

**IDENTIFYING SOME ECONOMIC PROBLEMS OF
THE MUSLIM COMMUNITY IN NORTH AMERICA
AND PRELIMINARY THOUGHTS ON THEIR
SOLUTION**

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IDENTIFYING ECONOMIC PROBLEMS OF THE MUSLIM COMMUNITY IN NORTH AMERICA AND PRELIMINARY THOUGHTS ON THEIR SOLUTION

There are two groups of financial issues that need to be identified, discussed and studied in details. Solutions that are compatible with both *shari'ah* and the environment we live in need to be sought. The first group of issues relates to the North American Muslim community as a whole while the second pertains to the behavior of individual Muslims in this land.

Public Community Issues

Within the first group of issues, we will discuss four problems:

- 1) The preservation of the public properties of the Muslim communities.
- 2) Financing activities carried out on these properties and other community Islamic activities.
- 3) The application of the Islamic inheritance system and last will, and lastly
- 4) The collection and distribution of Zakah.

1) The preservation of the public properties of the Muslim communities

The main item in the public communities' properties of Muslim in North America is represented by real estates (lands and buildings) devoted for religious, educational and other Islamic charitable purposes. The present legal status of these real estates is that they are owned by their respective organizations. While it is true that US Constitution provides for respect and equal treatment of all religions, the Islamic description of such real estates falls

beyond the existing limits provided for in the non-profit organizations systems and the tax exempt status of non-profit Islamic organizations.

With not a single exception, all Islamic centers are incorporated under the non-profit systems. These systems are likely to slightly vary from one State to another, but their common feature is to grant the incorporated organization a corporate status which allows them to own properties and be treated as legal entities, which are similar, in several respects, to natural persons. Consequently, all public properties of the Muslim community are registered as properties of these Islamic non-profit corporations.

Accordingly, non-profit corporations have full and unequivocal rights to dispose of their properties, whether they are in the form of real estates or in the form mobile assets. This is a principle inherited from the system of corporation in the Western legal traditions. Keeping in mind that some Islamic organizations may have made it more difficult, in their own articles of incorporation or in their by-laws, to sell a mosque or an Islamic center or to engage such a property as collateral in a mortgage contract, the problem remains. After fulfilling certain conditions, **the decision-making body of the Islamic non-profit corporation has the legal power to eliminate a mosque or any other public property of the Muslim community.** This is in one hand.

On the other hand, outsiders and any third party, Muslim or otherwise, can sue the Islamic organization for any possible or potential liability and force it to liquidate its assets, especially, its real estates to discharge of its liability.

Waqf, in the Islamic *Shari'ah*, is not like that. Its Nazer (manager) has no power to liquidate it. The rules and conditions of substitution of a *waqf* property make it rather impossible to eliminate a perpetual *waqf*. Further, perpetual *waqf* does not fall under liabilities that may necessitate its liquidation.

The conclusion is that if we want to provide protection and preservation of the public properties of the Muslim communities, Islamic centers, schools and the like, it is not sufficient to amend the articles of incorporation by limiting the power of the decision-making bodies of our Islamic non-profit organizations. What is needed is a lot more than that. **We need a system that inspires the Islamic principle of Awqaf.**

The fact is that the Islamic system of Awqaf does not only protect the real estate properties of the Muslim communities but it also protects the mobile assets and other properties, even, income-generating properties.

Solution

The first best and the ultimate solution of this problem is to seek new laws that protect the public properties of the Muslim community. Such laws should be designed in accordance with the principles of *waqf* as known in the Islamic *Shari'ah*. We need to work towards this goal. We can co-opt all charitable organizations in this effort. We can cooperate with all other non-profit organizations, religious and otherwise, to achieve this kind of improvement in the American legal system of non-profit properties for **the common objective of protecting them from their own decision-making bodies as well as from outsiders.**

In the meanwhile, we need to design suitable legal document on the basis of permanent irrevocable trusts in which any liability is charged to the Manager rather than to the trust property. A rough example of such principles is found in appendix I.

