BUSINESS OPERATIONS

REG D-AGENCY-CORPORATE GOVERNANCE

REG D

17 CFR § 230.500- Rule 504

The Securities Act of 1933 states that every offer to sell securities needs to be registered with the Securities and Exchange Commission ("SEC"). However, there are certain exceptions. If an offer meets specific criteria. It's eligible for an exemption from such registration. The SEC's Reg D is one such exemption to registration.

WHAT IS A SECURITY?

The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof…..

REG D:

Reg D contains a set of rules set forth by the SEC that allows an entrepreneur or a company to sell securities without registering with the SEC. It's intended to help small companies and start-ups that otherwise couldn't bear the costs of a standard SEC registration gain access to the capital market. Thanks to this regulation, introduced in 1982, companies can raise capital selling equities and debt securities.

Debt Securities are a negotiable or tradeable liability or loan. Examples are bonds, notes and commercial paper.

• REG D (CONT.)

• The company or entrepreneur must file a **Form D** disclosure document with the SEC after the first securities are sold.

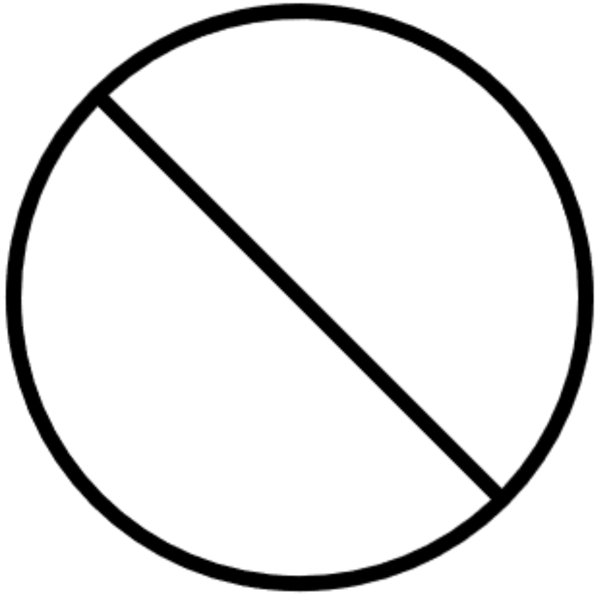
- REG D (CONT.)
- Corporations that use the Reg D option should understand:
  - What makes their company eligible to use REG D
  - How to disclose required information to investors with a private placement memorandum
- **Private Placement Memorandum** (PPM): A PPM serves as a single, comprehensive document outlining the material details about the offering.
  - How often forms must be filed
  - Potential consequences of using this Reg D

Exemptions Established By Regulation D

Under SEC Regulation D, there are two major rules that create exemptions for companies to make private offerings.

Rule 504

Rule 504 is an SEC regulation that allows companies to sell up to $10 million in securities in a 12-month period without registration. The company must file Form D within 15 days of the first sale. It must also comply with all regulations and laws in the states where the securities are being sold or offered.

