Top Ministry Legal Trends: Asset Protection and Corporate Governance
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I. WAYS TO PROTECT MINISTRY ASSETS

a. Ministry is a balancing act between objectives and risk.
b. Taking steps to protect ministry resources from potential liabilities stemming from ministry activities can tip the scales in the ministry's favor—asset protection.
c. Many ministries evaluate their organizational structure as part of their asset protection strategies.
    i. Organizational structures can range from an informal group of people to a complex and burdensome corporate structure. Some approaches are safer, and some may expose ministries to more risk.

II. BASIC ASSET PROTECTION: INCORPORATING THE MINISTRY

a. Limiting liability through an asset protection plan usually begins with incorporation. Incorporation can help protect members from the personal liability caused by the negligent acts of other members.
    i. Benefits of incorporating
        1. Shields members from liability for ministry activities
        2. Shields members' assets from creditors
        3. Easier access to capital and financing
        4. Perpetual existence beyond influential leaders
    ii. Costs associated with incorporating
        1. Additional expenses to start and maintain
        2. Administrative burdens adhering to corporate formalities

III. PROTECTING MINISTRY ASSETS THROUGH CORPORATE STRUCTURE

a. **Unincorporated Entity** – A group of people who meet for a common purpose. Longstanding rural churches have sometimes remained unincorporated associations.
    i. Legal Considerations – Individual members could be held personally liable for the acts of others in the ministry.
        1. "Members of an unincorporated church organization who are actually instrumental in incurring liability for it, or who either authorize or ratify its transaction or those made in its name, are personally liable therefor, while those who in no way participate in such transactions are exempt from liability." *Farm & Home Sav. & Loan Ass'n of Missouri v. Armstrong*, 85 S.W.2d 461, 468 (Mo. 1935).
    ii. Practical Considerations – The ministry is not a legal entity— individual members must sign contracts and share liabilities of the ministry.
b. **Single Incorporated Entity** – A state-recognized entity that is considered a person under the law. Smaller churches often remain a single incorporated entity
    i. Legal Considerations – Generally, only the ministry is exposed to liability—individual members are shielded from liability.
        1. A corporation has a separate existence as a distinct person. *See In re Coala, Inc.*, 182 B.R. 887, 893–94 (Bankr. N.D. Ala. 1995); *Chamberlain Mfg. Corp. v. Maremont Corp.*, 90 C 7127, 1993 WL 535420, at *9 (N.D. Ill. Dec. 19, 1993); *Howe v. Barney*, 45 F. 668, 669 (C.C.S.D. Ohio 1891).

        ii. Practical Considerations – The ministry is a legal person and can enter into contracts and purchase property. Individual members do not share liabilities of the ministry.

c. **Separate Incorporated Entities** – The ministries are separately incorporated entities that are governed independently of each other. A church may sometimes separately incorporate a school and allow each to run independently.
    i. Legal Considerations – If properly operated, each ministry's assets are likely shielded from liability for the other ministry's actions.
    ii. Practical Considerations – Each ministry is operated separately from the other with no governance oversight. Any interaction between the entities should be at arm's length.

d. **Incorporated Ministry & Holding Entities** – The incorporated ministry entity maintains all activities but transfers its assets and property to a holdings entity. A growing church will sometimes create a holdings entity to hold ministry resources.
    i. Legal Considerations – If properly operated, assets are shielded from ministry liability because they are owned by a separate holdings entity
    ii. Practical Considerations – The ministry board usually maintains governance control over the holdings entity. The ministry usually pays rent and other fees to the holdings entity to cover expenses.

e. **Incorporated Parent & Subsidiary Entities** – The parent ministry creates subsidiary entities to hold real estate and/or related ministry activities. A large ministry with several different endeavors will often create separate subsidiaries for ministry resources and activities.
    i. Legal Considerations – If properly operated, the parent ministry and subsidiary entities are generally shielded from liability for any claims that arise within a single subsidiary's operations
    ii. Practical Considerations – Adds a considerable amount of expense and administrative burden to follow corporate formalities across several entities.

f. **Incorporated Parent, Siloed Holdings, & Subsidiary Entities** – The parent ministry creates holdings entities who, in turn, create subsidiaries to hold real estate and/or related ministry activities. A large multi-site ministry with various endeavors sometimes utilizes a complex siloed holdings and subsidiary structure
    i. Legal Considerations – The parent ministry and subsidiaries are further separated by the siloed holdings entities. Generally, this provides greater liability protection from a claim against a single subsidiary's operations.
    ii. Practical Considerations – This strategy adds a significant amount of expense and administrative burden to follow corporate formalities across several entities.

IV. MORE CONTROL = GREATER RISK OF LIABILITY

a. Creating separate entities can help separate your ministry resources and activities. The structure of these entities depends on the needs of your ministry and the control that it retains over related entities. The level of control can range from no control—the safer approach to protect ministry assets—to full control, the least safe approach.
b. The more the parent entity exerts control, the greater the risk that each entity could be held liable for the acts of the others.

