



## **Legal Issues:**

# **Fraud, Fiduciary Duties, Crowdfunding, IP and Piracy**

John Muckelbauer, General Counsel  
October 9, 2021



## **Agenda**

- **Fraud**
- **Fiduciary Duties**
- **Crowdfunding**
- **IP and Piracy**

# Investigating Fraud



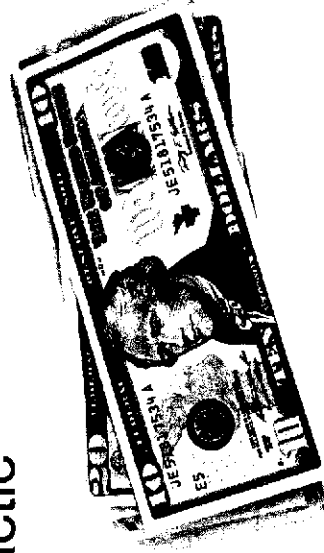
- Employment law consideration
- Secure relevant records and files
- Interview the suspect and witnesses
- May need to report to appropriate authorities
  - Attorney General
  - IRS and state taxing authorities
  - Office of Inspector General



# Recovery of Funds



- Council has fiduciary obligation to attempt to recover funds
- Consult with employment counsel
- Resignation/Restitution Agreements
- Do not threaten criminal prosecution as negotiating tactic



## Other Issues



- May be required to report material diversion of assets on Form 990
  - Amount or property involved
  - Corrective actions taken
- Potential harm to reputation of the nonprofit
- Possible loss of tax-exemption



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## Preventative Measures



- Two signatories for checks over certain dollar amount
- Original invoice or other appropriate documents required
- Never pre-sign checks
- Credit cards should not be allowed for personal use
- Review every credit card statement, transaction, and support
  - If possible, segregate duties
  - Background checks
  - Encourage whistleblowers
- Review all disbursements made to the signatories on the accounts
- Properly train Trustees or Audit Committee Members that perform reviews
- Surety Bonds for any accountable Officer



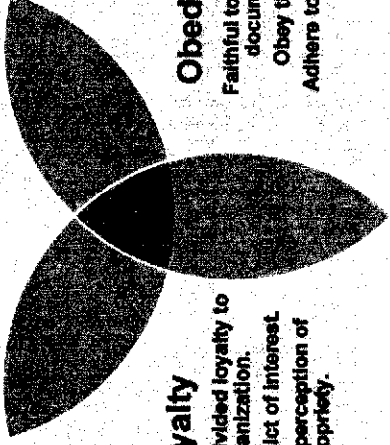
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# Fiduciary Duties



## Care

Decide and act in good faith.  
Prudent person level of care.  
Act in organization's best interest.



## Loyalty

Act with undivided loyalty to the organization.  
Avoid conflict of interest.  
Avoid the perception of impropriety.

## Obedience

Faithful to founding documents.  
Obey the law.  
Adhere to mission.

# Fiduciary Duties



Who is required to adhere to these duties?

Anyone who has a legal responsibility to help manage the assets of the organization.



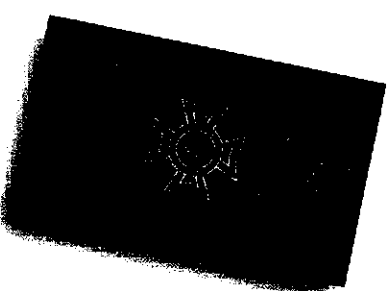
# Fiduciary Duties



Why are they important?

Necessary to provide assurance that the organization is being *managed properly*

(carefully, with the best interest of the organization in mind, and in keeping with the Bylaws and Charter)



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# Fiduciary Duties



Why else are they important?

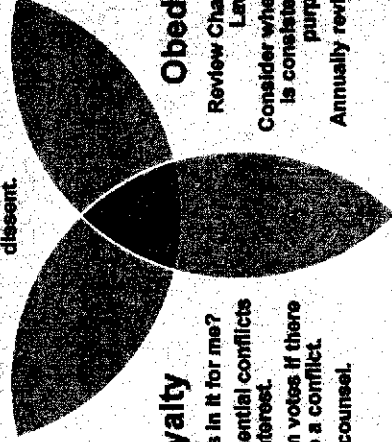
- Mandated by state and common law
- Risk the assets of the organization
- Risk personal exposure of liability

# Fiduciary Duties- Practical Steps



## Care

- Retain competent help.
- Rely on management.
- Use committees.
- Create a record of decision-making process.
- Promote open debate and record dissent.



