NONPROFIT ADVISOR

For DAV Departments and Chapters

Volume 4, No. 4 **Fall 2012**

WHEN THINGS GO SOUTH

The Disposition of Chapter Assets

No one likes to think about it, but sometimes chapters pass out of existence. Revocation, inactivity, whatever the cause – there are usually chapter assets to be handled. Article 6 of the National Bylaws is unambiguous about what happens in such a case: the assets pass to the appropriate DAV state department. (If there is no state department, the assets pass to DAV National). We'll call that the "Reversion Rule."

It is not always easy to implement this provision. Dissolutions, especially involuntary ones, trigger strong emotions and sometimes die-hard chapter members hang on to the assets as if they owned them. This issue of the newsletter addresses the legal status of some issues that can typically arise when a chapter passes out of existence or – as the title says – when things go south.

What if the chapter bylaws contain a provision that contradicts the Reversion Rule?

No can do. The courts that have considered the issue have been very clear that a subordinate unit in a fraternal organization is always bound by the rules of the parent, even where those rules may have been added after the subordinate unit received its charter.

But isn't there a sense in which the chapter members *do* own the assets of a chapter? Why can't they just take them and, for example, use them to start a post of another veterans' organization?

The assets of a chapter have almost always been obtained, or maintained, with funds donated by DAV donors or paid by DAV members. At any given moment in time, the members of a chapter are simply the stewards of those assets, bound to use them in pursuit of DAV's chartered purposes. It is one of the hallmarks of a nonprofit organization that no individual or group of individuals owns the assets. In other words, it is exactly the opposite of a for-profit corporation, where the stockholders are the owners.

Do the assets transfer automatically when the chapter goes out of existence?

Unfortunately, in most cases, the Reversion Rule is not self-executing. That is because the cooperation of non-DAV entities is usually needed to effect the transfer of assets. There are banks, investment companies, title companies and other players who often need more assurance than is provided by the DAV Bylaws.

Well, then, what happens next?

As the bad guy used to say in those low-budget movies of the 1940's, we can do things the hard way or the easy way. The easy way is to have the outgoing chapter officials sign the necessary documents and participate in the orderly transfer of

assets. The hard way is to have to go to court and get judicial orders for the reassignment of assets. In the case of DAV, it would typically be the state department that would have to shoulder the burden of the litigation. Although the department will almost certainly win the litigation, it will be an expensive and asset-wasting exercise.

But why should the outgoing officers make it easy for DAV, especially if a revocation is involved?

There are two reasons, one idealistic and one pragmatic. The idealistic reason is that forcing DAV (department) to go to court to take possession of DAV assets ultimately wastes those assets and makes less money available to do what DAV does best: fulfilling our promises to the men and women who served. The pragmatic reason is that chapter officers, or former chapter officers, have a fiduciary duty to the chapter and to DAV. Part of that duty is the orderly and economical transfer of assets. If an officer ignores that duty, he/she could well be liable for the legal fees incurred to bring about the hard way what the officer could have done the easy way.

Well, then maybe when a revocation is in the wind, the National Commander could impose a trusteeship on the chapter and transfer all the assets prior to the dissolution. Sound good?

Too good. Cart before the horse, execution before trial, whatever you want to call it, such a procedure would be unjust and would be antithetical to the spirit of fairness that DAV tries to maintain in all its dealings, and especially with its members.

Here's an idea. Maybe every department could become a joint owner of every chapter's assets just in case the day ever came when the asset needed to be transferred to the department. Think of it like a joint bank account. When Dad dies, Mom gets the dough automatically, no muss, no fuss.

Easy does it. Apart from the difficulty of "adding" the department to every chapter bank account, real estate deed and the like, other problems would surface as well. Think about real estate. Suddenly, the department would become a land baron, with the obligations that attach to that. If someone were to be injured in a chapter home, the department would be liable also, as an owner of the property. One of the great strengths of DAV has been the independence of the three tiers of the organization. We do not consolidate financials between and among the national, department and chapter levels. History tells us that organizations that do not follow our model often find themselves in trouble.

Nonprofit Advisor is prepared by the Office of the DAV's General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.

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