

Preface to United States Mennonite Central Committee Relief Sale Legal Handbook

The following pages are to be used by U.S. Relief Sales as a guide only to legal issues in the scope of the Relief Sale structure. This information was condensed from the United States Mennonite Central Committee Thrift Shop Legal Handbook and is reprinted with permission.

A number of updates have been issued since this manual was prepared. Including the following:

- 1) Donations of used items must be in good or better condition
- 2) Donation of vehicles require more paperwork, such as IRS Forms 8282, 8283, 1099-C

It is important to note that the IRS only recognizes donations as permissible tax deductions that were made to either registered 501 (c) 3 charitable organizations or to churches or religious organizations (who are automatically classified as charitable organizations.)

If a relief sale does not operate under the umbrella of a church or a religious organization (MCC is not a religious organization), the sale needs to apply for 501(c)3 status in order to be eligible to give charitable receipts..

Proper receipting of donations is important and the IRS specifies the information that needs to be listed on the various types of donations made to Relief Sales (once they are a registered charity.)

It is also important to note that once the 501(c)3 status is obtained, annual filings of Form 990 or 990EZ must be made unless gross receipts are less than \$25,000 per year.

Note: the IRS does NOT send out the form automatically along with the due date. You need to request it online or have it mailed to you. A fine of \$20 per day will be assessed for late filing.

For a review of current IRS laws and definitions, please go to the IRS web page or contact a legal expert.

April 2007

Mennonite Central Committee
U.S. Relief Sale Legal Handbook
(derived from the U.S. Thrift Shop Legal Handbook)

Just by living we are exposed to a myriad of laws, some of which impact us greatly and some of which we are unaware. Likewise, the operation of a thrift shop is impacted by all manner of laws and regulations from many levels of government.

As Christians, our ultimate authority is God. Therefore, there may be times when you consciously choose to not avail yourself of the rights granted you by law or not to obey a law that contradicts God's teaching. However, to make an informed decision, you need to know what the law provides.

The manual is set up in chapters. The table of contents should guide you to your issue in a hierarchical fashion. The index will guide you to places where keywords are discussed. If you do not know into which categories your issue fits or it is covered by several chapters, the index may be your best reference.

It is hoped that this handbook will be a useful tool. Your comments and suggestions to make it more so are greatly appreciated. It is anticipated that the handbook will be updated periodically.

The Obligatory Legal Disclaimer:

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher and author are not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."

--from a Declaration of Principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Acknowledgments

When Brenda Wagner asked me to undertake this project two years ago following the Thrift Workshops I thought I knew how much time it would take to bring to fruition. The scope of the manual changed after it became clear that providing state-specific answers to each legal issue discussed was beyond what I could do. I have instead attempted to provide a sound legal reference from which to start your search for answers. This manual is not intended as a substitute for local legal counsel, but might help you decide when local counsel is needed.

In the course of researching this project I realized that feedback from other attorneys across the country would be very helpful. The following attorneys reviewed a draft of this manual and offered suggestions, many of which were incorporated into the current version. I wish to thank them for their time and helpful comments:

R. Wayne Clemens, Souderton PA

Rick Skinner, Boise ID

A. James Gilmore, Newton KS

R. David Boyer, Fort Wayne IN

Dale L. Strasser, Freeman SD

I also asked Hope Nisly, the office administrator at the West Coast office, to proofread this manual. Her able red pen made many improvements, and I thank her.

Jerry Linscheid, J.D.

West Coast MCC

Reedley CA

TABLE OF CONTENTS

I.	Choosing the Business Structure	Ch. 1 Pg. 1
	A. Incorporating as a Nonprofit	Ch. 1 Pg. 1
	1. Articles of Incorporation	Ch. 1 Pg. 1
	2. Bylaws	Ch. 1 Pg. 2
	3. Meetings and Minutes	Ch. 1 Pg. 3
	4. Responsibilities of Board and Staff	Ch. 1 Pg. 3
	B. Sponsorship by another Nonprofit Organization	Ch. 1 Pg. 3
	C. Name	Ch. 1 Pg. 4
II.	Taxes	Ch. 2 Pg. 1
	A. Federal Taxes	Ch. 2 Pg. 1
	1. Income Taxes	Ch. 2 Pg. 1
	a. Federal Exemption Application	Ch. 2 Pg. 2
	b. Other Benefits of Qualifying for Federal 501(c)(3) Status	Ch. 2 Pg. 2
	c. Disadvantages of 501(c)(3) Status	Ch. 2 Pg. 3
	(1) Lobbying Restrictions Specific to 501(c)(3) corporations	Ch. 2 Pg. 4
	(2) Properly Notifying Donors of Tax-Deductibility of Donations	Ch. 2 Pg. 4
	(a) Gifts in exchange for something of value	Ch. 2 Pg. 4
	(b) Gifts of money	Ch. 2 Pg. 5
	(c) Gifts of Goods	Ch. 2 Pg. 5
	(3) Public Support Mandates for 501(c)(3)	Ch. 2 Pg. 5