V. RISK: "PIERCING THE CORPORATE VEIL"

a. If a ministry fails to abide by the corporate formalities or operates multiple entities as if they were just one entity, a court could "pierce the corporate veil" and hold each entity liable for the acts of the others.

b. Courts will hold a parent entity liable for the acts of a subsidiary if it's determined corporate formalities were not followed, and the subsidiary was just acting as an alter ego of the parent.

c. There are several factors that courts look at, including whether the two ministry organizations:

    i. **Are involved in the same business operations.**
    ii. **Have similar corporate names.**
    iii. **Commingle their assets and affairs.**
    iv. **Lack corporate records.**
    v. **Share address and office space.**
    vi. **Share employees.**
    vii. **Have a significant overlap within their boards of directors.**
    viii. **Fail to hold board meetings.**
    ix. **Undercapitalization.**

        1. *See Longhi v. Mazzoni*, 914 N.E.2d 834, 839 (Ind. App. 2009) ((1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form.)
        2. *W. Dakota Oil, Inc. v. Kathrein Trucking, LLC*, 974 N.W.2d 630, 632 (N.D. 2022) (Factors considered in determining whether to pierce the veil include: "insufficient capitalization for the purposes of the corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of the debtor corporation at the time of the transaction in question, siphoning of funds by the dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and the existence of the corporation as merely a facade for individual dealings.")

d. The single most important indicator of whether a parent and subsidiary would be considered alter egos of each other is the amount of control that the parent exerts over the subsidiary. Parent entities typically maintain some level of governance over a subsidiary. However, if the parent makes all the operational decisions for the subsidiary while the subsidiary fails to abide by required corporate formalities, it's likely that the court will hold the parent liable for the actions of the subsidiary.

e. Ministries can minimize this problem by:

    i. **Ensuring proper formation of entities.**
    ii. **Permitting little or no shared ownership between the entities.**
    iii. **Maintaining separate boards, records, accounts, and names.**
    iv. **Avoiding commingling of funds or shared bank accounts, among other things.**
    v. **Utilizing contracts between the entities for any shared operations, employees, or assets.**

VI. VEIL PIERCING IN MINISTRY

a. ***Doe v. Gelineau*, 732 A.2d 43 (R.I. 1999)**

   i. "When it comes to piercing corporate veils, courts are loath to act like Vlad the Impaler. Indeed, the stakes are too high for courts regularly to disregard the separate legal status of corporations. Because a corporation is an incorporeal, "artificial creature" of the law, it constitutes "an artificial person distinct and separate from its individual and often changing stockholders." Thus, courts are not inclined to perforate a corporation's legal shell merely to stick one or more of its constituent or affiliated entities with liability for the corporation's misdeeds. Rather, respect for the legitimacy of the corporate form and its protective shield of limited liability usually dissuades courts from using their remedial swords to run them through—at least without extreme provocation to do so.

   ii. The Supreme Court of Rhode Island refused to pierce the corporate veil even though the Defendant corporation owner was a corporation sole where there was evidence the corporate sole exceeded its statutory authority as a holding entity.

b. *Macaluso v. Jenkins*, 420 N.E.2d 251 (Ill. App. 1981)

   i. Court pierced the veil of the nonprofit to hold the founder/chairman of the board personally liable for breach of contract

   ii. Court found that the director made most decisions concerning corporation, was sole representative for corporation in negotiating contracts, had power to authorize loans to corporation, had authority to appoint vice-presidents without holding elections or consulting board of directors, and intended to profit from corporation by having corporation pay rent for offices where he carried on other business and from profitable fringe benefits

c. *Medlock v. Medlock*, 642 N.W.2d 113 (Neb. 2002)

   i. Divorce proceeding where Supreme Court reverse pierced the veil of a religious nonprofit holding that the religious nonprofit was the husband's alter ego and all $1.3m of nonprofit's assets were marital assets.

   ii. The husband took minimal salary from nonprofit, but the nonprofit provided housing, 9 vehicles, a motorcycle, various other personal expenses, and did little actual ministry activities.

d. *Wilson v. Wilson*, 211 So.3d 313 (Fla. App. 2017)

   i. A reverend founded seven ministries/churches over the span of 40+ years before his death in 2010. Some of his 14 children proclaimed themselves board members of the ministries after his death. The children also alleged that their father did not operate the churches as non-profits and failed to follow required corporate formalities.

   ii. The trial court disregarded the corporate identity of the nonprofits holding that the assets of the nonprofit entities should be part of the estate

   iii. In 2017, the appeals court held that the corporate entities could not be disregarded as businesses personally owned by the reverend and remanded the case back to the trial court.

      1. A hearing on a motion to dismiss was held on July 27, 2022, but the case remains pending.