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DISCOVERY.



MINIMIZING RISK IN CONFERENCE PROGRAMS

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Topics



Associated Entity Liability

Programmatic Liability

Data related liability

Intellectual Property Liability

Associated Entities

Associated Entities

Is an annual conference liable for injuries that occur at or the financial obligations of a camp, retreat, group home, or retirement home?

Historical relationship. Who created the entity? Who had control of operations? Who owned the property?



Don't rely on folklore and mythology.
Have the historical record.

Current relationship should be obvious

Always understand what the relationship WAS and what it NOW IS

Associated Entities

BOD 2516. Camps, Conference Grounds, and Retreat Centers—Title to annual conference or district camps, conference grounds, and retreat centers held in trust by an incorporated board or agency of an annual conference or district, or by an unincorporated board, commission, society, or similar body of the conference or district, can be mortgaged or sold and conveyed by such corporation or unincorporated body only after authorization by the annual or district conference to which such body is related.

This is about the only provision in the Discipline that touches on camps and retreats and their property.

BOD 2552 sets out standards for trustees of "...schools, colleges, universities, hospitals, homes, orphanages, institutes, and other institutions owned or controlled by any annual, jurisdictional, or central conference or any agency of The United Methodist Church..."

Associated Entities

Why is history important?

- Revival statutes-state laws that revive time barred legal claims like sex abuse claims
- Property claims-does your annual conference own part or all of the property in fee simple or do you have a trust interest?
- Does the current operating governance comport with the governing documents or has it strayed?

Real world example

- Folklore is that the Western NC Conference owned and operated a group home with very high value property since the 1800's and/or the real estate was subject to the trust clause.
- Reality is that none of the above is true. WNCC always was a prime financial supporter and had a church on campus that served the whole community, not just the home
- NC legislature passed a law reviving old sex abuse claims
- Lawsuits came rolling in

Associated Entities



Structures to help protect the Conference

- Should the AC own the real estate?
 - Leases create separation and shift liability for claims to tenant. Ground leases allow tenant to build and improve the property and borrow, more than a general lease allows.
 - Indemnification and insurance. There must be enough coverage to fund indemnification.
- Preferred that the associate entity have its own corporate existence and own its assets apart from the Conference, holding them in trust for the UMC
 - Have a Statement of Relationship type document that outlines the expectations of the parties under the relationship
 - ↻ Funding, marketing, but makes clear AE is its own operational unit

Associated Entities



BOD 2552-requires that trustees of an AE must be nominated, confirmed, or elected by the conference...

- You would nominate and elect where the AC controls the entity
- You would simply confirm a slate nominate by the AE itself where the AC does not control the entity
- What does confirmation mean?

Reality of
control

VS.

Perception of control

Associated **Entities**



If the AC controls entity and operates the ministry:

- Always have liability releases signed prior to services (if legally possible)
- Criminal checks on everyone and update the checks regularly
- Always make sure the AC is an additional insured on the insurance policies of the AE and mandate required coverages
- Ask service recipients to review staff and services regularly
- Check liens and lawsuits in the public records at least once a year
- Require risk based financial audits
- Make sure the AE is audited and approved by industry groups
- Have the real estate title history and corporate documents archived

Programmatic Liability

Programmatic **Liability**



Examples of programs:



Health Services,



Food Banks/Soup Kitchens,



Shelters

Common tools to reduce liability



Releases/Waivers



Leases or Shared Space Agreements



Insurance requirements (be an additional insured)

Programmatic **Liability**




Rabbit hole issues

- Does the program harm your local/state property tax exemption?
- Does zoning allow the program use for the property?
- Do you have to sign any grant or provider agreements that require you to comply with federal or state anti-discrimination laws or are you agreeing to comply with laws you are exempt from already?

Programmatic **Liability**



- Are you keeping records that the service recipients are part of the class being serviced?
 - • Do you have a sign in sheet for homeless shelter patrons certifying they are homeless and need shelter? Same with soup kitchen, etc.
 - Do you retain these records?
- Does the program require HIPPA compliance?

A Word On Insurance

A Word **On Insurance**



- Evaluate your insurance programs regularly
- The industry is under tremendous stress and cancellations are common
- Identify gaps in coverage periods of specific types of coverage
- Keep good historical records of policies, coverages and brokers
- Weather related losses
- Revival statutes-sex abuse and other claims

PCI Compliance

PCI Compliance



Payment card industry (PCI) compliance is mandated by credit card companies to help ensure the security of credit card transactions in the payments industry. PCI compliance refers to the technical and operational standards that businesses follow to secure and protect credit card data provided by cardholders and transmitted through card processing transactions. This includes nonprofits.