B.	State Taxes	Ch. 2 Pg. 6
	1. Income Tax	Ch. 2 Pg. 6
	2. Sales Tax	Ch. 2 Pg. 6
III.	Liabilities and Insurance	Ch. 3 pg. 1
	A. Casualty Coverage (Fire and Theft generally)	Ch. 3 Pg. 1
	1. Property Covered	Ch. 3 Pg. 1
	2. Perils Covered	Ch. 3 Pg. 1
	3. Amount of Coverage	Ch. 3 Pg. 3
	4. Replacement Cost vs. Current Value	Ch. 3 Pg. 3
	B. Liability Insurance	Ch. 3 Pg. 3
	1. General Liability Policies	Ch. 3 Pg. 4
	a. Product Safety	Ch. 3 Pg. 4
	b. Merchandise Warranties	Ch. 3 Pg. 4
	c. Excluded claims.	Ch. 3 Pg. 4
	d. Toxic Waste Clean Up	Ch. 3 Pg. 5
	3. Volunteer Coverage	Ch. 3 Pg. 5
	4. Vehicle	Ch. 3 Pg. 5
	5. Director and Officer Coverage and Fidelity Coverage	Ch. 3 Pg. 5
	6. Volunteer Immunity for Directors	Ch. 3 Pg. 6
IV.	Criminal Law	Ch. 4 Pg. 1
	Theft	Ch. 4 Pg. 1
	1. Shoplifting	Ch. 4 Pg. 1
	2. Bad Checks and Credit Card Fraud	Ch. 4 Pg. 2
	3. Stealing by Volunteers or Staff	Ch. 4 Pg. 2

Starting a Sale

The decision to begin a sale is an important one, but one in a series of decisions. Some of the issues in beginning a sale are where will it be, who will lead, and how will everything get paid for. These are not necessarily legal questions, but legal issues lurk just below the surface. This chapter will discuss setting up the organizational structure of the sale.

I. Choosing the Business Structure

You have basically two choices of business structure - incorporation or sponsorship. Incorporation is the process of creating a new entity. This entity has almost all the rights and responsibilities of an individual. It can own property and enter into contracts. It can sue and be sued. It cannot vote or be part of a family. Sponsorship is essentially being part of and coming under the umbrella of an existing organization. The status of a sponsored sale is a committee of the sponsoring organization, usually a church.

A. Incorporating as a Nonprofit

Incorporating is a relatively simple matter. It involves filing your articles of incorporation with the Secretary of State and paying the appropriate fees. The corporation begins on the date stamped on the copy of the articles returned to you. Contact your Secretary of State for the requirements and fees involved. Some states require an income tax deposit that is refunded upon obtaining state income tax exempt status. Most Secretaries of State provide several samples of Articles of Incorporation (including forms for nonprofit corporations) that can be used as a starting point for your articles. These can also be found on the Secretary of State website.

1. Articles of Incorporation

Most Secretaries of State, the IRS, and attorneys will have sample articles of incorporation. The articles will generally be a simple 1-2 page document. The important item to remember is that it must satisfy the state requirements for nonprofit status as well as the IRS requirements. The essential elements that should be covered are:

- Name
- General statement of purpose
- Statement that the corporation is nonprofit
- That no person, other than another nonprofit, may profit from the corporation

- names and addresses of the original incorporators and who can be served process (in a lawsuit) on behalf of the corporation

2. Bylaws

The bylaws are the rules by which you choose to run your corporation. In the bylaws you can determine:

- The purpose of the sale in more detail, including that MCC is to receive the net proceeds of the operation of the sale.
- The time, place and manner of calling, conducting and giving notice of members', directors' and committee meetings, or of conducting mail ballots.
- The qualifications and duties of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings
- The appointment and authority of committees
- The appointment, duties and tenure of officers
- Whether or not to have members and the mode of determination of members of record. In the articles or bylaws (depending on state law) you determine if you will have members. Members can be a group of churches or individuals who have a particular connection to the sale. Having members keeps the power broad-based. Not having members means the board nominates and elects itself. You can also make your board subject to approval by your regional MCC board. This allows the regional MCC final control over who sits on the sale board. It also makes it easier to be classified as “a public charity” and not a “private foundation,” something you will want to establish in your IRS application.
- The creation of reports and financial statements for members.
- The manner of admission, withdrawal, suspension, and expulsion of members or board members

