

Dear Comrade:

All real property (real estate) of a VFW Post should be vested in title on the deed recorded in the public records of your respective County in the name of the VFW Post. Any liquor license that a Post has should be held in the name of the Post Canteen or Home Association. There should be a written lease from the VFW Post, as lessor, to the VFW Canteen or Home Association, as lessee. To that end, all Posts should review their records to ensure that their Post's real estate is vested in title in the name of your VFW Post. If the real estate of your Post is vested in title and recorded in the County Recorder of Deeds Office in the name of your Post's Canteen or Home Association, please transfer the real estate into the name of your VFW Post. There are now NO transfer taxes involved with this conveyance of property between entities. In addition, I suggest that all Post's ensure that their Post By-Laws and Canteen or Home Association By-Laws are updated in accordance with the Post and Canteen or Home Association By-Laws as shown on the Department of Pennsylvania, Veterans of Foreign Wars website.

Remember, VFW Bylaws require that "any activity, clubroom, holding company or unit sponsored, conducted or operated by, for or [on] behalf of a Post..., shall be at all times under the direct control of the Post and all funds derived there from shall be at all times under the direct control of such Post... All money, property or assets of any kind or nature, as well as all books and records, owned, held or used by any any activity, clubroom, holding company or unit sponsored, conducted or operated by, for or [on] behalf of a Post..., shall be the property of such Post..., and must be placed in the care and custody of the respective Quartermaster.." Section 709.

Thank you to all of you for all you do for the VFW. Let's ensure the VFW remains the premier veterans' organization by continuing to do right things right. The Department's Headquarters staff and I are here to assist with any questions or comments regarding implementation of the above.

Background:

In 1998, a decision was handed down by the Pennsylvania Supreme Court in the case of Pennsylvania Liquor Control Board v. Richard E Craft American Legion Home Corporation, in which the Court held the Home Association of that particular Post was a subordinate unit of the Post thus permitting Home Associations to apply for a liquor license as an incorporated unit of a national veterans' organization. Consequently, it was recommended to all American Legion, Department of Pennsylvania Post Commanders, based on the decision in the Craft case and the current statute (47 Purdon's Statute §4-461.1 (a)), that Home Associations who do not have a liquor license but wish to obtain one should continue to apply as an incorporated unit of a national veterans' organization. However, it was also advised that a Home Association who currently has a liquor license transfer all other realty and assets in the Association to the Post to further insulate the Post and its assets from liability while still affording them the opportunity to have social or associate members who can contribute to the Post's financial success.

As a result of the above mentioned case, the Department of Pennsylvania through painstaking effort was able to eventually obtain passage of the Realty Transfer Tax exemption into Act 43 of 2017, the Tax Code Bill. The law exempts veterans' organizations from the Realty Transfer Tax during such necessary transactions. This is important because now there is no realty transfer tax when real property vested in the name of a Home Association is transferred to the Post. Hence, VFW Post(s) with real estate in the name of a home association/canteen/home corporation can now transfer the real estate into the name of the VFW Post(s), with no tax consequences.

Moreover, state case law states that when we have Post and Home Associations structured as laid out in the Craft case, among other things, our Post(s) and Home Association(s) are able to take advantage of favorable small games of chance laws in Pennsylvania. Specifically, if a Post owns the real estate and the Home Association has the liquor license and the Home Association leases the property from the Post, the Home Association is able to donate to the Post as a charitable entity up to 60% of its earnings. Of course, many of our posts donate to other causes as well but it is a way to financially help the post, if and when needed.

What if a Post's Home Association says it will not transfer the real estate to the Post?

1.) Obtain the Post and Home Association bylaws and articles of incorporation for both entities if you are able, then send to me if you need help;

2.) Review Home Association bylaws to see if they explain when officers are elected, how the home association is supposed to be run, etc.

3.) Absent any specifics in the home association bylaws (or if bylaws cannot be found) go to the next home association meeting with as many of the VFW member comrades that want what you want – VFW control of the property and transfer of title deed to name of the Post and do the following:

a.) make a motion to adopt the sample bylaws as found on the Dept of PA, VFW website... these bylaws clearly state that the home association is subordinate to the Post;

b.) make a motion that the Commander/Junior Vice/Adjutant/Quartermaster (if he/she is on our side of doing things right) be authorized to sign a deed to the real property from the Home Association, Inc. to the Post (whatever its name is);

c.) Nominate/Elect new officers for the home association... nominate VFW Post members for equivalent Home Association positions, i.e., Commander/President, Quartermaster/Treasurer, etc.