2) Financing activities carried out on these properties and other community Islamic activities

The present status of financing the Islamic activities is truly miserable and shameful. It basically depends on begging the members of the community by the officers of the Muslim organizations and running boxes between the lines on Friday prayers. May Allah forgive us for the humiliation we usually cause to our elected and volunteering officers!

Obviously in America, we do not have an Islamic government to spend on mosques. Though must be obtained by more sophisticated approaches, donations do not provide a stream of income that is stable and sufficient to sustain the necessary Islamic activities. Innovative ideas are needed and our Islamic history tells us that most community activity in the Muslim society have been financed by the Awqaf.

We need an Awqaf Law that provides for the establishment of investment type of Awqaf properties whose returns are devoted to sustain and promote the community activities of Muslims in North America including maintenance of public community properties; and we need to encourage individual Muslims to create such Awqaf.

Until the time when such an act comes to existence, we need to design formulas and patterns within the existing system of charitable trusts that encourage Muslims in North America to

create investment properties whose income is devoted to support the Islamic community activities. Preliminary thoughts on such a form of trust is provided in appendix II. It is formulated on the assumptions that there are few very rich Muslims in North America while there are many who own their residences.

3) The application of the Islamic inheritance system and last will

Here again as it is the case in other parts of Islamic Personal Law, we need a Law to be enacted by the Federal Government so that it can apply to all Muslims in the USA. A law that imposes the Islamic inheritance system on the majority of Muslims who did not fill on Islamic last will. As we all know, Islamic inheritance system doesn't only apply to devout Muslims, it also applies to the crooked and half-hearted ones as well as to the inheritance relations between Muslims and their non-Muslim relatives and spouses. All the above requires the forceful and binding power of a law.

Until that objective is attained, we need to promote the concept of last will using suitable format. Some of these formats are already in circulation in mosques and Islamic centers.

4) The collection and distribution of Zakah

While it is perfectly true that Zakah is the third Pillar of Islam and an individual worship, it is equally true that the Muslim community has the right to supervise its implementation. This needs to be enhanced by creating suitable establishments at the local community level as well as at the level of the overall Muslim community in the country.

The fact that we live under a secular constitution must not be a limitation for seeking the enactment of such laws of the Muslim community in the USA and Canada. We have several examples in the world where secular countries provide laws that apply to religious segments of their population since such laws are part of the social needs of those religious communities. **We need two things together: a will and a modus operandi for action together.**

Second group of issues: Issues related to behavior of individual Muslims

On the individual behavior level, we need to respond to two major and very important needs of Muslims in North American. The need for financing households and businesses and the need for finding investment channels that are compatible with the Islamic principles.

On the financing side, we have several religious opinions (*fatwas*) to the effect that in case of need, a Muslim may engage in obtaining interest-based financing for his/her household needs, including housing and sustenance expenses and for salvaging their businesses. Yet by their nature, these *fatwas* are exceptional, provisional and circumstantial. The solution of our financing needs can only be sought, in the ultimate analysis, in creating financing institutions that are compatible with the Islamic *Shari'ah*. This action requires ligo-political efforts that aim at relaxing the presently existing clauses in the financial institutions laws in almost all States of the USA that require financial institutions, especially, banks to be interest-ridden.

Such kind of requirements must be fought as being discriminatory against Muslims. In fact, it is also discriminatory

against Christians if they want to behave in accordance with the teaching of the Bible.

In the meanwhile, we may have to consider the need for creating interest-free house financing associations on the pattern of the housing cooperative of Toronto, and Credit Unions on the pattern of Philadelphia Muslim community credit union and the experience of Indiana in the late seventies.

