E. Incorporators' names are not legibly typed or printed, or addresses of incorporators are not shown.
- F. Payment of fees was not in acceptable form.



## OTHER FILINGS

You and your corporation are responsible for and obligated to contacting the various federal, state and local governmental agencies with which corporations must file. Do not expect the proper agencies to contact you. Act promptly after incorporating because failure to file, register or report may subject you and/or your corporation to fines or other penalties.

Determining which agencies must be contacted is not an easy task. Some businesses are more regulated than others, and some local governments are more restrictive than others. You may have to analyze statutes and ordinances, call or write many agencies, or consult professionals such as your lawyer or accountant.

This booklet does not attempt to explain or list all government agencies. However, some of the more frequently contacted agencies are listed below. (*For addresses and telephone numbers, see pages 20-21.*)

### FEDERAL AGENCIES — INTERNAL REVENUE SERVICE

#### A. Federal Identification Number

After incorporating, obtain Form SS-4 from the Internal Revenue Service (IRS) to apply for a **Federal Employer Identification Number** (FEIN). This number has been called the corporation's Social Security number and is a key reference number used by many government agencies.

#### B. S Corporations

If your corporation chooses not to be taxed as a corporation, obtain Form 2553

from the IRS to make an election as an "S Corporation." Consult your attorney or accountant for help in deciding whether this option will benefit you and your corporation.

## **STATE AGENCIES**

### **A. Securities**

Although authorized by the Articles of Incorporation, shares cannot be sold except in compliance with the Illinois Securities Law of 1953. Unless exempt, shares must be registered with the **Secretary of State's Securities Department**.

### **B. Trademarks, Service Marks**

Contact the **Trademarks Section** of the **Secretary of State's Department of Business Services**.

### **C. Sales Tax**

If you plan to retail, your corporation will need a retailer's occupation tax number. If you plan to wholesale, your corporation will need a resale certificate number. Contact the **Sales Tax Division** of the **Illinois Department of Revenue**.

### **D. Income Tax**

Corporations are subject to all state income tax laws, including withholding taxes. Contact the **Income Tax Division** of the **Illinois Department of Revenue**.

### **E. Unemployment Compensation**

Before your corporation hires employees, obtain an Unemployment Compensation Number from the **Illinois Department of Labor**.

### **F. Workers Compensation**

Contact the **Illinois Industrial Commission**.

### **G. Private Business and Vocational Schools**

Obtain a license from the **Illinois State Board of Education**.

### **H. Day Care Centers and Nursery Schools**

Obtain licenses from the **Illinois Department of Children and Family Services**.

### **I. Common Carriers and Utilities**

Contact the **Illinois Commerce Commission**.

### **J. Insurance Agencies and Brokerages**

Contact the **Illinois Department of Insurance**.

### **K. Professional Licenses**

Contact the **Illinois Department of Professional Regulation**.

**L. Attorneys**

Contact the **Clerk of the Supreme Court**.

**LOCAL AGENCIES**

Many counties, cities, towns and villages also require licenses or permits and may restrict advertising, signs, parking and numerous other aspects of operating a business. County and city clerks can often advise you of local ordinances and restrictions.



## CORPORATE FORMS AND FEES

ILLINOIS SECRETARY OF STATE  
DEPARTMENT OF BUSINESS SERVICES  
CORPORATIONS DIVISION  
www.cyberdriveillinois.com

Howlett Building  
Room 350  
Springfield, Illinois 62756  
(217) 782-6961

69 W. Washington  
Rm 1240  
Chicago, Illinois 60602  
(312) 793-3380

### SCHEDULE OF CORPORATE FORMS AND FEES FOR DOMESTIC & FOREIGN BUSINESS CORPORATIONS

Forms are referred to by Section Numbers of the **Business Corporation Act of 1983**