You are given wide latitude in drafting your bylaws. In most states the laws provide defacto rules for those areas not addressed by your bylaws. There will likely be a few constraints on your bylaws, such as minimum number for a quorum or restrictions on how many offices can be held by one person. Your bylaws may not contradict your articles of incorporation or state law requirements. **3. Meetings and Minutes**

After you file your articles you will need to hold an initial meeting to elect directors and adopt bylaws. You will probably want to schedule board meetings at least monthly. Minutes should be kept of all board meetings. This is the

official record of what the board discussed and decided. At a minimum the minutes should record the date, time and place of the meeting, who was present, what issues were discussed, what was decided (including the exact language of any motions passed), and details of any future action.

3. Responsibilities of Board and Staff

An outgrowth of the incorporation model is that there are several levels of authority and responsibility in the operation of the sale. In broad terms, the **board's** responsibility is to set sale policy, plan for the future, insure that there is adequate financing to run the sale, and appoint committees. The committee's responsibility is to implement the policy and provide sufficient information for the board to make informed decisions. In the beginning, these roles are often muddled, because those who work on the committee level are often those who also serve on the board. One of the difficulties that can occur in that situation is that board meetings get bogged down in the sale details and no one is addressing larger policy issues or planning for the future. A book that has been widely used and discusses this very issue is *Doing Good Better* by Edgar Stoesz and Chester Raber. It includes helpful checklists for staff and board evaluations.

B. Sponsorship by another Nonprofit Organization

The advantages of sponsorship are that another organization (often a church) has done all the work to become a legal entity, obtained tax-exempt status, and will have a continued interest in the welfare of the sale. Having a sale sponsored by another larger, well established organization helps during transition periods. A new sale will often have been the dream of a handful of people. When those people leave it sometimes is difficult to keep the dream alive. A sponsoring organization will be able to provide support and guidance during those times. The sale is a department or committee of the sponsor. The disadvantages are primarily two-fold: lack of autonomy and reciprocal liabilities. The sponsor has ultimate control and ownership of the sale. Sponsors may not exercise that control, but it exists. The sponsor is also liable for debts of the sale and vice versa. If the sponsor incurs large debts or files for bankruptcy, the assets of the sale can be used to satisfy creditors' claims. Insurance can resolve concerns about liability arising from accidents.

The sponsor must also be satisfied that having the sale under its "umbrella" will not jeopardize the sponsor's tax-exempt status, result in Unrelated Taxable Business Income, or otherwise produce unwanted consequences.

There should be a clear written agreement between the sponsor and the sale as to how the issues of control are resolved.

C. Relief Sale Name

Naming your Relief Sale may not be as simple as it seems. When selecting a name, try to make the name short, easy to remember, descriptive of the business, and capable of drawing attention. Refer to the Relief Sale web page listing to review names adopted by other sales.

Choosing a name for a corporation is a formal process included in filing your articles. The corporate name is registered with the secretary of state. The name must be unique and not used or reserved by another corporation. If the name you choose is already taken by another corporation when you file your articles, the secretary of state will reject your articles of incorporation. You can call the secretary of state to find out in advance whether a particular name is available.

The name of a corporation usually must include the words "corporation, incorporated, limited, company or chartered," the letters "Inc., or Corp." or some other phrase indicating that the entity is a corporation. Some states, such as South Dakota do not require the corporate suffix. The state corporation statutes will specifically identify which descriptions can be used.

If you wish to operate the sale under a name different than the corporate name, there is an additional procedure often called, "fictitious business name filing." A "fictitious business name" is used when the sale name is different from the legal name of the corporation. For instance, if the corporation is named "Midwest Mennonite Support Center, Inc." and the sale is operated under "Midwest Relief Sale", the name "Midwest Relief Sale" would be a fictitious business name. A fictitious business name is sometimes called a DBA (**doing business as**), as in: "Midwest Mennonite Support Center, Inc., DBA "Midwest Relief Sale." If you use a fictitious business name, you need to register it with your county recorder. The registration probably will need to be renewed periodically.

II. Taxes

This chapter will discuss the various taxes that apply to a sale and how you might become exempt from paying some of them.

A. Federal Taxes

One of the first tasks of the sale after incorporating is to obtain a federal tax ID number (TIN), sometimes referred to as employer identification number (EIN). This is analogous to an individual's social security number. The sale is assigned its EIN by completing IRS Form SS-4 and sending it in. There are several ways to transmit the form, but the quickest is to phone it in and then fax the form to the IRS with the new number. If the sale is sponsored by another organization, that organization will already have an EIN that the sale will also use.

