

PREVENTING PERSONAL LIABILITY FOR CORPORATE DEBT

The General Laws of the Supreme Lodge:

Sec. 26.8 Every lodge having substantial assets, operating a social quarters or if required by the General Governor, shall incorporate under the laws of the state or province in which the lodge is located.

Sec. 51.4 The associations shall incorporate under the laws of the state or province in which it is located unless Moose International shall determine that incorporating is not necessary.

Although there is no specific provision in the General Laws pertaining to the incorporation of the Moose Legions, they are all incorporated.

Why does Moose International place such importance on the need for the lodges, Moose Legions and associations to be incorporated? Moose International wants each of these organizations to utilize the benefits and protection that incorporation offers.

Throughout their existence, these organizations may incur debts of various natures. They may include mortgages, loans, leases, monthly utility bills and in some cases civil judgments against the organization. Sometimes, for one reason or another such as the closing of a lodge, the organization cannot pay off what it owes to its creditors. If the organization is not incorporated or not in good corporate standing, the creditors may look to the officers and directors of the organization to pay off the debts using their own personal funds. Being incorporated and staying in good corporate standing offers some protection, a shield, from personal liability for the debts of the corporation.

If you are incorporated, are you automatically protected from personal liability for the corporation's debts? Not necessarily. Failure to pay employee taxes including payroll, Social Security, Medicare and Workers Comp will cause the IRS to come after corporate officers and directors for payment. Also, failing to observe corporate formalities, conversion of corporate funds or a breach of fiduciary duty can produce individual liability for corporate obligations.

Corporate formalities include prompt filing of the annual or biennial (depending on your state) corporate report. If this report is not filed on or before its due date, the corporation may first be charged a penalty for a late filing. If the report is delayed too long, the state may administratively dissolve the corporation, meaning the corporation is no longer in good standing and may have to be re-instated or re-incorporated which will incur more fees. In some states the fees are substantial. The fees are only one consideration however. More important is the loss of corporate protection that occurs when the corporation is not in good standing. Each state has its own rules as to report filing requirements, penalties and dissolution of a corporation.

Another corporate formality is keeping minutes of board meetings. Also, signing all documents properly is of paramount importance. Every time an officer executes a document or even signs a letter, he should state the correct corporate name, the officer's name and his title. For example, "Northfield Lodge No. 2700, Loyal Order of Moose, by Robert Jones, Secretary" would be a proper signature.

It should go without saying that corporate funds should never be co-mingled with personal funds and vice versa. The officers and directors have a duty to manage the corporate funds wisely. Failure to comply with those rules and duties may allow a creditor to "pierce the corporate veil" and attempt to recover money owed by the corporation from the officers and directors individually.