Investment opportunities that are compatible with the Islamic Shari'ah are becoming more available with time and we need more emphasis on investment in the financial market with a package or manual of concrete *Shari'ah*-based evaluation of the different kinds of financial transactions and contracts for determining their compatibility with *Shari'ah*.

Emphasis is also needed on creating investment channels on a worldwide basis that link the potential contribution of Muslim communities in North America to the development of the economies of the Muslim countries.

Appendix I

THE PERMANENT*NAME OF MUSLIM COMMUNITY* ...
RELIGIOUS TRUST
OF
THE *NAME OF FOUNDING-CUM-BENEFICIARY ISLAMIC*
ORGANIZATION....., INC.

DO NOT COPY

**THE PERMANENTname of Muslim Community ... RELIGIOUS
TRUST
OF**

**The name of founding-cum-beneficiary Islamic
organization....., Inc.**

Article I: The Trust and The Trust Founder

We, the undersigned, name of founding-cum-beneficiary org.,
Inc., , a religious charitable organization incorporated
in the state of....., as represented by the president, the
secretary and the treasurer, and after the decision of the Board of
Directors of the Corporation no..... dated....., with full power and
authority vested in the Board by the Articles of Incorporation of the
Organization, announce and declare that the Name of the
Islamic organization hereby establishes a religious Trust (**Waqf**)
for the sake of God, the Almighty, and to serve the Muslim
community in This religious Trust (**Waqf**) consists of the
assets herein described. It is permanent for which we only seek
acceptance from God, the Lord of the Worlds. It is established in
accordance with the teaching and regulations of Islamic Shari'ah
(Law) and it is to be governed always and at all times by the spirit,
rules and teaching of the Islamic Shari'ah. No one has any right to
change or alter any thing in this document, As God said: "If any
one changes the bequest after hearing it, the guilt shall be on those
who make the change. For Allah hears and knows all things" [The
Qur'an, 2:181]. This document is to be considered as one unit
consisting of five articles, five pages and an appendix.

On this we fix our signatures, as legal and authorized
representatives of thename of founding organization.....Inc., on
each and every page and on the last page along with witnesses and
public notary. We also attach a copy of the decision of the Board of
Directors and make it an intrinsic part of the document.

This religious Trust (**Waqf**) is permanent and irrevocable. It
must be preserved until the Day when God resurrects all men and
women.

**The Assets entrusted are (full legal description
and listing of all real estates and attached fixed assets of the mosque and Islamic
center's land, buildings)**

This Trust is to be called: The Permanent Religious Trust of the beneficiary Islamic org

Article II: Use of the Trust's Assets Usage and Limitation of Power of Founders, Trustees and Beneficiaries

1. Usage of the Trust's assets is restricted to the religious Islamic purposes and within the limits ordained by the Islamic Shari'ah. No part of these assets can be used for any activity, what so ever, that may violate the Islamic moral, social religious and spiritual norms, regulations and guidance.
2. All capital gains, appreciation and revaluation accruing to the trust's assets shall be added to the principal of the trust and become inseparable part thereof, whether such gains accrue to the properties named in this document or to any other properties for which any part of existing properties is substituted.
3. All and any additions to the assets of this trust shall constitute an intrinsic and inseparable part of this trust and shall be covered by this document as if it were named in article I.
4. The name of the beneficiary organization shall have full, unequivocal and unchallenged rights to use any and all the assets of the trust for any and all of its activities and at the discretion of its appropriate decision making body in accordance to its own articles of incorporation. All this within the limits and conditions of this document and the Islamic Shari'ah.
5. The founders, trustees, managers, and beneficiaries have neither power nor authority of disposing of the assets of this trust or any and all of its capital gains under any and all circumstances.

However the beneficiary org. may replace the assets, wholly or partially, for other assets, at the discretion of its appropriate decision making body. In such cases, new assets must provide at least equal services to the Muslim community of Or any other nearby Muslim community, they must be purchased for the full amount of the proceeds of the sale of the old assets, the proceeds from the sale of assets must be placed in an Islamically accepted mutual fund or escrow account within the USA territories until the purchase is effected and its value

becomes due for payment. Such temporary arrangement must be limited to three month only.