1. Income Taxes

Your primary purpose in starting your sale is to generate funds for Mennonite Central Committee. Normally a sale pays federal income tax on its income. If your sale avoids paying income taxes by becoming exempt, more of your income can be contributed to MCC. The IRS grants an exemption from income tax for those organizations who do work deemed beneficial to society. One of those exemptions is for charitable organizations. To qualify as a charitable organization the sale must meet several standards. On the organizational end the documents that control the organization (articles of incorporation and bylaws) must show a charitable purpose and also preclude any individual from sharing in the profits. On the operational end the sale will have to show that it actually runs as a charitable organization.

a) Federal Exemption Application

Obtaining federal tax exempt (Internal Revenue Code §501(c)(3)) status is not usually difficult, but it is time consuming and requires attention to detail. Persons with knowledge of corporate law, tax law and accounting will be helpful in the application process. To apply for recognition by the IRS of exempt status as an organization described in § 501(c)(3) of the Code, use Package 1023, *Application for Recognition of Exemption*. This package contains a check list and all the forms necessary for the process. You should also get Publication 557, *Tax-*

Exempt Status for Your Organization. Note the application fee of \$500 as shown in Form 8718.

You can order all needed IRS Forms by phoning - 1-800-829-3676.

You can order or download IRS forms at this website - <http://www.irs.gov/>.

A convenient IRS feature allows you to prepare the tax exemption application form on your computer and print completed Form 1023 at this website - <http://ftp.fedworld.gov/pub/irs-fill/k1023.pdf>. Other forms are available as well.

You will need to provide to the IRS extensive documentation including articles of incorporation, bylaws, publicity, financial statements and budgets.

When you receive your Determination [of Exempt Status] Letter from the IRS you should read it carefully and note any conditions or temporary findings. Note what further information and by when you must supply it to obtain unconditional IRC §501(c)(3) and §509(a)(2 or 3) status. You may be asked numerous times to prove your tax exempt status by various individuals, organizations or other governmental agencies. Your Determination Letter is your proof. Do not lose it.

b) Other Benefits of Qualifying for Federal 501(c)(3) Status

In addition to not having to pay income taxes, a major benefit of being tax-exempt as a 501(c)(3) public charity entity is the ability to solicit tax-deductible donations.

There may be other benefits of qualifying as charitable under 501(c)(3), such as:

- potential qualification (under State or local laws) to purchase goods and services for use by the sale without paying sales tax
- potential qualification (under U.S. Postal regulations) to bulk mail at non-profit rates
- potential qualification (under local jurisdiction determination in accord with State laws) to own property exempt from paying real property taxes

- potential qualification to avoid paying other taxes, such as utility taxes

-potential qualification to avoid paying state income taxes (this is sometimes automatic, but often requires a separate state application form)

Don't assume that qualifying as exempt under 501(c)(3) will automatically qualify you for any of these other exemptions. You must meet each governing authority's individual requirements.

501(c)(3) status carries a number of restrictions on the activities of your sale. The most important are listed below.

c) Disadvantages of 501(c)(3) Status

One of the major benefits conveyed by 501(c)(3) status -- that of eligibility for tax deductible contributions -- brings with it substantial scrutiny and burdens.

Congress has imposed many detailed restrictions on 501(c)(3) groups to ensure that the public policy of furthering charitable programs does not unduly advance other activities by funding them with tax-deductible dollars. The most important of these rules, unique to operating as a 501(c)(3) entity, are as follows:

- Not too much involvement in the legislative process (either by lobbying legislators directly or by communicating with members of the public to have them encourage legislative results)

- No contributions of time or money, or assistance in any way (including endorsements) to candidates for elected office or to political parties

- No misrepresentation to donors of amounts deductible particularly in regard to payments a donor makes where benefits are returned, such as with entry fees to fundraisers)

- The need to be funded by a variety of donors.

(1) Lobbying Restrictions Specific to 501(c)(3) corporations

The easiest way to avoid these entanglements is for the corporation to not engage in activities to influence legislation or elections. If you wish to lobby, determine the limits. *Being A Player*, 2nd edition, 1995, published by the Alliance for

Justice is reportedly THE resource regarding the lobbying limits. Call (202) 822-6070 for ordering information.

