

# СВІЙ ДО СВОГО



## Ukrainian Business and Community Directory

World Wide Listing of:

**Community, Professional, Business and Trades,  
Persons with Special Skills and Expertise**

who can contribute to our community



## СВІЙ ДО СВОГО Ukrainian Community Issues – June 2012 (2)

### “Constitutions” and “Memorandum and Articles of Association”

#### Ukrainian Associations

It has been brought to our attention that there may be some “Hromada” (Ukrainian Associations) Constitutions that are not in line with current modern co-operative principles and some clauses within them may be inappropriate in present day context.

Equally, it appears that some Hromadas were structured under inappropriate constitutions to the total detriment of our community. This needs to be addressed immediately.

A number of “Constitutions” and “Memorandum and Articles of Association” have been perused. This perusal has been undertaken in isolation of the many Hromada Committees.

An open and frank discussion with rational and emotionally mature persons who are interested in fostering the Ukrainian cause and advancing our language, culture and heritage is welcomed.

In examining these documents, our comments are as follows:

- They are out of date and antiquated in their principles:
  - *One of the documents examined was last updated in 1986*
  - *Two attempts have been made to update the 1986 version but for some reason never achieved*
- Not relevant in today’s democratic society
- Lack of organisational naming conventions and uniformity
- Some “Branches” are isolated from the overall Organisation.
- Very dictatorial towards Branches
  - *One of the constitutions refers to “Branches... insubordination to the Executive Committee of the (state office named).” - how antiquated !!*
- Ordinary members seem to have the same and equal right as Branch Representatives – we need clarification; on the surface it allows for “Branch Stacking” at elections.
- The distribution of assets, upon dissolution of branches is unco-ordinated and inappropriate.
  - *Anecdotal evidence suggests that there have been Hromadas who had Share based Co-operatives business structures where the assets and facilities such as halls and schools have been vested in individuals (not the Community) and sold off, possibly for the financially benefit of the individuals.*

## **Recommended Solution - Community Re-Structure**

The whole community structure should be totally revised, including our global involvement, remembering the expression “look after the cent and the dollar will look after itself” what is meant is “look after the grass roots membership of our community and the community will grow strong and resourceful, enabling the community to look after our interests in Ukraine”. In our opinion the re-structuring of the community should follow these general principles:

1. The Hromada should be the main stream organisation having Local Branches, State and a Federal Executives. All other organisations are to be peripheral to this structure all as detailed below.
2. Removal of non-relevant “organisations” (those that may have existed in the past but now belong in our history books)
3. Unification of the splinter groups
4. Apply true democratic values:
  - i. One Person One Vote
  - ii. Preferential Voting
  - iii. Majority Rules
5. Replace the “Presidential” / “Holova” structure with a “Chairmanship” organisational structure with a Board of Directors at each of the Branches, State level and Federal level as detailed below:
  - a. Each Branch to be autonomous, as such it shall be responsible for its own:
    - i. Finances and fund raising etc.
    - ii. Assets of land, buildings and infrastructure
    - iii. Community education, culture and aged care etc.
    - iv. Maintain a perpetual Membership Register, including re-establishing a Historical Register of past members and their details.
    - v. This should not preclude branches and peripheral organisations working together to rationalise their resources.
  - b. Branch Membership shall be free to all Ukrainians or persons of Ukrainian heritage whether they speak, read or write Ukrainian or not. Individual members of the community can only be a member of one Branch
  - c. Branch Funding should be on a “User Pays” basis.
    - i. The fundamental principle of this is that in the event that the member is not sent, or received, a membership reminder invoice their membership will not be forfeited.
    - ii. “User Pays” basis means that entry into functions shall have a cost associated with this that covers all “outgoing”.
    - iii. Branches that have facilities should market these facilities to the Broader Community in their locality on an “outgoings and profit” basis.

- d. State organisational level to consist of two representatives from each of the Branches within that State and these members shall elect their chairman and specific delegates as necessary. State organisational level shall not have individual members.
- e. Federal organisational level to consist of two delegates from each of the state organisations. All meeting to have full representation from all State Organisations
- f. Peripheral organisations such as churches, youth, political and professional organisations to be represented at the Federal level in an advisory capacity only. The reasoning behind this is that they have their own:
  - hierarchical structure and
  - constitutions /rules

As the Hromada organisation is the mainstream organisation in our community, members of these peripheral organisations are encouraged to become members of their local branch of Hromada.

Should these organisations have a vote at Federal level, in effect mean they would have two votes:

- One at Branch Level and
- One at Federal Level.

This would not be equitable.

- g. Global level, the Federal level of the organisation shall nominate and endorse any delegates that are required as part of this function.
- h. At Branch, State and Federal level each of these organisations should encourage to be supported by volunteers who have specific expertise and/or have the spare capacity to assist.

**Model (Rules) Constitutions** are provided under the Corporations / Co-operatives Acts and Corporate Affairs in each state to facilitate organisations to readily prepare their own constitutions with minimal legal input. These Model Rules are available online for everyone to use. The conditions, provisions and obligations contained in these documents are structured to be fair and equitable to all.

Our two preferred corporate structures that can be adopted are:

1. Business type which is usually in the form of a Company through ASIC.
2. Co-operative type which is in line with a Trading Co-operative.

Both of these structures are acceptable and have the same standing at law within our understanding:

- i. They each require resolutions be passed in similar ways,
- ii. They are each covered by Acts of Parliament etc.
- iii. They each have similar clauses and principles,
- iv. Each of these can be modified to suite specific requirements,
- v. Each of them can be changed only by stakeholders as prescribed,
- vi. Conflict with each of these is actionable through the Court System.