6. The properties of this trust cannot be mortgaged, put as collateral, forsaken, or disposed of in any manner by any of its founder, managers, trustees, beneficiaries or other persons. These properties do not enter under the ownership of the founders, trustees, managers, or beneficiaries. Any contract, commitment or obligation made to the contrary of this clause is null, void and invalid.

Article III: The Trust Management

1. The founder of the trust,*name of the founding Islamic Org.*..... shall be the Trust's manager and trustee for as long as it exist. It is required to take good care of the property. This includes being in full charge and responsibility of maintenance, insurance, taxes and any and all other normal and customary expenses necessary to keep the assets usable for want they are for, and free of obligations to any outsider or any third party.
2. The manager cannot sell the properties of the trust; they cannot give them as a gift or in a last will to any party, use them as a collateral, put a lien or cause a lien to be put on it or expose them to any liability to any third party. But it may chose to surrender its right to the use and/or management, in writing to another Islamic, tax exempt organization of similar objectives, that serves the same Muslim community or a nearby Muslim community.
3. Since the trust must not be suit for any liability to any third party, any such liability and/or responsibility that may otherwise be charged to the Trust, shall fall on the manager and the trust shall be free of any liability to any third party at all times.
4. The manager/trustee shall deserve neither compensation nor salary for management.

Article IV: Amendment

The founder, severally and/or jointly, within the limits of Shari'ah, have full rights to amend, change and/or modify any article of this document, except revoking the trust or removing any asset from it.

Article V: Separability, Succession and Arbitration

1. We direct and ordain that if any part of this document is determined invalid by a court of competent jurisdiction, the other parts shall remain valid and enforceable.
2. If *beneficiary org.* ceases to exist, the Islamic organization that replaces it shall succeed it wherever it is mentioned in this document. If there shall be no successor, any Islamic organization in the state of that is certified by the Islamic Society of North America (ISNA) or by the North American Islamic Trust (NAIT), shall replace *beneficiary org.* or its successor.
3. Should any disagreement, conflict or dispute arises with regard to this Trust, interpretation of its texts and articles, use of its premises and activities undertaken therein, its beneficiaries and/or its management, or any other matter that relates to it in any way or manner, a committee of three, representing the*beneficiary organization*....., ISNA and NAIT, respectively shall be called to solve such dispute. Its decision shall be final and binding to all parties and in all courts.
4. Since this trust and its document are of public benefit and interest to all members of the Muslim community in ...(county or city)..., any member of this community is in a position to supervise and control the faithful and proper implementation of the texts and spirit of this document.

Any member of the Muslim community in(city or county)..... , ISNA, NAIT, severally and/or jointly have a right to give a written complaint, with description of the violation, and ask for the committee mentioned above to be formed to consider his/her complaint. Two thirds of the prices of tourist class air tickets and other transportation cost for members of the committee coming from outside the area of the trusts assets shall be born by the complainers and must be deposited with ISNA or NAIT before the committee meeting.

This document is made in thee original copies: one copy for each of*beneficiary org.*, ISNA and NAIT.

Date

Trust Founders	Witness	Witness
Names: andand.....represen ting <i>name of founding</i> <i>org.</i>	Name	Name
Address ,,	Address	Address
Signatures	Signature	Signature