Form No.	Type of Form	Filing Fee
BCA-1.15	Statement of Correction	\$ 50 *
BCA-1.17	Petition for Refund, Review or Appeal	\$ 5
BCA-2.10	Articles of Incorporation	\$ 150 ***
BCA-4.10	Reservation or Transfer of Name	\$ 25
BCA-4.15/4.20	Application to Adopt an Assumed Name	*****
	Application to Change an Assumed Name	\$ 25
	Cancellation of an Assumed Name	\$ 5
BCA-4.25	Registration or Renewal of Name (Foreign)	\$ 50
	Cancellation of Foreign Registration	\$ 25
BCA-5.10/5.20	Change of Registered Agent/Office	\$ 25
BCA-5.15	Notice of Resignation of Registered Agent	\$ 5
BCA-5.25	Affidavit of Compliance for Service on Secretary of State	\$ 10
BCA-6.10	Statement of Resolution Establishing Series	\$ 25
BCA-9.05	Statement of Cancellation of Non-Reissuable Shares	\$ 5
BCA-10.30	Articles of Amendment	\$ 50 *
	Restatement of Articles of Incorporation	\$ 150 *
BCA-11.25	Articles of Merger, Consolidation or Exchange	\$ 50 per corporation
BCA-11.39	Articles of Merger Between Illinois Corporations and Limited Liability Companies	\$100 *****
BCA-12.20	Articles of Dissolution	\$ 5 *
BCA-12.25	Articles of Revocation of Dissolution	\$ 5 **
BCA-12.45/13.60	Application for Reinstatement of Domestic and Foreign Corporations	\$ 200 **
BCA-13.15	Application for Authority to transact business in Illinois	\$ 150 *
BCA-13.40	Application for Amended Authority to transact business in Illinois	\$ 25
BCA-13.45	Application for Withdrawal	\$ 25 *
BCA-14.01	Statement of Election to Establish an Extended Filing Month	\$ 25
BCA-14.30	Cumulative Report of Changes in Issued Shares and Paid-in Capital	\$ 5 *****
BCA-14.35	Report following Merger or Consolidation	\$ 5 *****

\* Plus applicable franchise taxes, penalties and interest

\*\* Plus annual reports, filing fees, and applicable franchise taxes, penalties and interest

\*\*\* Plus applicable franchise tax

\*\*\*\* Plus applicable franchise taxes, penalties and interest

\*\*\*\*\* Filing fee is \$100, but if merger involves more than 2 corporations, \$50 for each additional corporation.

\*\*\*\*\* The filing fee to adopt an assumed name is \$150 if the current year ends with either 0 or 5, \$120 if the current year ends with either 1 or 6, \$90 if the current year ends with either 2 or 7, \$60 if the current year ends with either 3 or 8, \$30 if the current year ends with either 4 or 9.

NOTICE: The only forms of payment that may be accepted with the filing of Articles of Incorporation (profit or not for profit), Applications for Authority (profit or not for profit) and Applications for Reinstatement (profit or not for profit) are as follows: certified check, cashiers check, money order, law firm or CPA's check. All payments must be in the exact amount due.

Make checks payable to: **ILLINOIS SECRETARY OF STATE**  
CASH CANNOT BE ACCEPTED FOR ANY FILINGS WITH THIS OFFICE

C-147.19



## ADDRESSES AND TELEPHONE NUMBERS

### SECRETARY OF STATE

Secretary of State  
Department of Business Services  
330 Howlett Building  
Springfield, IL 62756  
217-782-6961

Secretary of State  
Department of Business Services  
69 W. Washington, Ste. 1240  
Chicago, IL 60602  
312-793-3380

Secretary of State  
Securities Department  
900 S. Spring St.  
Springfield, IL 62704  
217-782-2256

Secretary of State  
Securities Department  
69 W. Washington, 12th Floor  
Chicago, IL 60602  
312-793-3384

[www.cyberdriveillinois.com](http://www.cyberdriveillinois.com)

### DEPARTMENT OF REVENUE

Illinois Department of Revenue  
Income Tax Division  
101 W. Jefferson  
Springfield, IL 62708  
217-782-9488  
800-732-8866

Illinois Department of Revenue  
Income Tax Division  
100 W. Randolph  
Chicago, IL 60601  
800-732-8866

Illinois Department of Revenue  
Sales Tax Division  
101 W. Jefferson  
Springfield, IL 62708  
217-782-9488  
800-732-8866

Illinois Department of Revenue  
Sales Tax Division  
100 W. Randolph  
Chicago, IL 60601  
800-732-8866

[www.revenue.state.il.us/](http://www.revenue.state.il.us/)

### INTERNAL REVENUE SERVICE (form pick-up only)

Internal Revenue Service  
320 W. Washington, Rm. 611  
Springfield, IL 62703  
800-829-1040

Internal Revenue Service  
230 S. Dearborn  
Chicago, IL 60609  
Attn: Form Services  
800-829-1040