(2) Properly Notifying Donors of Tax-Deductibility of Donations

There are three situations under which you will issue charitable receipts. The three situations are:

1. Gifts in exchange for something of value
2. Gifts of money
3. Gifts of goods or merchandise

One area that seems to reoccur is the deductibility of donated time. The IRS is quite clear that volunteering does not create a tax deduction. Volunteers can deduct their out-of-pocket expenses incurred as volunteers (such as mileage to and from the sale or phone charges for sale business), but not the value of their time. The sale will not issue a receipt to a volunteer for time or expenses, but can send a thank you letter verifying that the person did volunteer at the sale.

(a) Gifts in exchange for something of value

You must clearly state to donors what constitutes the "tax-deductible" portion of a payment when it is only partly a gift. The situations to be concerned about arise from what are called "quid pro quo" (or inducement or other benefit event) fundraising where the "donor" makes a payment for which they get something back of value. **IN THESE CASES, THE "SOMETHING OF VALUE" REDUCES THE AMOUNT OF THE TRUE (i.e., tax-deductible) GIFT!** Under present law, you must disclose, to all payors of more than \$75.00 who get anything of value back, that the fair market value of what they received must be subtracted from the payment to determine the tax-deductible portion of their gift. Also, the organization must include a "good faith" estimate of the value of what they received.

In practical terms, when someone attends your benefit dinner, e.g., the law requires that (for anyone paying more than \$75.00, which might include the person purchasing multiple dinner tickets) the sale disclose on the ticket or receipt an estimate of the fair market value of the dinner, entertainment etc. (even if the event cost your organization nothing!) and the formula determining the deductible amount.

(b) Gifts of money

Under present law donors of \$250 or more in any one day must receive a written receipt from you before they file their tax returns. The receipt must state the amount and date of the donation, the donor's name, the sale name and address, and that the donor was given "no goods or services in exchange for the gift." Good practice is to promptly thank all your donors, in writing.

(c) Gifts of Goods

You will receive most of your donations in the form of goods. Some donors will want a receipt, so you should be prepared to issue receipts upon receipt of the goods. Receipts for goods will state your name and address, the donor's name, the date of receipt, a reasonable description of the items and that the donor "received no goods or services in exchange for the gift." **You do not place a value on the goods.** That is the donor's responsibility. On the rare occasion where the donation is worth over \$5000, you will be asked to sign an IRS appraisal form. The actual appraisal will be done by someone else, but you will acknowledge receipt of the merchandise.

And finally, no tax deduction may be taken by a donor who has earmarked the donation

- for your lobbying efforts or
- to benefit a particular individual

(3) Public Support Mandates for 501(c)(3)s

501(c)(3) exempt organizations come in two flavors -- public charities and private foundations. It is very important that the sale be characterized as a public charity and **not** a private foundation. Public charity status under 509(a)(2) is earned by establishing a diversity of funding sources. Two alternative "public support tests" are available -- both are highly technical, but basically require a retrospective showing (over a four or five year period) that its funding is not dependent on a few large donors or purchasers of services. Since for new organizations just applying for a 501(c)(3) determination letter such a result can only be hypothesized, in the exemption determination process, such organizations will be granted favorable public charity status under either of the "public support tests" only for a five year advance ruling period. When you see a 501(c)(3) letter that

references the end of a five year period, it is stating the date by which you will have to provide financial information to the IRS to finalize your public charity status. If you do not, the IRS and potential donors and other agencies from which you may seek assistance will treat you as a private foundation.

Another method of obtaining public charity status is as a supporting organization under 509(a)(3). That requires that MCC have the authority to exercise control over the sale and that the sale be exclusively organized and operated for the benefit of MCC.

B. State Taxes

1. Income Tax

If your state has corporate income tax, you will also want to obtain state tax exempt status. Some states grant the exemption automatically upon obtaining federal exemption. Other states require an application. The vast majority of the states follow the IRS definition of “charitable”, so obtaining state income tax exemption after completing the federal form should be straight forward. You may be required to submit a copy of the federal application with the state form. In some states you will be required to register as a charity. This may be done automatically when you file your articles of incorporation.

2. Sales Tax

Sales taxes come into play at two levels within the sale setting. The first is on goods that the sale uses itself. A number of states allow charities to purchase goods free of sales tax. You will need to complete the sales tax exemption form for your state. If approved you can expect to receive a sales tax number that you must provide to each vendor you purchase goods from. You can expect a slightly different definition of “charity” than in the income tax exemption application. Thus, you may qualify for income tax, but not sales tax exemption. The second level of sales tax is on the goods the sale sells. On that tax there is no exemption. You are required to collect that tax and remit it to the state in a timely manner.

III. Liabilities and Insurance

The sale is exposed to a number of risks from fire to personal injury. Most of

these risks are usually covered by insurance of various types. This chapter will discuss the different risks and the insurance available to protect the shop.