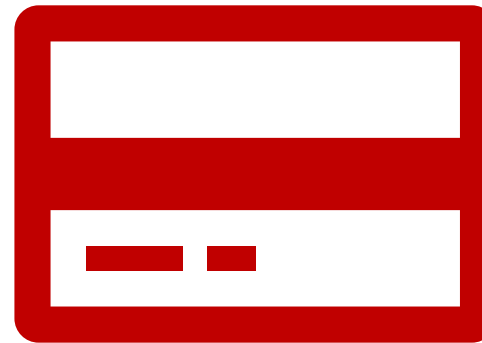
PCI Compliance



If you are taking contributions with a credit or debit card, you need to be PCI compliant

If you are using an app like Tithe.ly or service like Pushpay, which warrant to be PCI compliant, you still need to be PCI compliant.

Same if you are using PayPal portals



PCI Compliance



Processing agreements with banks or with third party service providers push breach liability down to you in a series of escalating fines if you are not compliant.

Compliance is physical and digital

If you take or enter numbers manually, you have to have processes in place to insure security

If you have a portal, your own systems need to be secure and certified especially if you have wireless access onsite.

PCI Compliance



Have your network examined for security vulnerabilities.

It's not just about someone getting in your system from the outside. It is also about letting people in from inside.



- What are employees allowed to download? Apps, software extensions, using websites that allow entry behind your firewall, etc.
- Phishing and malware

PCI Compliance

- <https://www.pcisecuritystandards.org>
- https://www.pcisecuritystandards.org/documents/PCI_SSC_Overview.pdf?agreement=true&time=1600438138693

Data In General

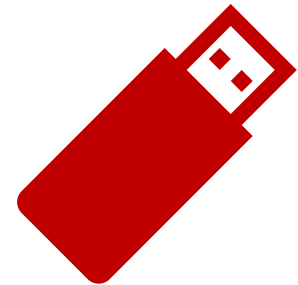


Personal data can be church property but persons giving it have statutory rights under state and federal law (maybe, but not likely federal)

Personal data doesn't have to be financial. Name, age, address, contact, is all personal data.

You MUST protect it

Have privacy and data policies for your conference



Data



There are no federal laws that covers personally identifiable data in general. Federal laws cover specific industries and specific types of data.

Industries:



- Financial institutions
- Certain health providers and health care information
- Telecommunications providers

Each state has their own data protection laws

<https://www.itgovernanceusa.com/data-breach-notification-laws>

Data



What types of data does your conference have?

- Credit card data
- ACH
- Medical
- SSN, drivers license, DOB
- Names, emails, phone numbers, addresses

Control access to databases. Usage must be strictly controlled by staff for approved purposes only

Know what digital service providers do with your data.

- Ex. Texting service or Tithe.ly, do they sell personally identifiable data or use it to contact members to try to sell services or market for others

Data



Data breach is not only accessing or stealing personal data, credit card information, etc., but it is also the unauthorized access and use of data

You have to make reasonable attempts to secure data under most state laws. What “reasonable” means is very different state to state.

If there is a data breach, you might have to notify all possibly affected persons in writing and notify your state Attorney General in certain circumstances and provide credit reporting service

Data



If residents of other states or countries are affected, the reporting obligations and liabilities may differ widely from your state law.

Not complying with state notification laws can lead to very large fines and penalties and potentially criminal and/or civil action from state AGs.

Example, the European Union has an extensive data protection statutory regime. If an EU citizen had data affected, you have to comply with the notice and other legal requirements.

Data Issues Are The **Emerging Issue For Nonprofits**



In 2011 hackers broke into a system operated by St. Ambrose Cathedral, of Des Moines, Iowa, stealing more than \$680,000 the church had raised to help homeless and abused women.



First Presbyterian Church of Birmingham, whose records were compromised after the church's computer system became infected with the CryptoLocker ransomware. These extortion schemes usually demand money in exchange for a decryption key that restores the files back to normal.

Data Issues Are The **Emerging Issue For Nonprofits**

February 2019, Bayside Covenant Church notifies affected parties and California AG that personal data of members stolen, have to purchase credit reporting services for affected persons

Nonprofit employee uses personal data to text members and their children political campaign solicitations

Streaming **Worship**



US Copyright laws require you to have permission from the owner of the music to stream online, i.e. a license

Christian Copyright Licensing International (CCLI) is most common licensing agency

Basic CCLI does not permit streaming performances (live or recorded) online

Streaming **Worship**



CCLI streaming licenses will let you stream on your own website, but maybe not third-party social media sites.

Terms of Use for Facebook, Youtube, and Instagram may also prohibit. Facebook has special programs for streaming performances.

Streaming



Annual Conferences should make sure they have the correct copyrights licenses and streaming licenses for the music and images they are using and the streaming platforms they are using.

GCFA has resources for you- <https://www.gcfa.org/resource/church-copyright-licensing-options>

Consult with you chancellor and/or legal counsel



Thank You!



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