Notary Public
Name
Address
Signature

Appendix II

**THE PERMANENTNAME... CHARITABLE
TRUST OF THE BENEFICIARY
ORGANIZATION..., INC.**

DO NOT COPY

**THE PERMANENTname... CHARITABLE TRUST OF
The beneficiary organization..., Inc.**

Article I: The Trust and The Trust Founders

We, the undersigned, **AND**, husband and wife, residing inaddress....., with full legal and mental capacity and full freedom announce and declare, and will and desire that we establish a Trust (**Waqf**) for the sake of God, the Almighty. This trust (**Waqf**) consists of the assets herein described. It is permanent for which we only seek acceptance from God, the Lord of the Worlds. It is established in accordance with the teaching and regulations of Islamic Shari'ah (Law) and it is to be governed always and at all times by the spirit, rules and teaching of the Islamic Shari'ah. No one has any right to change or alter any thing in this document, As God said: "If any one changes the bequest after hearing it, the guilt shall be on those who make the change. For Allah hears and knows all things" [The Qur'an, 2:181]. This document is to be considered as one unit consisting of six articles and five pages. On this we fix our signatures on each and every page and on the last page along with witnesses and public notary.

This trust (**Waqf**) is permanent and irrevocable. It must be preserved until the Day when God resurrects all men and women.

The Assets entrusted are (full description)

This Trust is to be called: The Permanent Charitable Trust of thebeneficiary org

Article II: Use of the Trust's Revenues and Limitation of Power of Founders, Trustees and Beneficiaries

7. The Trust's revenues are defined as the total of all rents and rental payments, any ordinary profits, and all that arises to the Trust in terms of rights and incomes in any form and kind. Revenues do not include capital gains nor appreciation of its assets and its land at any time, nor the capital gains resulting from any revaluation, replacement or substitution of the asset or assets of the trust at any time, form or kind.
8. All capital gains, appreciation and revaluation accruing to the trust's properties and assets shall be added to the principal of the trust and become inseparable part thereof, whether it accrues to this named property or to any other property for which it is substituted.
9. After fulfillment of the conditions of article III, the beneficiary org. becomes the sole beneficiary of the trust. It shall have full, unequivocal and unchallenged rights to use the revenues

of the trust for any and all of its activities and at the discretion of its appropriate decision making body in accordance to its own articles of incorporation.

10. The founders, trustees, managers, and beneficiaries have neither power nor authority of disposing of the assets of this trust or any and all of its capital gains under any and all circumstances.

However after the revenues of the assets of the trust become due to *beneficiary org.* it may replace these assets, wholly or partially, for other income generating assets, at the discretion of its appropriate decision making body. In such a case, new assets must be purchased for the full amount of the proceeds of the sale of the old assets. The proceeds must be placed in an Islamically accepted mutual fund or escrow account within the USA territories until the purchase is effected and its value becomes due for payment. Such temporary arrangement must be limited to three month only.

The founders and their beneficiary children have the right to replace the property of the trust for another property of at least equal value provided that the whole new property becomes an asset of this trust in addition to other conditions mentioned in this para.

11. The properties of this trust cannot be mortgaged, put as collateral, forsaken, or disposed of in any manner by any of its managers, trustees, beneficiaries or other persons. These properties do not enter under the ownership of the trustees, managers, or beneficiaries. Any commitment, obligation or contract made to the contrary of this clause is null, void and invalid.

Article III: Conditional Benefits of Founders and Their Children

1. The Founders, severally and/or jointly have full and uncontested rights to the usufruct of this property, they may use it as a residence and/or a source of income during their lifetime or the life of the surviving one of them.
2. After the expiry of both trustees, their unmarried children, together or any one of them alone, have same and equal rights like those enjoyed by their parents until one year after the youngest child ... **name** ... graduates from university and finds a full time job or until she gets married.
3. Any poor child or children of the founders are entitled, severally and/or jointly, to the usufruct of the assets of this trust, for use as residence or for income. This right does not prejudice the right of unmarried children and it must be claimed before the revenues of the trust are turned to *beneficiary org.* For a

proof of poverty, it is sufficient that one, non-beneficiary child of the founders certifies it to ... *beneficiary org.*

4. Grandchildren are not included in the benefits of this trust, except as part of the household of their beneficiary parents.
5. During the periods required to satisfy paras 1,2 and 3 of Article III, the beneficiaries are required to take full charge and responsibility of maintenance, insurance, taxes and any and all other normal and customary expenses necessary to keep the property usable and free of obligations to any outsider or any third party. In case they do not take such charge and responsibility, The *beneficiary org.* can pay for what is needed and come back on the occupant/beneficiary of the property for reimbursement of the paid amount in full, in addition to 10% as a compensation for its administrative expenses.