A. Casualty Coverage (Fire and Theft generally)

Casualty insurance protects against the loss of sale owned property due to a variety of causes. Not every loss of property is covered. Many policies do not cover loss due to earthquake or flood, although for an extra premium you can often get coverage.

In considering property coverage, there are four main issues to think about:

1. What property should you insure?
2. What perils will the property be insured against? In other words, under what conditions will you be entitled to receive payment from the insurance company?
3. What dollar amount of insurance should you carry? (Obviously, the higher the amount, the higher the premiums.)
4. Should you buy coverage for replacement cost or for the present value of the property?

1. Property Covered

Business personal property coverage: A typical policy covers the following items located on the business premises: furniture and fixtures, inventory, other personal property used in the business (such as technical books and cassette tapes), leased personal property, and personal property of others that's in your custody.

Typically, various items are excluded, such as accounting records and currency.

2. Perils Covered

Property insurance for small businesses is usually written in one of three forms: Basic Form, Broad Form and Special Form.

Whichever policy you decide on, read it carefully before you pay for it--not just when you've suffered a loss. You may discover that some coverage is narrower than it first seemed. Fortunately, most policies are written in plain English so you can understand what's covered and what isn't. If you need coverage not provided in the policy, talk to your agent about how to add it on.

Basic Form coverage includes losses caused by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles (but not loss or damage caused by vehicles you own or operate in the course of your business), riot, vandalism, sprinkler leaks, sinkholes and volcanoes. The policy defines these perils and also lists some exclusions, such as nuclear hazards, power failures or mud slides.

Broad Form coverage contains everything that's in the Basic Form and adds protection from a few more perils, including breakage of glass (that is part of a building or structure), falling objects, weight of snow or ice and water damage. Again, these terms are defined in the policy and, again, exclusions are listed.

Special Form policies are constructed differently than Basic and Broad Form policies and offer wider and slightly more expensive coverage. Instead of listing specific perils such as fire and lightning, Special Form policies simply say that your business property is covered against all risks of physical loss unless the policy specifically excludes or limits the loss. This type of policy offers the most protection. For example, it's a convenient way to insure against loss by theft, which isn't covered by Basic and Broad Form policies.

If you're concerned about property loss caused by perils not covered or, in the case of a Special Form policy, excluded from an insurance policy, you can often get the additional coverage through an endorsement (add-on page) to the policy by paying an additional premium. For example, such coverage is usually available for losses due to earthquakes and floods.

You may be able to combine property and liability insurance in one policy. You can purchase property insurance as a stand-alone and buy a separate stand-alone policy for liability coverage, or you can buy a policy that combines both coverages. It's often but not always cheaper to buy a combination policy.

3. Amount of Coverage

Carry enough insurance on the contents to replace it. If you're in doubt as to how

much it would cost you to replace, have an appraisal made so you know that your idea of value is realistic. Because the value of the property may increase, it's wise to get a new appraisal every few years. Your insurance agent should be able to help you do this.

Usually it's best to insure your property for 100% of its value. If doing this is prohibitively expensive, consider a policy with a higher deductible rather than underinsuring.

Underinsuring to get a reduced premium is a false economy for several reasons. Not only are you not covered if you suffer a total loss, but it may also reduce your ability to recover for a smaller loss. This is because most insurance policies carry a co-insurance clause which states that to recover the full policy amount, you have to carry insurance to cover at least 80% (this percentage may vary) of the property's replacement cost or actual cash value. If you don't, you become a co-insurer if there's a loss, even if it's less than the policy maximum; the policy will only pay off a percentage of its face value.

4. Replacement Cost vs. Current Value

Historically, in case of a loss, a basic fire insurance contract covered the actual current value of the property, not its full replacement value. Today, policies are routinely available with replacement cost coverage. This is the coverage you want.

B. Liability Insurance

The second major category of insurance coverage for a small business is liability insurance. Your business can be liable to people injured and for property damaged because you or your volunteers didn't use reasonable care. For example, if a customer falls on a slippery floor and then sues you, you may be liable if you negligently failed to provide safe premises. You hope never to have to use these insurance policies. One way to reduce that likelihood is to keep the premises free of hazards.

