



VENABLE

# Donor Exposure – Dealing with a Charity in Trouble

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# Some Recent (and too common) Scandals Involving Charities

- Mismanagement
- Excessive Compensation
- Lavish Expenses
- Embezzlement
- Personal Injury
- Fraud
- Sexual Abuse
- Terrorist Activity



# Hearing About the Problem

- Newspaper Reports
- Lawsuits
- Rating Services (Guidestar, Charity Navigator, BBB)
- Internet



# Doing Your Due Diligence – What To Look for and Where

- 501(c)(3) status – IRS Select Check, IRS Determination Letter
- Financials (hopefully audited) – look at the footnotes for problems
- Form 990s
  - Compensation
  - List of Directors and Officers (OFAC check)
  - Related-Party Transactions



# Due Diligence (continued)

- Basic Internet search for possible problems and lawsuits
- Site visits and references
- Secretary of State filings
- Charity Rating Services:
  - Administrative Expenses
  - Fundraising expenses
  - Board information
  - Proper policies



# Donor Exposure

- Legal Liability – very limited if only a donor
- Potential liability to other donors
- Donors who relied on your solicitation
- Misrepresentation
- Special concerns for donor foundations – taxable expenditure for making a noncharitable gift



# Public Relations Risk

- Guilt by Association – Brand Risk
- Appearing negligent
- Inviting Government scrutiny – State and Federal Regulators
- Bad publicity



# Special Concerns with Sponsorships

- More than a passive donor?
- Compliance with commercial co-venture rules





# Remedial Actions When Informed of a Problem

- Option 1 - Do nothing. Just a donor. Distance is good.
- Option 2 – Be more proactive:
  - Get a complete explanation
  - Audit (at whose expense?)
  - Demand donation returned
  - Freeze additional contributions
- Option 3 – help craft a solution



## Remedial Actions (continued)

- Consider getting public relations help
- Have talking points for the press and other inquiries
- Consider going to the authorities



# Gift and Sponsorship Agreements

- Help demonstrate that donation was well considered and documented
- Can be a helpful tool when things go wrong
- Provisions to include:
  - Purpose of donation
  - Basic representations by charity – charity is in good standing
  - Reporting obligations of donee
  - Donee will return donation if misused



# Gift Agreement Provisions

- Indemnification of Donor