## Loyalty

- Ask, what's in it for me?
- Disclose potential conflicts of interest.
- Abstain from votes if there could be a conflict.
- Seek counsel.

## Obedience

- Review Charter and By-Laws.
- Consider whether proposal is consistent with our purpose.
- Annually review activities.



# Crowdfunding



## Crowdfunding Basics



- Any effort to raise money with donations from a large number of people
- Usually through websites
- Projected to raise \$90-95 Billion by 2025
- Successful about 35% of the time
- Examples:

GoFundMe    Indiegogo

KickStarter    YouCaring

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## Crowdfunding Risks



- You're competing against top PR and Ad agencies
- Most people don't want to give you their money
- Competes with VFW Fundraising
- May conflict with Bylaws and MOP
- States may require registration

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## Crowdfunding Costs



- Platform fees
  - Sign Up Fees
  - Fundraiser Fees (about 5%)
  - Donor Fees
  - Processing Fees (about 3% plus \$0.30 per transaction)
- State Registration
  - Filing Fees
  - Sanctions

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## Crowdfunding Conclusion



- Must be temporary
  - Intended for specific event
  - Not "repetitive or ongoing"
- Sections 214, 414, 514 MOP
- There's a reason why there are so many sites
- Remember your Fundraising Program and Grant Agreement



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# Intellectual Property



TM



## VFW Intellectual Property



- Use of VFW name and logos
- Posts and Departments may use the logo for VFW activities (non-commercial).
  - Brochures for membership drives
  - Post events
  - Community outreach effort
- For merchandise, the first stop is VFW Store.
- For other uses, you must have the authorization of the Quartermaster General.



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## Other's Intellectual Property



- Pictures
  - Use your own (with any necessary releases)
  - License and royalty free sources
  - Buy stock image and credit source
- Music
  - Obtain licenses for business use



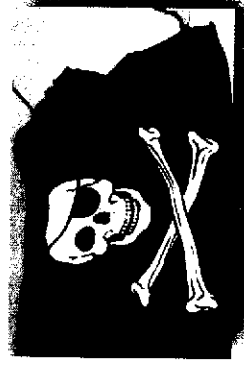
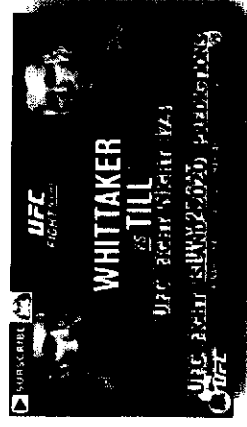
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## Other's Intellectual Property



### Pay-Per-View Piracy

- Fight Night at Post
  - Good Idea
- License
  - Required
- "Auditors"
  - Hired agents with I-phones
- Letter/Legal Demand
  - J&J Sports, G&G Closed-Circuit Events, Joe Hand Promotions



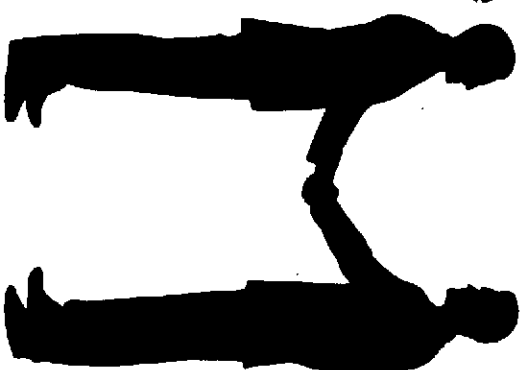
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# Other's Intellectual Property



## What Happens Now?

- Don't Ignore
- Default Judgment Probable
- Respond
  - They Don't Care
  - The Right Attorney Can Help
- Negotiate Fee
- Reasonable Plus
- Settlement



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# QUESTIONS?

John Muckelbauer, General Counsel

(816) 968-1140

[jmuckelbauer@vfw.org](mailto:jmuckelbauer@vfw.org)

Monica Levy, Paralegal

(816) 968-2783

[mlevy@vfw.org](mailto:mlevy@vfw.org)