1. General Liability Policies

Liability policies are designed to protect you against lawsuit judgments up to the amount of the policy limit. **A big benefit of the policy is covering the cost of defending the lawsuit.** They provide coverage for a host of common perils, including customers and guests falling or otherwise being injured. Liability policies state a dollar limit per occurrence and an aggregate dollar limit for the policy year. A \$1 million policy is a reasonable *minimum* amount. If you desire more coverage, you may need to purchase an umbrella policy that comes into effect after the underlying policies are exhausted. Umbrella policies are usually inexpensive.

a) Product Safety

Your sale will receive many donated items. Some of these will be unsafe to use. The U.S. Consumer Product Safety Commission publishes a Thrift Store Safety Checklist to help identify problem merchandise. The most current list can be found at the following website: <<http://cpsc.gov/cpscpub/pubs/thrift/thrftck.html>> You can also find information about most consumer products that have been recalled at the Commission's home page: <<http://cpsc.gov>>.

b) Merchandise Warranties

It may seem out of place to find a discussion about warranties in the insurance chapter, because this is not a risk you would insure against. The risk is also fairly minimal, because generally the remedy will be to accept the merchandise back from the customer in exchange for their purchase price. What is important to understand is that you may be selling your used items with a warranty. You should check to determine if your state allows you to disclaim all warranties and sell your merchandise "as is."

c) Excluded claims.

Punitive damages - damages intended to punish your business for willful or malicious behavior are not covered by the typical general liability policy. And liability coverage won't protect your business if an employee intentionally assaults a customer. In addition, a general liability policy doesn't cover injuries caused by defective products or motor vehicles, or by an employer's liability for injuries received by workers on the job.

d) Toxic Waste Clean Up

Suppose the government orders your company to clean up a toxic waste problem on your property. This can occur even if the pollution happened years before you bought the property. Will your liability insurance policy cover the clean-up costs (called the "response costs")? Most liability policies now exclude coverage for toxic waste. If you own property that could become involved in a toxic waste problem, find out exactly how far your liability coverage extends in environmental situations. You may need to buy supplementary coverage (if available and affordable) to cover this risk.

2. Volunteer Coverage

It is doubtful that volunteers who get injured while working at the sale are covered under the general liability or the worker's compensation policies. Liability policies exclude coverage for injuries to persons working on behalf of the sale, including volunteers. Worker's compensation policies cover only paid employees which also excludes volunteers. Some liability policies offer volunteer coverage for an additional premium. Other policies specifically cover injuries to volunteers. You can have volunteers sign a waiver of liability to release the sale from claims for injuries arising from negligence. You may be comfortable taking none of these options, but the board should recognize the issue and decide how to address it.

3. Vehicle

If the sale owns a vehicle or if sale volunteers or staff use their own vehicles on sale business, you will want to make sure those activities are covered by one of your policies.

4. Director and Officer Coverage and Fidelity Coverage

The most difficult area to discuss is directors and officers insurance, or D & O, which is also intimately connected to fidelity coverage. D & O insurance covers the board of directors and officers for erroneous management decisions they make that cause injury. Organizations moving large amounts of money should have fidelity coverage to cover possible criminal acts, which are specifically excluded from D & O. Areas under fidelity include theft, robbery, burglary, forgery and general shenanigans involving computers. D & O, on the other hand, may protect

the board from failure to implement proper controls that would have prevented the losses from the exposures covered under fidelity. D&O insurance does not cover: fines and penalties imposed by law, libel and slander, personal profit, dishonesty, failure to procure or maintain insurance, bodily injury and property damage claims, pollution claims and suits by one board member against another.

The larger the organization and the wealthier the board members, the greater the need for D & O. However, D & O is formidably expensive for small organizations, and many plans provide limited coverage for what you are realistically risking. All insurance policies are not created equal, and some in the D & O area tend to be written to cover you for anything except what you might really be risking. There is no hard-and-fast rule on the cost-benefit problem, and you must assess your own exposure. If you are buying this insurance, have the proposal reviewed by an insurance professional other than the person selling it.

Finally, the organization may indemnify you for actions taken, as long as no actual malfeasance is involved. Some states require indemnification language in the Articles of Incorporation or Bylaws. Other states presume that the organization will indemnify its board members unless the bylaws forbid it. However, indemnification is worth something only if the organization has either assets or insurance. An income tax issue for the board members arises when a board member incurs legal defense costs and the organization reimburses the board member for those costs. In those cases the board member may have to include that reimbursement as income and may not be able to deduct the defense costs. A safer practice is to state in the organization bylaws that the corporation will directly pay the board member's legal defense costs. This avoids the income tax problem.

The section following on volunteer immunity mitigates some of the need to carry D & O insurance.

5. Volunteer Immunity for Directors

To make it easier for persons to volunteer as officers or directors for nonprofit organizations, a number of states and the federal government have enacted statutes to protect those volunteers from lawsuits. The federal statute is known as The federal Volunteer Protection Act, 42 U.S.C. §§ 14501-14505 (**VPA**), provides that an individual who harms another while a volunteer for a nonprofit organization is not liable for the harm inflicted. The organization can be sued, but not the volunteer personally. "Volunteers" include unpaid officers and directors;

"unpaid" means receiving no more than \$500 per year in expenses. The Act preempts state laws unless the state specifically adopts legislation designed to avoid application of the Act.

