

# DEPARTMENT OF DEFENSE INSTRUCTION 1000.15 AND PRIVATE ORGANIZATION LIABILITY

**SUBJECT: Department of Defense Instruction 1000.15 and Private Organization Liability**

**1. PURPOSE.** To outline the requirements of Department of Defense Instruction (DODI) 1000.15 regarding liability and what a Private Organization (PO) and its membership can do to protect their interests.

## **2. DISCUSSION.**

a. DODI 1000.15, at paragraph 6.3.3 requires, "Documentation indicating an understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities." The issue of liability brings up two areas of the law whereby a member of a PO may become personally liable for the liabilities of the PO. These liabilities can either stem from a contractual obligation or from a tortious act.

(1) Contracts. An agreement between two or more parties (an individual or an entity) that obliges each party to do or not to do a certain thing. Technically, a valid contract requires an offer, an acceptance of that offer, and, consideration (some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other).

(2) Torts. In French, "tort" means "a wrong." Tort refers to that body of law, which allows an injured person to obtain compensation from the person who caused the injury. People are expected to conduct themselves without injuring others. When they do so, either intentionally or by negligence, they can be required by a court to pay money to the injured party ("damages") so that, ultimately, they will suffer the pain cause by their action.

(3) Note, that Kansas law does not have a statute that states when a member of a PO can be held personally liable for the debts of the organization. Our research also did not disclose a court case where a member of an organization has been found personally liable for the organizational debts absent some action on the member's part beyond that of being a member of the organization. These two facts together indicate that general principles of law and the specific factual scenario will determine when and if a member would be held liable. These same two facts would show that the risk of being found personally liable for the debts of the

PO to be very low.

b. There are two methods to protect against personal liability by the members of a PO for the liabilities of the PO: insurance and incorporation.

(1) Insurance. The DODI 1000.15, at paragraph 6.9, requires that "Adequate insurance, as defined by the Service concerned, shall be secured by the organization to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf, or the operations of any equipment/apparatus or device under the control and responsibility of the private organization." Note, neither DOD nor Department of the Army (DA) has defined adequate insurance. There are commercial insurance companies which sell business insurance which could be tailored to a PO. One example is USAA, which has its business insurance program underwritten by The Hartford. Their number is (800) 343-1546, ext. 6-9645 to obtain a quote or if you have questions or need assistance.

(2) Incorporation. A legal entity, allowed by legislation, which permits a group of people, as shareholders (for-profit companies) or members (non-profit companies), to create an organization, which can then focus on pursuing set objectives, and empowered with legal rights which are usually only reserved for individuals, such as to sue and be sued, own property, hire employees or loan and borrow money. Of key concern is that once incorporated, the PO will protect its membership from personal liability. The only caveat being if a member acts in an intentional egregious manner or commits gross negligence in the performance of their duties, that a court would "pierce the corporate veil" and allow an action against that person in their individual capacity. Gross negligence is any action or an omission in reckless disregard of the consequences to the safety or property of another. A PO, depending on the nature of its activities, can incorporate with the State of Kansas or with the United States.

(a) To incorporate within the State of Kansas contact the Kansas Secretary of State, Corporations Division. Their website is [www.kssos.org](http://www.kssos.org). The Corporation Division administers the Kansas General Corporation Code, the Kansas Limited Liability Act, the Kansas Revised Uniform Limited Partnership Act and other related laws. Forms and procedures to follow in forming and maintaining business entities, as well as business records may be found here. Fees to the State of Kansas, for incorporation, range from as small as \$20 (for a nonprofit corporation) to as high as \$150 (for most for-profit incorporation). To become a Nonprofit Corporation within the State of Kansas, a PO must first file with the Internal Revenue Service (IRS) and qualify under one of more than 25 categories of tax-exempt organizations under Section 501(c)(3) of the IRS Code. For more information contact the IRS at (800) 829-1040 or at their website, [www.irs.ustreas.gov](http://www.irs.ustreas.gov). The State of Kansas publishes a detailed handbook each year, which is available on their website called the *Kansas Corporate Handbook*.

(b) There are three main characteristics that distinguish a nonprofit organization from a

business enterprise. They are: (1) Significant amounts of revenues are received from providers or entities that do not expect to receive either repayment or economic benefits relative to the amounts provided; (2) There is no defined ownership that can be sold, redeemed, transferred; nor is there entitlement to a share of the assets if the organization is liquidated; and (3) The purpose of the operation is not to produce a profit.