

GOING NONPROFIT

By Deryl Davis, STAGE DIRECTIONS, October 2004

So, you want to start a nonprofit theatre, or turn your company into one? Think hard, say a host of lawyers, accountants and theatre professionals. Running a nonprofit theatre can be wonderfully exciting, creative and even liberating, but it's not all fun and games. A lot of bookkeeping, administration and planning goes into every production; you won't dance long before the footlights if your stagecraft isn't backed by a keen business sense. (And those lights won't stay on long, either.) But for those who have created and led successful nonprofit theatre, as thousands have around the country, nothing is quite as good as running your own show both onstage and off. With that in mind, here is some how-to advice on becoming a not-for-profit theatre.

First, say the experts, be sure of your purposes. Not every theatre needs to be a nonprofit or even to be incorporated. "You should ask yourself, 'Is there another way to do this?'" says New York attorney/arts administrator/dancer Amy Schwartzman. "Can I raise the money my company needs without being a nonprofit? Can I be sponsored by another organization?":

If you're only producing one or perhaps two plays a year, you don't need to be a nonprofit, says Schwartzman, a former executive director of Volunteer Lawyers for the Arts in New York. In most cases, you can still get tax-deductible contributions and help from donors. While there's a trade-off, Schwartzman says it can be worth it to avoid administrative headaches. She encourages theatres considering the move to nonprofit status to think about timing, too: Do they have the financial records, sound business plan and evidence of public support required by the Internal Revenue Service?

Of course, there are many good reasons to become a nonprofit theatre ranging from federal income tax exemption to reduced postal rates to eligibility for nonprofit grants and awards. Veteran nonprofit CEO Doug Bechtel lists some of them on the helpful Community Theatre Green Room website (www.communitytheater.org). Of no small importance is the fact that donors can deduct gifts to a nonprofit theater from their taxes. And in many states, nonprofits are exempt from local income taxes and many sales and property taxes.

There's another big reason theatres incorporate and become nonprofits. They have a dream and a public mission that nobody else has met. That's the case with Scott Fortier, who founded Catalyst Theater Company in Washington, DC., four years ago. He says the work of incorporating and attaining nonprofit status for his theatre has been well worth it, although not easy.

"Definitely have a good business plan going in," Fortier says, "and have a clear fundraising plan for the first six months, the first year, and after that.:

Here, then are the basic steps you'll need to take to turn your theatre into a nonprofit charitable corporation, or 510(c)(3). Exemption requirements and filing instructions can be found under the IRS website section on charitable organizations at www.irs.gov/charities

Create a mission statement. This paragraph describes how your theatre will benefit the public good. As a nonprofit, your primary purpose must be to benefit the public rather than earn a profit, although you may do that, too. Advice on creating a mission statement can be found online at www.nonprofitexpert.com/mission.htm

File articles of incorporation with the state (often the secretary of state) in which your company resides. This is the first step toward becoming a corporation, which is necessary prior to applying for nonprofit status. The articles generally include the company's name and address, its purpose and the name of a "registered agent" who will represent the company. Sample articles are at the Minnesota Council of Nonprofits website: www.mncn.org/info/template_start.htm

Write company by-laws. How will the organization be run? Who will be the members, directors and officers of it? What committees will you have, and how will responsibilities be shared? The by-laws are meant to address these organizational questions and establish a system of governance. They also determine the number and size of your board of directors. Sample by-laws can be found at: www.communitytheater.org/articles/bylaws.htm

Hold a meeting of your new board of directors. At this meeting, you can approve the by-laws and apply for the important federal tax exemption on IRS form 1023. (www.irs.gov/pub/irs-fill/k1023.pdf) You will need to detail the organization's past, present and future activities and provide two to three years' projected budgets. (If your organization has been operating as an unincorporated entity, you'll need to provide past budgets as well.) The IRS will also ask you to describe funding sources and future fundraising plans. Be forewarned: This exemption process can take from three to six months, so start early. Once you've become exempt, the declaration is generally retroactive for the preceding 15 months.

There are other things you'll need to do, like apply for an Employer Identification Number (EIN) and file for state and local tax exemptions. An exhaustive checklist is available from the Nonprofit Coordinating Committee of New York at www.npccny.org/checklist. Remember some of these regulations will differ from state to state. Should you find an attorney to walk you through the process of becoming a nonprofit theatre? Schwartzman says, "absolutely." Many cities and states have a branch of Volunteer Lawyers for the Arts or an equivalent organization that offers free legal advice to arts organizations. Fortier got help from the Washington Area Lawyers for the Arts (www.thewala.org). He calls the advice indispensable.

There are other things to be aware of as you prepare to become a nonprofit: The IRS will want to know where your funding comes from, and to receive assurance that all proceeds go back into the theatre and are not used for personal gain. Generally, the IRS will expect to see about one-third of an organization's income in public support and from more than one source, according to Schwartzman. Bechtel cautions that the IRS will look closely at any individual who gives more than five percent of the theatre's annual income and is also an officer, employee or board member.

Hopefully, a good portion of your theatre's budget will come from ticket sales. However, Fortier warns against thinking that ticket sales will be enough by themselves. "That's when you run into real issues," says Fortier. "Sometimes shows do well critically but may not be hits at the box office." The key, he says, is wooing donors, applying for nonprofit grants and building up a subscriber base from the very beginning. He's hoping Catalyst will double its subscriber list this year.

Perhaps the most important piece of advice offered by Fortier and other theater professionals who have started nonprofits is to find the best board of directors you can. They will be instrumental in leading your theatre and ensuring its sound financial and artistic future. In his article "Why a Non-profit Theatre Company" (www.communitytheater.org/articles/nonprofit.asp), Bechtel writes that fundraising and donation solicitation are among a nonprofit board of directors' primary functions. That's not idle talk, says Washington actor/director Michael Russotto, who found a local theatre company in 1993.

"A fantastic board with fantastic leadership is the only way a theatre can survive," Russotto says, admitting he learned the hard way. "It's great if a bunch of actors can get together and do plays, but someone has to do the business, make the business plan and raise money. You have to be married to it."

It's not idle talk for Fortier either. With three seasons under his belt, good reviews, and strong local support, he and his wife September, a company co-founder, look forward to a good run ahead. But they're keeping an eye on the balance sheet, ever mindful that "show business" is exactly that.