

LEGAL HOTSPOTS FOR CHURCHES AND MINISTRIES

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POP QUIZ

- How many serve a church of less than 500 attendees? Over 500 attendees?
- Does your church own real property? Is it mortgaged or free and clear?
- Does your church operate a preschool or daycare? Does it lease to a separate preschool or daycare?
- Does your church directly support foreign missionaries or foreign churches/ministries?

TOP 5 REASONS CHURCHES ARE IN COURT

Top 5 Reasons Churches End Up in Court

	2014	2015	2016	2017	2018
Reason #1	 Sexual Abuse of a Minor	 Sexual Abuse of a Minor	 Property Disputes	 Sexual Abuse of a Minor	 Sexual Abuse of a Minor
Reason #2	 Personal Injury	 Property Disputes	 Sexual Abuse of a Minor	 Property Disputes	 Zoning
Reason #3	 Property Disputes	 Personal Injury	 Personal Injury	 Personal Injury	 Personal Injury
Reason #4	 Insurance Coverage Disputes	 Zoning	 Insurance Coverage Disputes	 Zoning	 Property Disputes
Reason #5	 Affordable Care Act	 Insurance Coverage Disputes	 Zoning	 Insurance Coverage Disputes	 Clergy Removal

ChurchLaw&Tax
LEAD YOUR MINISTRY WITH CONFIDENCE

This infographic also includes cases involving religious organizations.

NOT ALL CLAIMS GO TO COURT!

- The previous chart shows only claims that go to court.
- Many top claims made against churches don't get to court:
 - Employment claims
 - Governance challenges
 - Member disputes and challenges
 - Volunteer complaints
 - Mediation/arbitration clause disputes

**8 LEGAL
“TRAPDOORS”
THAT COULD END
MINISTRIES-
LEGAL HOTSPOTS
FOR 2022**

1. Good Governance and Church Merger/Split
2. Third Party Leases
3. Foreign Grants/Donations
4. Security/Safety
5. Child Abuse Considerations
6. Assimilation of Sex Offenders
7. Tax/Financial Matters/Crypto
8. Employment/Religious Liberty Concerns

1. GOOD GOVERNANCE

Incorporation, Asset Protection, Mergers/Splits



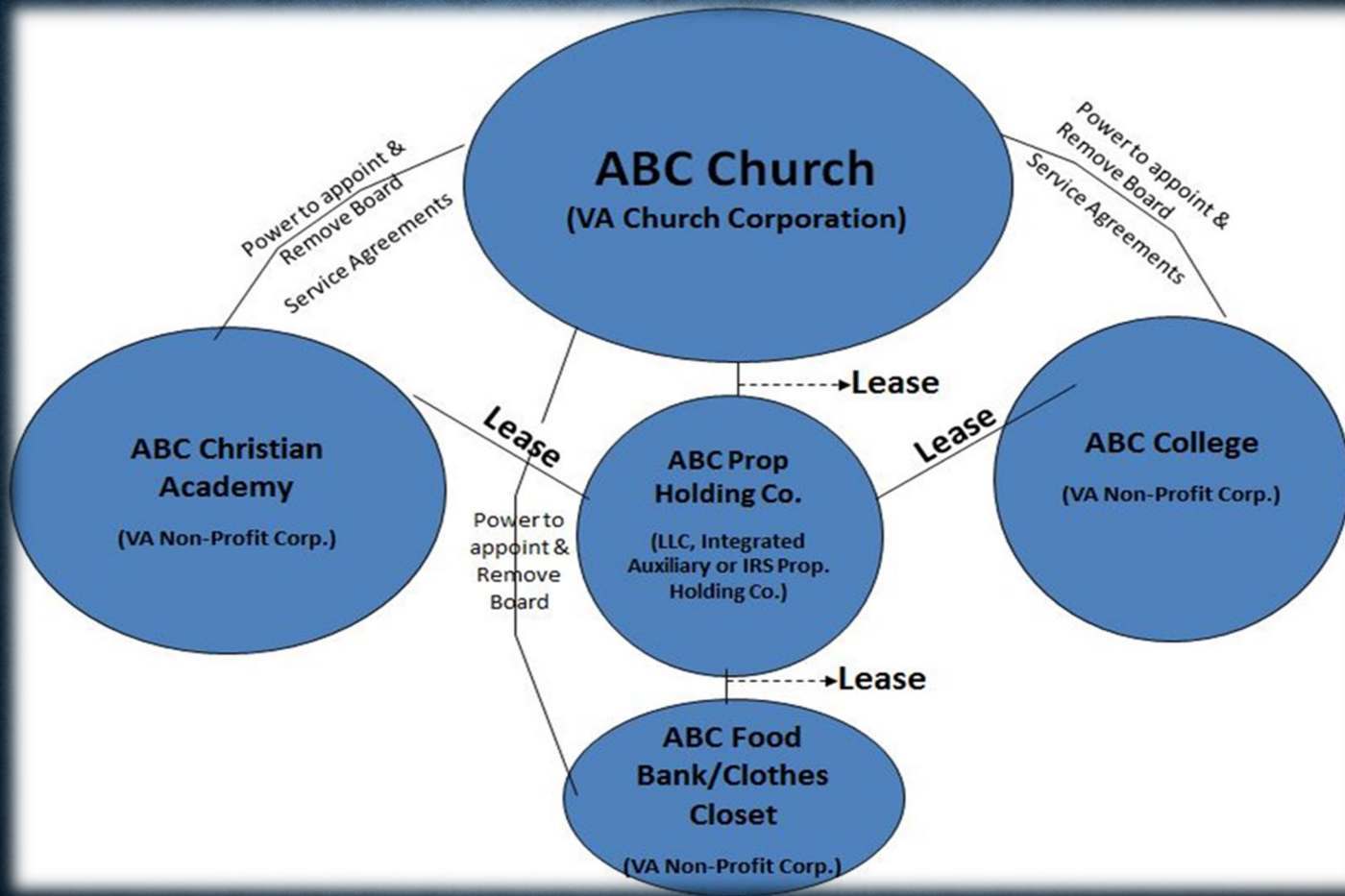
INCORPORATION AND GOOD GOVERNANCE: WHY BOTHER?