All IRS forms and publications may be requested by mail from:

Internal Revenue Service  
Forms  
P.O. Box 24672  
Kansas City, MO 64131

[www.irs.ustreas.gov](http://www.irs.ustreas.gov)





## ADDRESSES AND TELEPHONE NUMBERS (cont.)

### ILLINOIS STATE BOARD OF EDUCATION

Illinois State Board of Education  
100 N. First St.  
Non-Public School Approval  
Springfield, IL 62777  
217-782-4321

[www.isbe.state.il.us](http://www.isbe.state.il.us)

### DEPARTMENT OF INSURANCE

Illinois Department of Insurance  
Agents/Brokers Section  
320 W. Washington  
Springfield, IL 62767  
217-782-6366

[www.idfpr.com](http://www.idfpr.com)

### DEPARTMENT OF PROFESSIONAL REGULATION

Illinois Department of  
Professional Regulation  
320 W. Washington  
Springfield, IL 62786  
217-785-0800

Illinois Department of  
Professional Regulation  
Investigative Unit  
100 W. Randolph  
Chicago, IL 60601  
312-814-4500

[www.idfpr.com](http://www.idfpr.com)

### ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield, IL 62706  
217-782-7295

Illinois Commerce Commission  
160 N. LaSalle  
Chicago, IL 60601  
312-814-2850

[www.icc.state.il.us](http://www.icc.state.il.us)

### DEPARTMENT OF LABOR

Department of Labor  
Division of Unemployment Insurance  
910 S. Michigan Ave., 11th Floor  
Chicago, IL 60605  
800-247-4984  
(Ask for New Employers' Packet)

### INDUSTRIAL COMMISSION

Industrial Commission  
Workers Compensation  
100 W. Randolph  
Chicago, IL 60601  
312-814-6500

### DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Illinois Department of Children and Family Services  
100 W. Randolph  
Chicago, IL 60601  
312-814-6800

400 W. Monroe  
Springfield, IL 62701  
217-785-2509



# FRAUD AWARENESS

Volume 1, Issue 1

March 2012

## HIGHLIGHTING DISABILITY FRAUD IN THE NEWS

### LEGALLY BLIND MAN WORKS CONSTRUCTION

A couple was convicted of defrauding Social Security and were sentenced to prison and ordered to make restitution totaling more than \$132,000.

*Want to know more?*

A legally blind disability annuitant worked full time for the couple's construction company while collecting disability benefits. According to reports, the man and his wife falsely told the Social Security Administration she did all the work. Both the beneficiary and his wife were sentenced to prison.

*Read the whole story at [Tri-Cities.com](http://Tri-Cities.com):*

[Couple Sentenced](#)

### PARAPLEGIC VETERAN WALKS

*Want to know more?*

*Read the whole story at: [KHQ.com](http://KHQ.com)*

[Largest VA Fraud](#)

After 10-years in the Air Force a serviceman was injured while unloading equipment and subsequently claimed he had lost the use of his legs. After receiving his medical retirement and VA disability benefits, the veteran established an excavation business, started an aircraft maintenance facility, and also obtained a pilot's license.

In 2007, one day after entering a VA hospital by wheel chair where he continued to claim paraplegia, the veteran appeared in court on an unrelated charge walking and climbing stairs unassisted in the courthouse. In 2009, he plead guilty to charges of wire fraud and making a false statement and agreed to repay \$950,000.

### ELDERLY ANNUITANT USES TWO IDENTITIES

In November 2010, an 84-yearold Michigan resident and Title II retirement beneficiary pled guilty to theft of government funds and was sentenced to one day of incarceration and to repay over \$194,000.

*Read the whole story at:*

[Michigan Man Uses Second Identity to Defraud SSA](#)

This elderly retiree had used his true name to apply for Title II disability and retirement benefits while working under a false identity. He had received benefits under both identities.

Fraud in the railroad retirement programs is investigated by the RRB's own Office of Inspector General. Visit their webpage at:

[Railroad Retirement Board Office of Inspector General on the Web](#)

Published twice a year by U.S. Railroad Retirement Board Office of Programs  
Comments, questions, kudos? Contact us at [FraudAwareness@rrb.gov](mailto:FraudAwareness@rrb.gov)



# FRAUD AWARENESS

Volume 1, Issue 2

October 2012

## HIGHLIGHTING DISABILITY FRAUD IN THE NEWS

### FORMER AIR TRAFFIC CONTROLLER CONVICTED

A former air traffic controller was sentenced to 24 months in prison and ordered to repay more than \$680,000 for failing to disclose work activities while receiving benefits under the Federal Employees' Compensation Act (FECA).