**The Preferred Constitution** should be operating as Trading Co-operatives having a Chairmanship / Board structure and should be Membership based NOT Shareholder based:

1. Where possible it is preferred to have a uniform constitution for all Branches country-wide.
2. Allow Ukrainians in remote areas have the same equal rights as members in central locations.
3. Individual members of the community can only be a member of one Branch. However this should not preclude individuals supporting another Branch as the need arises.
4. Individual members should only hold one official position within the three levels of the organisation. The reasons for this are:
  - a. There could be a potential conflict of interest by one person holding more than one position and possibly casting more than one vote.
  - b. Gives more people an opportunity to express alternate points of view enabling the greater cross pollination of ideas.
  - c. Enable the spread of workload more evenly; achieving greater results
5. Elections and voting on issues shall be "One Person One Vote".
6. Preferential voting should be implemented.
7. Branches to take full ownership and responsibility for the assets their forefathers acquired and provided.
8. All assets are to be vested in the Community – refer point 9 below.
9. The issue of asset distribution upon the dissolution of a Branch is a complex issue and is addressed below.

## **Community Assets**

The assets we refer to are those provided to the various churches and their convents, presbytery, units and flats, aged care facilities, schools and classrooms, community halls, club facilities and offices, sporting facilities, youth camps and financial institutions.

Anecdotally, the total value of all assets in the order of \$A750 million - \$A1,000 million in Australia alone.

All community assets were purchased, constructed, fitted out, furnished, manned and the operations of these facilities were funded by the many families across the country. This was wholly due to the personal efforts, toil and donations by our parents and grandparents since arriving here. Also a great number of these assets were funded through government grants and support.

There are two main grouping of facilities and assets:

- Hromada assets that are for the use and management by the whole Ukrainian Community such as Halls, Sporting facilities, Clubs etc.
- Peripheral Organisations such as the Churches, Youth Groups etc. that have been supported by special interest groups in the community and have their own hierarchical organisational structure.

Our comments in this document are specific to Hromada assets only.

Speaking to our parents, grandparents and family friends who contributed to a large degree to all of these assets, you will soon realise that their vision was to provide for our future needs and growth in our new country.

None of us have the legal or moral right to decimate these assets in any manner, shape or form, as all of these assets, no matter how described legally in the various “Constitutions” and “Memorandum and Articles of Association”, were provided for and on behalf of the Ukrainian Community for the Ukrainian Community as a whole.

There have been several instances where Community Facilities and Assets have been mismanaged resulting in substantial losses.

The following principles shall be enshrined into any Constitution.

Any rationalisation, sale, renovation, modification or re-construction of Community Facilities and Assets shall be supported by independent property related professionals such as Architects, Town Planners, Quantity Surveyors, Valuers, Accountants, Auditors and Banks showing full and detailed “Feasibility Studies”, “Cash flows” and “Rates of Return” supporting or otherwise all projects before widely publicly detailing the projects to the Ukrainian Community for their concurrence.

There is anecdotal evidence that are many instances where assets and facilities have been vested in individuals via inappropriately formulated “Constitutions” and “Memorandum and Articles of Association” or Share Based Co-operatives.

**Share Based Co-operatives** have their base in their pre-arranged provisions determining the fair and equitable distribution of shares by stakeholders. These measurable issues include and are not limited to:

- amount of labour and time provided,
- fees paid,
- funds expended
- initial share value
- and other such agreed measurable issues

Speaking to our parents, grandparents and other members of the community who were physically involved in building our community, there were no such “Share” based Co-operatives existing at the time that they knew of.

**All work undertaken by our pioneers was for the whole Ukrainian Community in the locality, with members volunteering their labour and time and providing donations in the provision of these facilities. Any shortfall was borrowed from banks, grants provided by governments and provided by benefactors unconditionally. They did what they could for the community and NEVER expected any financial return for their effort.**

Assuming that there may have been a genuine Share based Co-operative structure in place and all aspects were adhered to correctly, the majority of the Ukrainian population in diaspora would not have known the:

- implications behind such an agreement,
- the English language, which was new to them at the time, and
- certainly did not understand the legal terminology.

This is a case where uneducated migrants may have been misled into such an agreements by unscrupulous or ill-informed persons.

**A Forensic Analysis, Audit and Title Searches should be conducted in each State to determine:**

- list of Ukrainian Community facilities that existed from as early as 1950,
- the demise of these facilities,
- the legal personnel involved
- the committee of management at the time
- list of shareholders
- list of forfeited shares
- list of persons whom purchased these forfeited shares
- The price paid for the purchase of the forfeited shares
- final path of the proceeds of sale
- history of the constitution of that particular Branch

**Unless otherwise proved, given that the real scenario is as described above, we demand that the persons and families who benefited from the sale of these community assets return the funds with interest to the Ukrainian Community in that State.**

**Assimilation of our community**

At the current rate of dissolution, by assimilation or other means, of our community, in 10 - 20 years' time the:

- churches will not have any parishioners,
- classrooms will not have any students or pupils,
- CYM and Plast will no longer exist
- there will not be such celebrations as the Malanka

We will only exist in history books.

So what will happen with the assets our forefathers provided for us!

We have been advised that many organisation have vested there assets, upon their dissolution, to the churches and to CYM and Plast. With the dissolution of our community, it is then pointless to disseminate assets to these peripheral organisations.

Once again, speaking to our parents, grandparents and family friends who contributed to the Ukrainian Communities infrastructure, they will tell you that, if there is no one left standing in our community, the assets should be inherited by the neediest of people in Ukraine; that is the orphanages.

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