- Limited Personal Liability-Leadership and Members.
- VA: Removes Court involvement from property matters.
- Ease of Trademark registration.
- Stability and avenue to update governing documents.
- Ensure assets are used for tax-exempt purpose.
- Ensure board members have fiduciary responsibility to manage assets wisely.
- Separate assets from liability.

**CHURCH
GOVERNANCE –
COMMON
PITFALLS**

- Legal/Tax Exempt Inadequacies.
 - Too narrow/silent
- Lack of “Religious”-ness.
 - No Stated Doctrine/SOF
- Procedural Concerns.
 - Membership/Elections/Chain of Authority
- Risk Management/Best Practice Policies.
 - COI/Audits/Authority
- Christian Dispute Resolution.

ASSET AND LIABILITY SEPARATION





CHURCH MERGERS/SPLITS

- What do governing documents say?
- Conduct good due diligence (legal, financial, spiritual).
- Pastor and Board election and removal clearly stated
- Consult knowledgeable legal counsel to determine best options.
- Write down motivations and expectations of both sides, including time frame, ***before*** starting legal process.

2. THIRD PARTY USE/LEASES

PROS/CONS OF 3RD PARTY USE

- **Pros:**
 - Outward-facing Ministry
 - Community Involvement
 - Potential Source of Revenue
- **Cons:**
 - Unwanted/Inconsistent Use
 - Greater Liability Exposure
 - Tax Implications

PRIVATE ENTITY STATUS

- Have a clear statement about the church's sincerely held beliefs on marriage and sexuality in your foundational documents.
- Have a written Use Policy and/or Agreement evidences private owner status.
- All uses are consistent with church's religious beliefs and use of its property.
- Defends against Quasi-Public Use Argument.

LIABILITY CONCERNS

- Cannot “firewall” against ALL liability risks.
- Check with insurance carrier that proposed use is covered by your policy.
- Require organizations to identify church as an “additional insured” on their liability insurance policy.
- Indemnification clause in Use Agreement.
- Biblical Dispute Resolution clause.
- Adequate Child Protection Policies by User.

CHILD PROTECTION

- Landowner may be liable for child abuse that occurs on its property, even by a third party.
- If user is conducting activities with minors (i.e., preschool, homeschool co-op, etc.), user should have adequate screening and training of workers.
- 4 Elements:
 - Child sexual abuse and grooming training;
 - Screening of potential workers;
 - Tailored child protection policy and procedure;
 - Monitoring and oversight for responding to and reporting reasonably suspected child abuse.

