

Officers Duties And Legal Issues



- Fiduciary Responsibilities are duties imposed on officers and directors by law. Each elected officer has a personal liability to the Post and the members because you hold the property, records and money in trust.

Fiduciary Duties

- The concept of Fiduciary Duty is increasingly being used in the non-profit world:
 - Watchdog organizations focusing on violations of those duties.
 - State AG's pursuing both criminal and civil claims alleging violations of fiduciary duties.
 - IRS "Good Governance Practices for 501(c)(3)" organizations.
- As VFW officers you are a fiduciary and certain duties are imposed by law.

Fiduciary Duties

- Fiduciary from the Latin fides – Faith – A fiduciary must always act in good faith in their relation to the organization.
- Officers and Directors have an obligation to act primarily in the interest of the organization rather than personal interests or the interests of a particular constituency.
- Three Specific Fiduciary Duties:
Care; Loyalty; Obedience.



Duty of Care

- Duty to Exercise Due Diligence in managing the organization's affairs.
- Three Elements of Due Diligence:
 1. Must act in Good Faith – Intellectual Honesty – Can't ignore or hide important facts – Duty to Inquire.
 2. Must act with the same care that an ordinarily prudent person would use in a similar position under similar circumstances.
 3. Must act in what you reasonably believe is the organization's interest.



Duty of Loyalty

- Act with undivided loyalty to the organization and in the organization's interest rather than any personal interest or interest of some other organization.
- Prohibits Conflict of Interest.
- Absolute Duty to Disclose Financial Benefit from a transaction.
 - Sitting quietly and/or abstaining is not enough.
- Best to avoid even the perception of impropriety.

Duty of Obedience

- An officer or director has a duty to assure that the organization is operated:
 1. To fulfill its Mission.
 2. To be in accordance with the law.
 3. To be in compliance with its By Laws.
- Duties are imposed individually and collectively and you can be held personally liable.

Fiduciary Duties (cont.)

- Common Sense Rule – In accepting a position of leadership we understand that:
 1. We must use good judgment in handling the organization's business.
 2. We must act in the interests of the organization as a whole and not our own self interests.
 3. We must follow the rules if we expect others to follow the rules.



Group Exemptions

- A central organization may apply for a group exemption if:
 - All subordinate units are affiliated with the central organization. Similar in structure, purposes and activities.
 - All subordinate units are subject to the central organization's "general supervision and control."
 - All subordinate units must be exempt under the same section of the code.
- Once a Group Exemption is granted, central organizations can add and delete subordinate units on their annual filing.



Statement of VFW Policy

- In adopting rules and regulations for the operation, management and control of clubs and/or canteens, the following **PROVISIONS** of the National By-Laws **MUST BE** adhered to:

VFW Policy

1. ANY ACTIVITY, CLUBROOM, HOLDING COMPANY OR UNIT SPONSORED, CONDUCTED OR OPERATED BY, FOR OR IN BEHALF OF A POST, INCORPORATED SEPARATELY FROM THE POST OR UNINCORPORATED, SHALL BE AT ALL TIMES UNDER THE DIRECT CONTROL OF THE POST AND ALL FUNDS DERIVED THEREFROM SHALL BE AT ALL TIMES UNDER THE DIRECT CONTROL OF THE POST.

VFW Policy

2. ALL MONEY, PROPERTY OR ASSETS OF ANY KIND OR NATURE, AS WELL AS ALL BOOKS AND RECORDS OWNED, HELD OR USED, BY ANY SUCH ACTIVITY, CLUBROOM, HOLDING COMPANY OR UNIT SPONSORED, CONDUCTED OR OPERATED BY, FOR OR ON BEHALF OF A POST, SHALL BE THE PROPERTY OF THE POST AND MUST BE PLACED IN THE CARE AND CUSTODY OF THE POST QUARTERMASTER.

VFW Policy

3. NO POST OR ACTIVITY, CLUBROOM OR HOLDING COMPANY OR UNIT SPONSORED, CONDUCTED OR OPERATED BY, FOR OR ON BEHALF OF ANY POST, MAY OWN ANY PROPERTY JOINTLY OR IN COMMON WITH ANY INDIVIDUAL, FIRM, PARTNERSHIP ASSOCIATION, CORPORATION OR OTHER BUSINESS OR CHARITABLE ENTITY INCLUDING VETERANS ORGANIZATIONS.

VFW Policy

4. A POST MAY NOT PARTICIPATE IN ANY ARRANGEMENT WHEREBY THE FUNDS OF SUCH POST, OR ACTIVITY, CLUBROOM, HOLDING COMPANY OR UNIT SPONSORED, CONDUCTED OR OPERATED BY, FOR OR IN ITS BEHALF, ARE EXPENDED ON PROPERTY HELD BY ANOTHER ENTITY FOR THE JOINT USE OF SUCH POST, AND OTHER INDIVIDUALS, FIRMS, PARTNERSHIPS, ASSOCIATIONS, CORPORATIONS OR OTHER BUSINESS OR CHARITABLE ENTITIES, INCLUDING VETERANS ORGANIZATIONS.

Financial Planning and Legal Issues

- Is the current budget serving the achievement of the VFW mission?
- Do you have long range planning for 1-3-5-10 years?
- Have you safeguarded Assets?
- Reputable bank (FDIC)
- Proper Insurance such as:
 - Property and Building
 - Casualty
 - Liability
 - Dram Shop Liability
 - Automotive
- Have you safeguarded Investments?
 - Diversified
 - Quality Investments
 - Conservative

Possible Legal Issues

- Sexual Harassment/Discrimination
- Canteens – Dram shop Insurance
- Clubs – Lack of Proper Insurance Coverage
- Waste of Organizational Assets
- Preparing or Promulgating False or Misleading Reports
- Theft
- Causing the Organization to incur Unnecessary Tax Liability
- Imprudent Investments
- Failure to Secure Competitive Bids
- Entering into Imprudent Contracts
- Failure to Disclose Prior Business Interest

Rules of Guidance for VFW Operations and Activities

**VFW National By-Laws
And
Manual of Procedure**



Department By Laws



Post Incorporations



Post By Laws



Canteen or Home Association Rules