

## Organization of Posts and Home Associations/Canteen/Home Corporation

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.



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# Pennsylvania Statutes Title 47 P.S. Liquor § 4-461.1. Incorporated units of national veterans' organizations

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(a) The board shall have the authority to issue new licenses to incorporated units of national veterans' organizations, as defined herein, in counties where the number of licenses exceeds the limitation prescribed by section 461. <sup>1</sup>

(b) The term **"national veterans' organization"** shall mean any veterans' organization having a national charter.

The term **"incorporated unit of a national veterans' organization"** shall mean any incorporated post, branch, camp, detachment, lodge or other subordinate unit of a national veterans' organization having fifty or more paid up members and organized for a period of at least one year prior to filing the application for a license. The term does not include auxiliaries, "sons of" or other similar organization.

The term **"affiliated organization"** shall mean home associations, home corporations, auxiliaries, "sons of" or similar organizations which are directly affiliated with an incorporated unit or a national veterans' organization. An affiliated organization must meet the definition of a club set forth in section 102, <sup>2</sup> except that:

- (1) if incorporated, the affiliated organization need not have been in continuous existence for at least one year prior to its application; or
- (2) if unincorporated, the affiliated organization need not have been in continuous existence for at least ten years prior to its application.
- (c) When the charter of an incorporated unit of a national veterans' organization is suspended or revoked, the club license of the organization shall also be suspended or rescinded. The club license of an incorporated unit of a national veterans' organization is not transferable to any

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other organization or person, except as provided in this section.

(d) An incorporated unit of a national veterans' organization may transfer its club license to its affiliated organization as long as, in addition to fulfilling all the requirements pertaining to the transfer of club licenses, the state department of the national veterans' organization provides the board with written approval for such a transfer. The license shall be suspended or rescinded upon the suspension or revocation of the charter of the affiliated incorporated unit of the national veterans' organization. The license shall also be rescinded upon request of the state department of the national veterans' organization or if the affiliated organization's affiliation with the incorporated unit of the national veterans' organization is severed.

(e) Only one club license may be issued to the incorporated unit of the national veterans' organization, and the board may not issue a license to an incorporated unit of a national veterans' organization if any of the unit's affiliated organizations holds a club license.

(f) For purposes of this section, a municipality which permits the issuance of club liquor licenses to incorporated units of national veterans' organizations also permits the transfer of such licenses to an affiliated organization of the incorporated unit of the national veterans' organization.

(g) An incorporated unit of a national veterans' association or an affiliated organization which has its license suspended or rescinded or its request for transfer denied under this section may request a hearing before a hearing examiner under section 464. <sup>3</sup> The board may not consider the propriety of the state department of the national veterans' organization's decision to suspend the charter, revoke the charter or refuse to approve the transfer. The written request from the state department of the national veterans' organization, standing alone, is admissible evidence at the board hearing. An appeal of the board's decision may be taken under section 464, except that the appeal shall not act as a supersedeas of the board's decision.

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1 47 P.S. § 4-461.

2 47 P.S. § 1-102.

3 47 P.S. § 4-464.

4 [Prev \(https://codes.findlaw.com/pa/title-47-ps-liquor/pa-st-sect-47-4-461.html\)](https://codes.findlaw.com/pa/title-47-ps-liquor/pa-st-sect-47-4-461.html).

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