TAX IMPLICATIONS

- User Fees: Optional but be clear that fees are not for income-producing but to counter operating costs.
- Related Use: Church should be clear that 3/P use is related to its religious use. See our *Unrelated Business Income and Tax Primer*.
- Property Taxes: Church real property is typically exempt from property taxes; however, 3/P may impact it.

3. IRS/FOREIGN ACTIVITIES



CHARITABLE DONATIONS

- **IRC 170:** charitable deduction is allowed when contribution is “to or for the use of” an exempt organization.
 - Earmarked vs. Designated
- Cannot “pass-through” a gift to an individual or organization. – “Resting place” rule.
- IRS Tests: Donor Intent vs. Control
- See our *Foreign Grants* [White Paper](#).

FOREIGN GIVING

- **Intent**
 - Cannot market an event as a fundraiser for a foreign charity/individual.
 - Cannot market for projects that have not yet been approved.
- **Control**
 - Foreign organization is a *branch* of the church.
 - Stage 1: Due diligence/investigation/written application/reference checks/OFAC
 - Stage 2: Written agreement *with enforcement teeth*.
 - Stage 3: Consistent reporting/follow-up.

**I HAVE A
GRANT
AGREEMENT,
CAN I WIRE
\$\$\$?**

- **OFAC SDN: WHAT?**
 - Sanctions programs list
 - Individuals and companies list.
- Penalties are high *just for failing to check and even if you self-report and stop!*
 - **2014, ESCO corporation:** \$2m in penalties for violation of sanctions on Cuba, *even though they self-reported and cooperated.*
 - **2012 Yasrebi and the Child Foundation, Oregon:** \$50,000 fine on Yasrebi and 5 years' probation, \$50,000 fine on org and 2 years probation. He pled guilty to sending funds to Iran in violation of the embargo and trying to cover it up. This was **EVEN THOUGH** they couldn't prove actual ties to terrorism. Organized in 1994, it supported poor children and orphans in the Middle East.



**OFAC
COMPLIANCE**

- Management
Commitment
- Risk Assessment
- Internal Controls
- Testing and Auditing
- Training

SPONSORING R-1 VISA APPLICATIONS

- Sponsoring church/ministry must have legally-compliant tax-exempt governing documents.
- Must have a formal 501(c)3 tax-exempt Determination Letter.
- Sponsorship will result in a site visit by Citizenship and Immigration Services to confirm whether actual church/ministry.
- If deemed not an actual church/ministry → potential shut down.

4. CHURCH SAFETY AND SECURITY



VIOLENCE IN THE CHURCH

No longer a place of refuge from violence:

- 2014 – 176 incidents of deadly force (74 deaths);
- 2015 – 248 incidents (77 deaths);
- 2016 – 246 incidents (66 deaths);
- 2017 – 261 incidents (118 deaths).
 - 92 before Southerland Springs
- 2018 (11 months) – 21 (8 deaths)
- Weapons used (1999-2018)
 - Firearm – 58%
 - Knife – 15%



POTENTIAL LIABILITY FOR A CHURCH

- Generally, premises owner not liable for criminal actions of third parties.
- UNLESS owner failed to use reasonable care to protect invitees if owner knew/reason to know for *reasonably foreseeable* risk.
 - *Lopez v. McDonald's* (1987) / *Axelrod v. Cinemark Holdings* (2014).
- Factors:
 - Previous criminal activity
 - Recency/Repeated Occurrence
 - Similar Conduct
 - Publicity



SAFETY/SECURITY CONSIDERATIONS

- Initial Considerations
- Contact/Communicate with local PD
- Guns or No Guns and Who Carries – *Check State Law.*
- Options:
 - Hire off-duty LEO/Security Firm;
 - Trained Security Team;
 - Risk-mitigation policies and security items.
- See [*Violence in the Church*](#) White Paper.