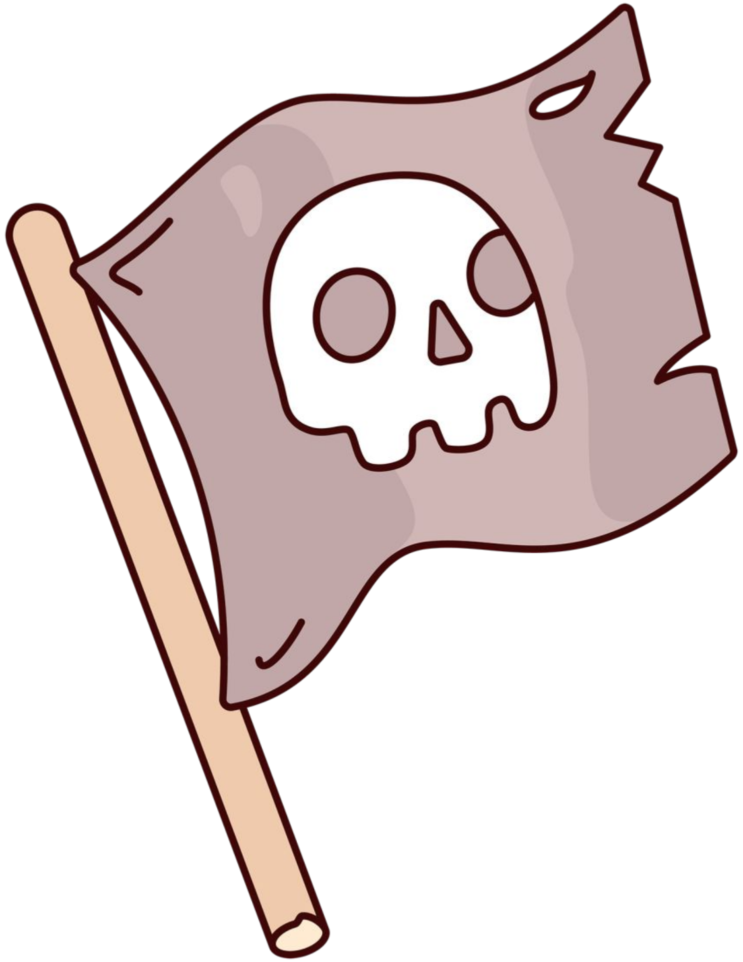


- Some companies are not eligible for a Rule 504 exemption. These include:
  - Investment companies
  - Exchange Act reporting companies
  - Companies with no specific business plan
  - Companies that plan to engage in a merger or acquisition with an unidentified company or companies
  - Companies that are liable for a "bad actor" disqualification.

Exemptions Established By Regulation D

Rule 5O6

- A company that qualifies under Rule 506 can raise an unlimited amount of capital in offerings. The seller must be available to answer questions from the buyers, and buyers receive restricted securities.
- As with the previous Rule 504/505, a company operating under Rule 506(b) may sell to an unlimited number of accredited investors and up to 35 non-accredited investors. Unlike under Rule 504/505, however, all non-accredited investors must be considered "sophisticated." This means they must have enough of a financial or business background to evaluate the potential risks and rewards of the investment.



- **Limitations of SEC Regulation D:**

- The benefits of Reg D are only available to the issuer of the securities, not to affiliates of the issuer or to any other individual who might later resell them. What more, the regulatory exemptions offered under Reg D only apply to the transactions, not to the securities themselves.

Are companies with no specific business plan exempt under Rule 504?

Yes

##.##%

No

##.##%

##/##

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Results slide

Are companies with no specific business plan exempt under Rule 504?

Yes

##.##%

No

##.##%

RESULTS SLIDE

"Sophisticated" under Rule 506 means

Intelligent ##.##%

The ability to evaluate Securities ##.##%

The ability to evaluate potential rights and rewards of investments. ##.##%

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"Sophisticated under Rule 506 means

Intelligent

##.##%

The ability to evaluate Securities

##.##%

The ability to evaluate potential rights and rewards of investments.

##.##%

RESULTS SLIDE

AGENCY

AGENCY LAW: Agency law is a **common law** doctrine which controls the relationship between principals and agents.

Principal: Appoints an agent to act or work on his/her behalf.

Agent: A person who agrees and is **AUTHORIZED t**o act on behalf of another.

AUTHORITY: 3 FORMS

Expressed Implied AND Apparent

AUTHORITY: FORMATION

Express Authority: Expressed usually by a written agreement. Agent then takes the steps **NECESSARY** to accomplish what is requested by the principal.

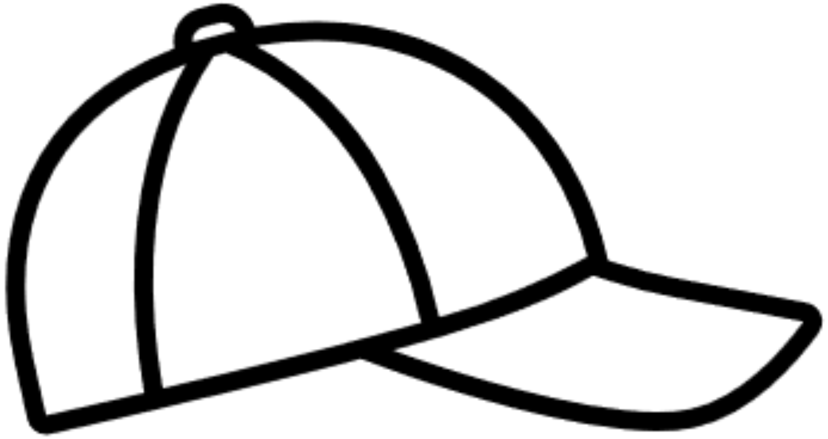
Implied Authority: Look at the principal's conduct. If principal's conduct indicates that the agent should take action, then authority is implied. However, an agent does not have the authority to do anything expressly prohibited by the principal.

