

Protecting Your Organization's Hard Won Assets: A Lawyer's Point of View

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- Easy! Put all of your assets in an untraceable bank account in the Cayman Islands!

Thank you! I believe we have time for a few questions...

Get It In Writing & Save a Copy!

- Document Everything!
- Receipts
- Your Contracts
 - Have an attorney draft agreements...
 - Indemnity Clauses
 - Waivers
- Their Contracts
 - Read Them!
 - If you don't understand, ask an attorney!

Who has Authority?

- “An agent’s authority to act must come from the principal. It is well established that the authority conferred upon the agent by the principal can take two forms: actual authority or apparent authority.” (*Progressive Cas. Ins. Co. v. Ehrhardt*, 69 Md. App. 431 (1986)).
- Agent’s function is to represent the rights of the principal. The agent’s authority is limited by the instructions, restrictions, and needs of the principal. (*Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643 (2006)).

Types of Authority

- **Actual Authority**: The authority actually granted by the Principal; may be expressed or implied
- **Apparent Authority**: The authority which, though not actually granted, the principal knowingly permits the agent to exercise or which himself holds out as possessing.
 - “One who knowingly permits another to act for him as though authorized, inducing third persons to rely to their disadvantage on the seeming authority, is estopped from later asserting the lack of authority of his apparent agent.”
 - (*Reserve Insurance Company v. Duckett*, 240 Md. 591 (1965))
 - Key Question: “Is Reliance Reasonable?”

Ratification

- Limits placed by the principal upon the agent's authority may be ineffective if, with knowledge of all facts, the principal either waives the act of the agent in exceeding his or her authority or adopts the act. (*Hill v. State*, 86 Md. App. 30, (1991)).
- Must have "Intention to Ratify" and "Knowledge of All Material Facts"

Intention to Ratify

- “Intention to Ratify may be inferred by words, conduct or silence on the part of the principal that reasonably indicates its desire to affirm the unauthorized act.” (*Linden Homes Inc. v. Larkin*, 231 Md. 566 (1963))
- How do we know?
 - Receipt and retention of the benefits of the unauthorized transaction
 - Failure to make a timely disaffirmance of the unauthorized acts.

Legal Protections for Non-Profit Volunteers

- Protections to Volunteers come from two sources: Federal (Volunteer Protection Act) and State (Maryland Volunteer Service Acts)
- Volunteers generally not legally responsible for harm or injury caused if they:
 - Acted within the scope of their volunteer duties;
 - Had the proper license or certification, if necessary, for the duties (e.g., doctors, nurses, lawyers, etc.); and
 - Did not act in a deliberate, intentional, criminal or extremely careless way.
- Liability is generally limited to the personal insurance the volunteer has
 - For example, if a volunteer drives in the course of their duties, they may be held liable to the extent their personal car insurance provides coverage
- Volunteers CAN be held personally liable if they:
 - Commit a violent crime, hate crime, or sexual offense
 - Violate state or federal civil rights laws
 - Are under the influence of drugs or alcohol at the time of the injury;
 - Knew about the harmful act or believed a harmful act was likely to occur and approved, authorized, or participated in the act; or
 - Learned about the act after the fact and still approved of it.

Officer and Directors as Volunteers

- Same rules, generally, applies to Officers and Directors who are volunteering for a charitable organization, however...
- Officers and Directors are NOT protected from being sued by the Maryland Office of the Attorney General if the organization deliberately violates the state's registration requirements for charitable organization.
- In that case, the Officer or Director may be personally liable!!

But what about the organization itself?

- The charitable organization itself may be liable for the harm or injury caused by a volunteer
- Charitable Organization may be protected by “charitable immunity rule”
- This rule protects charitable organizations from civil lawsuits when the organization has no liability insurance coverage for the underlying harm or injury
- Must be a Charitable Institution
 - Such as charities, religious institutions, science/education institutions, and volunteer emergency services
- Donors gave those funds to charitable purposes, not to pay civil damages
- However, if there is an insurance policy that provides coverage, this immunity does not apply!
- For further reading, see *James v. PG County*, 288 Md. 315 (1980); *Abramson v. Reiss*, 344 Md. 193 (1994); MD Code, Business, Section 6-101; and MD Code, Insurance, Section 19-103

So, there's a problem...

- Contact your insurance company right away
 - Whether that's a notice of potential case (e.g., letter or email making a demand)
 - ...or a lawsuit! There can be important deadlines that, if missed, may greatly jeopardize your case and make it difficult to defend you.
- Do not respond...
 - ...to the other party...
 - ...to the media...
 - ...on social media...
 - ...Unless Advised By Your Attorney!

▼
So, you've
lawyered
up...

- Be Honest With Your Attorney!
 - Attorney-Client Privilege & Duty of Confidentiality
 - I can't advise you if I don't know the facts
 - Tell me the good and the bad; I work best when I can analyze the case from both sides
 - I need to know the strengths and weaknesses of a case
- Follow My Advice
 - It's what I get paid to do!
 - If you disagree with what I say, let me know. We can talk options; risk-reward; pros and cons.
 - If you don't understand something— ask!

Lifecycle of a Lawsuit

- Complaint
- Service
 - Resident Agent
- Answer
- Discovery
- Motions
 - Motion to Dismiss
 - Motion for Summary Judgment
- Settlement Conference
 - Settlement Negotiations typically occur throughout the course of the “lifecycle”, from before the suit is filed up until the eve of trial (sometimes even during the course of a trial!)
- Trial

Complying With Discovery

- Interrogatories
 - Written Questions with Written Responses Made Under Oath
- Request for Production of Documents
 - ...Remember how I told you to get it in writing? Here's why
- Admissions
 - Strictest deadline; if you don't respond, it's deemed admitted!
- Depositions
 - Oral Questions and Oral Responses Made Under Oath

Discovery is Key

- Helps both sides evaluate the case
 - Both sides get to see what will be presented at a trial, so they can evaluate the outcome
 - Assists in settlement negotiations for both sides
 - No surprises at trial
- Failure to Comply
 - Sanctions
 - Monetary Penalty
 - May be unable to present evidence at trial
- Give your attorney everything asked for; They will make appropriate objections

Settlement Discussions

- Most Cases Settle
- Settling a Case isn't agreeing you did wrong...
 - It's risk-reward; It's balancing economics
- Your lawyer will evaluate chance of success
 - ...And Costs of Going Forward
- Settlements can also include Non-Disclosure Agreements!

Timely Paying Judgments

- If a judgment is issued against you, it's not the end of the world...
- However, not paying the judgment timely will create more problems
 - Liens
 - More Court Costs / Attorney Fees
 - Judgments are public record and may create difficulty in receiving donations and financing