More Ministry Control

Less Ministry Control

NO ONE	OUTSIDE SECURITY	SECURITY TEAM	EMPLOYEES/VOLUNTEERS	APPROVED ATTENDEES	ANYONE
All individuals are prohibited from carrying firearms.	Only an outside security vendor whom you have hired is authorized to carry firearms.	Only individuals on your ministry's internal security team are authorized to carry firearms.	Select ministry staff and/or volunteers are authorized to carry firearms.	Certain attendees are approved to carry firearms.	Any individual with a permit is authorized to carry firearms.
SIGNAGE	OFF-DUTY OFFICERS	SECURITY PLAN	POSITION REVIEW	GUIDELINES	SIGNAGE
Does your state require your ministry to post sign prohibiting firearms or are firearms automatically prohibited?	Can you hire local law enforcement? If so, what does the police dept. require regarding insurance and liability issues?	Have you defined your security team's duties and training?	Have you identified which positions are not conducive to carrying a firearm?	Have will you determine whether to allow an attendee to carry?	Are you required by state law to post signs granting permission to carry, or is permission automatically granted?
AUTHORIZED BY LAW	SECURITY VENDORS	SCREENING	SCREENING	PRIOR APPROVAL	VIOLATIONS
Are policy officers or similar authorities authorized by law to carry firearms regardless of ministry policy?	If you're planning to hire an outside security company, is it qualified, properly licensed, and insured?	How will you screen the security team (interview, background check, permit verification, training, etc.)?	How will you screen staff/volunteers (interview, background check, permit verification, training, etc.)?	Does your state allow prior approval on an individual basis? If 1 person is approved, may other automatically carry?	Have you considered what behavior is not allowed when someone is carrying a firearm?
		LICENSING	AUTHORITY TO ACT	AUTOHRITY TO ACT	
		Does your state require armed members to be licensed security guards?	Are you allowing staff/volunteers to carry, or are you specifically authorizing them to act on your ministry's behalf?	Are you allowing attendees to carry, or are you specifically authorizing them to act on your ministry's behalf?	
		INSURANCE			
		Do you have proper insurance to protect your ministry and the security team?			

Courtesy of Brotherhood Mutual Ins. Company®



SAFETY/SECURITY POLICY

- Preparation
 - Involve Congregation.
 - Prepare Staff and Volunteers.
- Develop Written Policy.
 - Qualifications for safety/security team
 - Weapons policy
 - Response protocols
- Building your Security Team
 - Identify
 - Recruit
 - Train
 - Deploy
 - Manage

5. CHILD PROTECTION

**FOUR STEP
STRATEGY TO
PREVENT CHILD
ABUSE**

1. Worker Selection-Screening
2. Worker Training and Supervision
3. Proper Response to Indications of Child Abuse
4. Reporting Child Abuse

WORKER SELECTION

- Background checks
 - Criminal
 - Child abuse registries
- Reference checks-often more important than background checks if done correctly



WORKER TRAINING AND SUPERVISION

- Establish and explain child abuse prevention policy.
- Train workers (employees and volunteers) to identify abuse and grooming, prevent abuse, and report abuse.
- Require all workers to receive training before starting work and require “refresher” courses.





VIRTUAL YOUTH MINISTRY

- What are the hidden dangers of virtual ministry, especially youth ministry?
- Precautions?
- Which platform should we use?
- Privacy concerns? - COPPA
- Online bullying?
- Other basic guidelines?

[Conducting Youth Ministry in a Digital Age](#) White Paper Article

PROPER RESPONSE TO INDICATIONS OF ABUSE

- Conduct sufficient investigation to determine whether a reasonable suspicion that child abuse occurred, according to state law.
- Minister to alleged victim and family and alleged perpetrator and their family as Christ would have ministered.
- Work with legal counsel to properly report and proper communication with stakeholders and general public.



REPORTING CHILD ABUSE

- Under most state law, the following are mandatory reporters (VA Code Ann 63.2-1509):
 - Teachers
 - Childcare workers
 - Athletic coaches
 - “Any person 18 years of age or older associated with or employed by an public or private organization responsible for the care, custody or control of children”
 - Admin and employees over age 18 who work for day camps, youth centers, and youth recreation centers
- If mandatory reporter has “reason to suspect” abuse, they must report it immediately.
- Safe Sport Act of 2017
- Privilege: Many states recognize priest/penitent privilege.
 - Ministers exempt from mandatory reporting of information gained in confidential communication

RECOMMENDATIONS:

- Draft a written child abuse prevention policy that covers *at least* the reporting, training, and prevention requirements under the Act.
- Provide copy of policy to all participating adults annually and obtain written acknowledgement of receipt.
- Provide online training and train to your church's particular policy and obtain written certification of completion.
- Document compliance with above steps.

**EVANGELICAL
COUNCIL FOR
ABUSE
PREVENTION
(ECAP)**

- Organization developed to support Christian Ministries in child protection and abuse prevention through awareness, accreditation, and resources.
- ECAP provides churches and ministries with resources and practical policies for reducing child abuse in their ministry.
- www.ecap.net

6. SEX OFFENDER INTEGRATION

INTEGRATING SEX OFFENDERS IN THE CHURCH

The Great Need

There are serious difficulties in returning a sex offender into the local community upon release from prison as this impacts the community and the offender.