The man worked as a construction foreman for a general contractor while receiving disability benefits. To continue receiving benefits, he made false certifications to the Department of Labor's Office of Workers Compensation Programs (OWCP).

*Want to know more?*

Read the whole story at DOT OIG:

[FECA Beneficiary Convicted](#)

Learn more at the  
*Nashua Telegraph:*

[Drum & Bugle Corp Leader](#)

### DISABILITY ANNUITANT WORKS FOR 15+ YEARS

A man collected Social Security Disability benefits for 15 years while working for a musical performance group. He was sentenced to three years home confinement and ordered to repay over \$376,000 in benefits.

From January 1992 to April 2008, the New England disability recipient worked as the manager of operations for a prestigious musical performance group that won national awards and marched in the 2005 presidential inaugural parade.

### COUPLE CONVICTED IN LONG-RUNNING SCHEME

A Pacific Northwest couple was sentenced to prison for a long-running scheme to defraud government programs including the Social Security disability program. Both received prison sentences and must repay nearly \$300,000 in restitution to various state and federal programs.

In their plea agreements the couple admitted that in 1993 the husband had used a fictitious identity to apply for disability benefits. At multiple interviews over the years he assumed this false persona pretending that he was profoundly disabled and unable to work. The wife had defrauded state and federal assistance programs by claiming to be a single mother to obtain benefits.

Read the whole story at:

[Couple Defraud Federal and State Programs](#)

Fraud in the railroad retirement programs is investigated by the RRB's own Office of Inspector General. Visit their webpage at:

[Railroad Retirement Board Office of Inspector General on the Web](#)

Published twice a year by U.S. Railroad Retirement Board Office of Programs  
Comments, questions, kudos? Contact us at [FraudAwareness@rrb.gov](mailto:FraudAwareness@rrb.gov)



# FRAUD AWARENESS

Volume 2, Issue 1

Spring 2013

## HIGHLIGHTING DISABILITY FRAUD IN THE NEWS

### MISSOURI LOAN OFFICER CONVICTED

A man was convicted of theft of government funds and other crimes in connection with the receipt of disability benefits for 15 years while operating a loan company and leading an active lifestyle.

*Want to know more?*

Read the whole story at [USDOJ website:](#)

[Loan Officer Convicted](#)

In addition to charges of social security disability fraud, the man had also been charged with mail fraud and one count of transmitting a false negotiable instrument with the intent to defraud the government for trying to repay the money with a money order drawn on a false account.

### UNDISCLOSED MARRIAGE COSTS COUPLE \$121,000

A Tennessee couple pleaded guilty to defrauding the government of Social Security Supplemental Security (SSI) payments over an 18-year period.

*Want to know more?*

Read the whole story at: [SSA OIG](#)

[Couple Plead Guilty to SSI Fraud](#)

When an SSI applicant is married and living with a spouse who is not SSI eligible, the spouse's income is used to determine the amount of benefits. In this case the beneficiary failed to disclose his 1993 marriage causing him to be overpaid \$121,000 during the next 8 years. His spouse also pleaded guilty to fraud for failure to disclose that she was married in forms submitted to the SSA in May 2011.

The two were ordered by U.S. District Judge to pay restitution of over \$121,000.

### HOUSTON MAN USES FALSE IDENTIFY

A Houston man was ordered to federal prison following his conviction on charges of theft of government funds.

Read the whole story at:

The defendant admitted that from February 1996 through March 2012, he stole approximately \$83,000 from the SSA by using an assumed identity.

[False identity Used To Defraud SSA](#)

The judge accepted the defendant's guilty plea and sentenced him to 21 months in prison and to pay

Fraud in the railroad retirement programs is investigated by the RRB's own Office of Inspector General. Visit their webpage at:

[Railroad Retirement Board Office of Inspector General on the Web](#)

Published twice a year by U.S. Railroad Retirement Board Office of Programs  
Comments, questions, kudos? Contact us at [FraudAwareness@rrb.gov](mailto:FraudAwareness@rrb.gov)