Example of Implied Authority

John wants to sell his car. He gives Linda all the information concerning the car; year and model of the car; quirks of the car; color and value. He then says to her “if you can get at least $10,000 for it, take it. However, you can’t sell anything that is in the glove compartment of the car”.

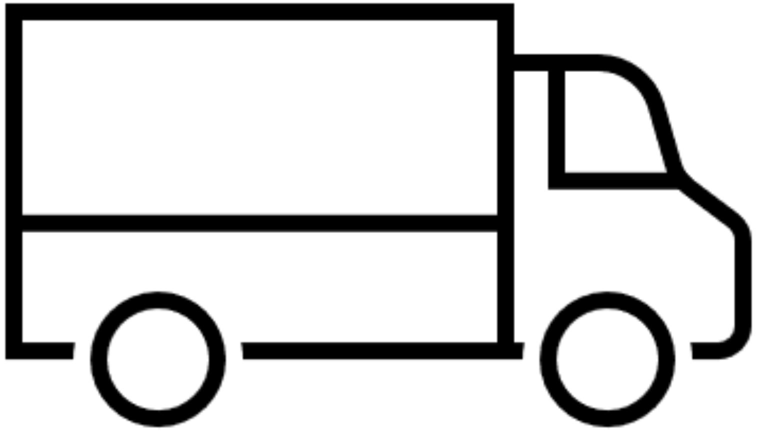
Linda finds a buyer for the car. However, there was a book in the glove compartment and Linda included that in the sale. John sues Linda for the value of the book. Will he win?

- AUTHORITY FORMATION (CONT.)
- **Apparent Authority**: When a third party reasonably infers that someone is authorized to act on behalf of another party, despite the fact that no existing (express or implied) authority exists. A principal can be bound by the acts of the agent, although no authority exists.
- For example, a nurse has apparent authority to accomplish anything a reasonable person would believe that job entails.



HYPO: Apparent Authority

Student nurse Laura is not trained to give vaccinations. She is training at a hospital, is dressed in a nurse's uniform, and nowhere on her person does it indicate that she is a student. During her rounds she encounters a patient that needs a vaccination. She says to herself “this looks pretty straight forward, and I studied this last week in class”. She gives the patient the vaccination and things go horribly wrong. The patient sues. The hospital’s defense is that Laura did not have the authority to give vaccinations. The patient will win because….

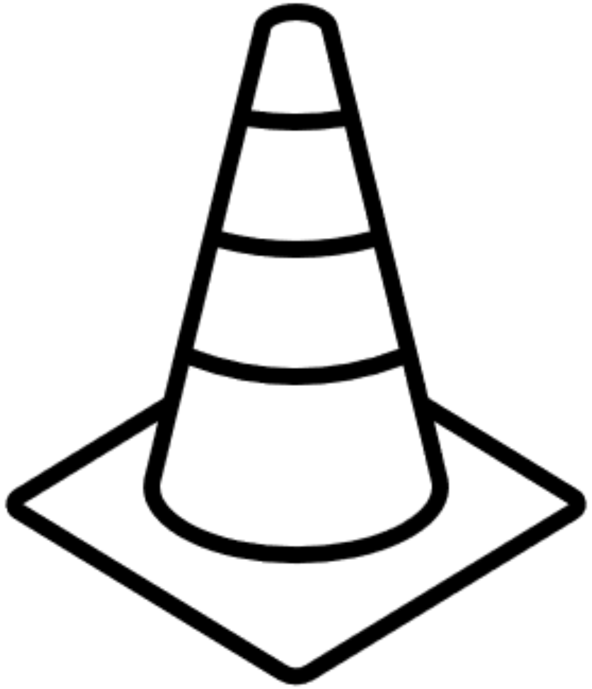


VICARIOUS LIABILITY

- **Vicarious Liability**: Assigns liability to a person who did not cause the harm.
- A principle is always liable for torts an agent committed while the agent completes their responsibilities.
- Lisa is a truck driver employed by Sweet Drink Cola Company. She delivers Sweet Drink products to various supermarkets in Los Angeles. She accidently hits another car, and the driver of that car is injured. Sweet Drink is vicariously liable for Lisa's accident because she is their agent.