There is a tremendous need to assist the offender in making the transition to the local church.



INTEGRATING SEX OFFENDERS IN THE CHURCH (CONT.)

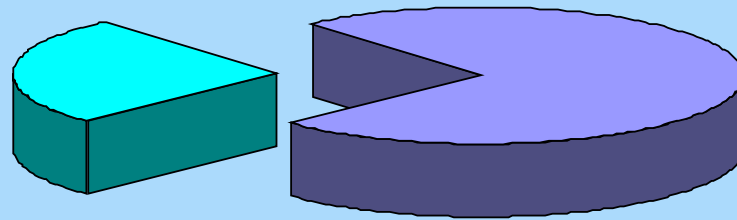


The Greater Problem

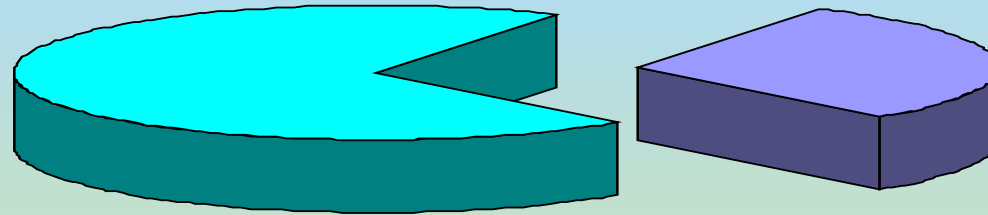
- Serious offenses make it difficult to assimilate some offenders;
- Congregations recoil;
- Threat of relapse;
- Authentic re-integration is a slow process that requires a high level of accountability.



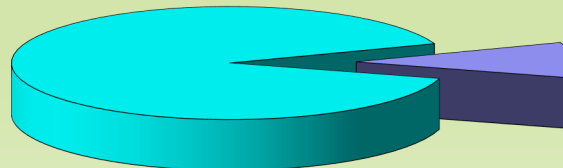
National Criminal Recidivism Rate



Impact of Bible Study and Worship on Inmates While Incarcerated



Impact of Bible Study and Worship While Incarcerated Plus Inclusion in a Church Body of Believers Upon Release



BEST TYPE OF MISSION/ CHURCH TO UNDERTAKE INTEGRATION

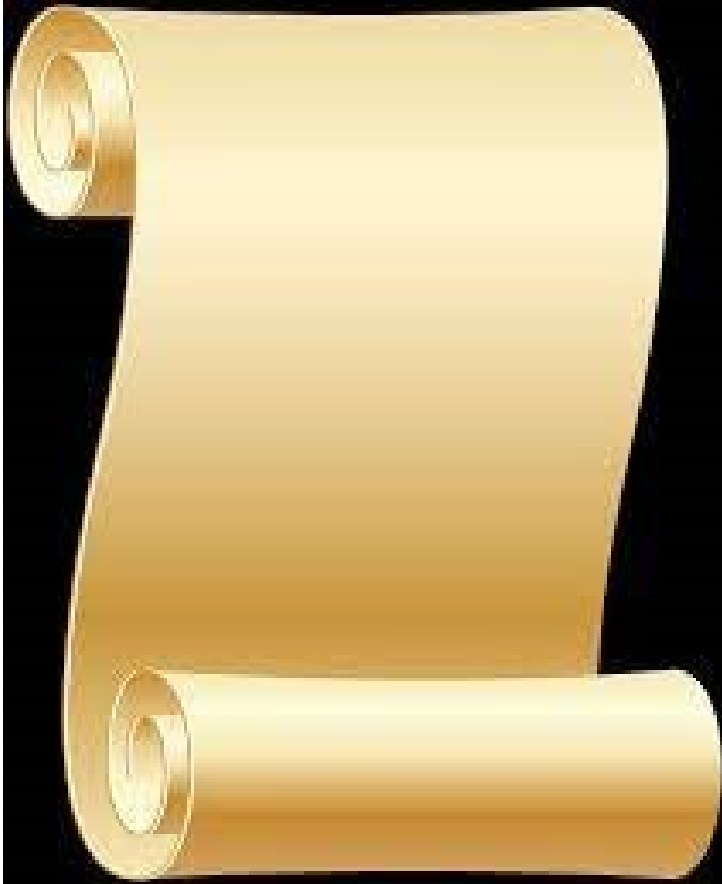
- Vibrant, healthy and stable-not in transition or building etc.
- Established leader with organizational trust
- Sufficient resources to disciple and mentor
- Vision for this type of ministry (also engages in Celebrate Recovery or other addiction programs)
- Gift of discernment and calling for this type of high risk but great ministry