Article IV: The Trust Management

1. The founders of the trust (and the surviving one of them), severally and/or jointly, shall be the Trust's manager and trustee during their lifetime. They shall take good care of the property. However they cannot sell or bequest the properties of the trust; they cannot give them as a gift or in a last will to any party, use them as a collateral, put a lien or cause a lien to be put on it. They cannot expose them to any liability toward any third party. But they may chose to surrender their right to the usufruct and/or the management, in writing to the *beneficiary org.* itself without affecting any of the rights and privileges of their unmarried and poor children.
2. After the death of the surviving founder, the management shall be given to the beneficiary child if he/she is at least eighteen years of age. Otherwise to the next older child of the founders who lives in *state or city*....., provided he/she is at least eighteen years old. If this could not be done the management goes to the *beneficiary org.* without any prejudice to the rights of unmarried and poor children as mentioned in article III.
3. After the rights of the founders and their children, mentioned in article III, are fully satisfied, the trust' management shall be transferred to the *beneficiary org.* If the *beneficiary org.* decides to replace the property for stocks and mutual funds' units, it must select the best of such investments. It must comply with the spirit and rules of Shari'ah. There must be no investment in shares prohibited according to the Islamic Shari'ah nor in mutual and investment funds in which interest-based banks, insurance and other financial companies,

entertainment, hotels and armament industries make more than 20% of the portfolio.

4. The manager/trustee shall deserve neither compensation nor salary for management.
5. Since the trust must not be suit for any liability to any third party, any such liability and/or responsibility that may otherwise be charged to the Trust, shall fall on the manager, and the trust shall be free of any liability to any third party at all times

Article V: Amendment

The founders, severally and/or jointly, within the limits of Shari'ah, have full rights to amend, change and/or modify any article of this document, except revoking the trust.

Article VI: Separability, Succession and Arbitration

5. We direct and ordain that if any part of this document is determined invalid by a court of competent jurisdiction, the other parts shall remain valid and enforceable.
6. If *beneficiary org.*ceases to exist, the Islamic organization that replaces it shall succeed it wherever it is mentioned in this document. If there shall be no successor, any Islamic organization in ...*city or county*.... that is certified by the Islamic Society of North America (ISNA) or by the North American Islamic Trust (NAIT), shall replace *beneficiary org.* or its successor.
7. Should any disagreement, conflict or dispute arises with regard to this Trust, interpretation of its texts and articles, distribution of its revenues, its beneficiaries and/or its management, or any other matter that relates to it in any way or manner, the Executive Board of *beneficiary org.*... shall appoint a committee of three, one of them must be the Director of*beneficiary org.* .., to solve such dispute. Its decision shall be final and binding to all parties and in all courts.
8. Since this trust and its document are of public benefit and interest to all members of the Muslim community in ...(county or city)..., any member of this community, and especially the children and descendants of the founders, is in a position to supervise and control the faithful and proper implementation of the texts and spirit of this document.

Any member of the Muslim community in ...(city or county)..., ISNA, NAIT and any descendents of the founders have a right to

give a written complaint, with description of the violation, and ask for the committee mentioned above to be formed to consider his/her complaint.

This document is made in six original copies: one copy for each of ...beneficiary org. ..., ISNA, the founders and their childrenand

Date

Trust Founders	Witness	Witness
Names: and	Name	Name
Address,,	Address	Address
Signatures	Signature	Signature

Notary Public
Name
Address
Signature