The VPA does not provide immunity for: conduct engaged in without a license when a license is required, or for willful, criminal or reckless misconduct, or for negligence in the operation of a motor vehicle, aircraft, vessel requiring insurance coverage or a license to operate, or for acts committed under the influence of drugs or alcohol.

California Corporate Code §5239, for example, states that a volunteer director of a nonprofit corporation is not personally liable for monetary damages, caused by their negligent (but not intentional) act in performing their duties, if the act was performed in good faith and the damages caused by the act are covered by a liability insurance policy.

Pennsylvania Consolidated Statutes 15 § 5713 states that if a bylaw adopted by a nonprofit corporation so provides, a director is not personally liable for monetary damages unless the director failed to perform his duties and the failure constitutes self-dealing, willful misconduct or recklessness. This liability exemption does not apply to criminal responsibility or for the payment of taxes.

IV. Criminal Law

Unless your sale is extraordinarily fortunate, a crime will occur that affects the sale. As with most planning, it is helpful to think about how the sale will respond to crime before it happens rather than in the heat of the moment. A crime is treated fundamentally differently than a civil matter. A crime is a wrong against the government, not you. Thus, the government brings the charges against the defendant and prosecutes. The sale is generally involved only as needed as a witness and has little control over the outcome of the case.

A. Theft

Theft is loosely defined as taking the property of another with the intent to deprive the owner of it. There are four types of theft that the sale may encounter: shoplifting, bad checks or credit cards, stealing by staff or volunteers, and assaults.

1. Shoplifting

Nearly every retail establishment is a victim of shoplifting. Shoplifting, or any shop theft, raises a number of issues and emotions. Not only are thieves taking what doesn't belong to them, they are taking from the "church" and limiting what MCC can do in the name of Christ. What is the Christian response to theft? How do you condemn the act, but not the actor? Some questions such as these should be addressed before considering the law. There are also numerous practices that you may implement to discourage shoplifting. One of the most effective ways to deter shoplifting and simultaneously increase sales is increased customer attention. Greet and offer to help those who enter your sale and you have created an atmosphere that is pleasant for your legitimate customers and unpleasant for someone intent on stealing.

Once you have made the decision to use the criminal justice system, these guidelines will help you work effectively within that system and not open the sale up to additional liability. It is also suggested that you contact your local police department. They are usually very willing to explain what should and should not be done in a shoplifting situation. The Chamber of Commerce may also be a good source of information.

If you suspect someone is shoplifting you need to determine whether you have

enough evidence, known as probable cause, to act on that suspicion. As you will see, probable cause is a pretty high standard.

To establish a solid base for *probable cause*, and prevent false arrest claims, there are six universally accepted steps that a merchant should follow before detaining someone suspected of shoplifting:

1. You must see the shoplifter approach your merchandise
2. You must see the shoplifter select your merchandise
3. You must see the shoplifter conceal your merchandise
4. You must maintain uninterrupted observation of the shoplifter
5. You must see the shoplifter fail to pay for the merchandise
6. You must approach the shoplifter outside of the shop

2. Bad Checks and Credit Card Fraud

Some states have a specific procedure for retailers to follow in the case of checks returned due to insufficient funds. This involves a certain manner of notifying the maker of the bad check and usually will specify the amount of damages that can be collected if the check is not made good. Bad checks are often treated as a contract claim (that can be taken to small claims court) unless the intent to defraud is clear (whereupon it becomes criminal). Again, your local police department or Chamber of Commerce are good sources for what to do to prevent bad checks or credit cards and also what can be done if you do receive a bad check.

3. Stealing by Volunteers or Staff

Theft by insiders is disheartening. The vast majority of the workers will be honest to a fault. If you are convinced that a worker is stealing, you may wish to terminate their relationship. While you can be very blunt when speaking with that person directly and in private, it is best to be much more circumspect when discussing, if at all, with others the reason for the termination. You do not want to risk a defamation lawsuit by stating or implying that the worker stole from the sale. Truth is a good defense to defamation, but you may bear the burden of proving that what you said was true.

B. Crimes Against People

Although an assault is a highly emotional situation, from the sale perspective, little legal discussion seems necessary. Depending on the jurisdiction, the victim may feel left out of the process. One significant exposure to the sale is a claim that the sale was negligent in providing a safe environment for its customers and workers.