TYPE OF SEX OFFENDER FOR CHURCH TO CONSIDER TO UNDERTAKE INTEGRATION

3 types of sex offenders-

1. First time, situational offender with one victim
known to offender=**low risk**;
2. More than one victim, abuse long term and predatory often violating position of trust and offender in denial or minimization of crime and
impact=**moderate risk**;
3. More victims and prior offenses, may not know
victims, personality disorder and sometimes preferential molester=**high risk. To be avoided**

CONSIDERATIONS FOR INTEGRATION



- Require offender to sign an agreement with the church, agreeing to abide by all rules established by the church.
- Assign a chaperone to accompany individual while on the church premises (offender should never be alone).
- Strict prohibition from any contact with children.

7. TAX AND FINANCES

**Tax-Exemption / Financial Accountability /
Cryptocurrency**

TAX/FINANCIAL MATTERS

- Churches are automatically 501(c)(3) without having to file Form 1023 and get official approval.
- More medium and large churches are seeking formal determination for other benefits.
- 501(c)(3) tax-exempt organizations do not have to pay business/organizational income taxes.
- *They do pay employment taxes.* File Form 941
- Make sure financial organization is in place.
- Consider systems and standards of ECFA

Should churches accept cryptocurrency donations?

- Be aware of fraud. Don't get outside your ability to safeguard tax-exempt assets.
- Regulations on cryptocurrency and donations of cryptocurrency incentivize donating the asset itself, not just the proceeds from a sale of the asset.
- If you do accept cryptocurrency, create a process and ground rules in advance to reduce the risk of fraud
- Consider third-party cryptocurrency processors
- See our article here:
<https://www.simmsshowerslaw.com/virtual-currency-gifts-should-churches-nonprofits-accept-bitcoin/>

REPORTING REQUIREMENTS

- Any amount – donations receipt – no goods or services involved in donation
- Between \$250-\$500
 - **Form 8283 – Non-Cash Donation Form**
 - No requirement to file Form 8282 upon sale or disposal of gift
- Between \$500-\$5000
 - Form 8283 + **signed acknowledgment of gift**
 - Recipient must also use **Form 8282** if sold or disposed of gift w/i 3 years of receipt
- Over \$5000
 - **Form 8283 + recipient will need to get qualified appraisal of gift**
 - Form 8282 if recipient sells or disposes of gift w/i 3 years of receipt

QUESTIONS TO ASK

- Keep the Donated Asset or Sell Immediately?
 - Some platforms will immediately liquidate for you if you choose
 - Asset could further increase in value or decline rapidly
 - Most donors will likely attempt to give you an asset when it is at a high point
- Does your platform accept the different cryptocurrencies you want to accept?
- Will the platform assist you with donations receipts and IRS reporting?

MAJOR THIRD-PARTY GIFTING COMPANIES

Company Website	Structure	Website Integration	Fees	Donor Account Required	Donor Receipts	Files 8283	Files 8282	Auto Liquidation	Qualified Appraisal	Payout System
Engiven: https://www.engiven.com/	For-profit	Yes	4% flat fee	No	Sent by the company	Donor compiles, org signs	Org files	Yes	Donor responsibility	2-3 days
Charity Vest: https://www.charityvest.org/donate-crypto	Donor Advised Fund	No, but can refer to CV's site	0.5%-1%	Yes	Sent by the company	Company files it	Company files it	Yes, w/i 1 day	Donor responsibility	W/i 30 days
Every.org: Every.org/cryptocurrency	Non-profit	Yes	0.5%	No	Sent by the company	Company files it	Company files it	W/i 1 day, weekly disbursement	Donor responsibility	Weekly, sooner w/ account linking
CoinBase: https://www.coinbase.com/	Brokerage	Can be done	≈0.5%	Yes	Sent by the org	Donor compiles, org signs	Org files	Org does it	Donor responsibility	Upon clearance in Coinbase

QUESTIONS AND ANSWERS



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