HYPO:

Henry employs Linda to manage his properties. Linda has the authority to make all major decisions concerning Henry’s properties. Linda finishes some paperwork concerning Henry’s properties and heads home. She has a car accident and fatally injures a young man. If the young man’s family sues Linda, can Henry be held vicariously liable for the young man’s death?



- If a tort happens outside of official duties the liability of the principal depends on whether the agent’s acts were during a **frolic or detour**.

Analysis of Frolics and Detours Usually Through the Lens of Employment:

Scope of Employment: Employee actions that are required to perform work.

Frolic: Is a major departure from the scope of the principal and agent agreement. Principal is **no** longer liable for the acts of the agent.

Example: Lisa decides to skip work for two hours and go to a bar. She is a truck driver. She gets drunk and hits another car. That is a frolic because skipping work in order to go drink is totally outside the scope of her employment. Truck drivers are never required to drink while working.

Analysis Frolics and Detours Usually Through the Lens of Employment:

Detour: Minor departure from the scope of the principal and agent agreement. Principal in this case **is still** liable for the acts of the agent.

Lisa is required to deliver Sweet Drink products to a restaurant. At the restaurant, she decides to have a lunch. After the eating, she slips and accidently hits someone in the face and breaks their nose. Sweet Drink is responsible for Lisa’s actions because it was foreseeable that she may have something to eat while at the restaurant.

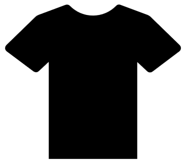
- **Circumstances Considered Outside the Scope of Employment:**
- **Independent Contractor**: Is a person who does work for a particular employer but is not an employee. Examples, are temporary workers and seasonal workers.
- Dave owns a trucking company and contracts with Sweet Drinks to deliver drinks to out of town locations. Dave is not an employee of Sweet Drinks, but a contractor who is contracted to provide a service. Sweet Drinks is not liable for his actions.

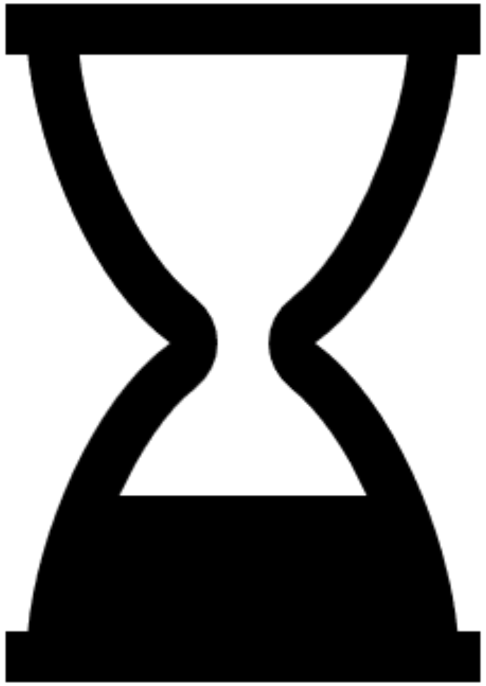
- **Circumstances Considered Outside the Scope of Employment: (Cont.)**

- **Illegal Acts**: Usually fall outside of the scope of employment. However, if you have a security guard that works for a particular entity and that security guard assaults another person, then vicarious liability **can** apply because his scope of work may require force.

HYPO:

Ian is a handyman and has his owns company named "IHANDYMAN". Henry own Big Properties and contracts with IHANDYMAN to fix some his tenant's refrigerators. Henry decides that the tenants would be more comfortable seeing his company's logo when sending Ian. He gives Ian a shirt with the Big Properties logo and tells him to wear it, so the tenants will feel more at ease when letting Ian in. While fixing one of the refrigerators Ian accidentally hits Miss Smith and breaks her nose. She sues Ian and Big Properties? Is Big Properties variously liable for IHANDYMAN's actions? Is it reasonable to argue that Ian had apparent authority, why?





- **TERMINIATING AN AGENCY RELATIONSHIP**:
- **Lapse of Time**: If parties set a time period for which the agency relationship is valid, then after this time has passed the relationship is no longer valid.
- Example: Valarie contracts with Sally to sell her house. The contract is valid for 90 days. Sally doesn't sell the house in 90 days; she is no longer considered Valarie's agent.

TERMINIATING AN AGENCY RELATIONSHIP: (Cont.)

Purpose Achieved: Some agents are hired to achieve a specific purpose. Once that purpose is achieved the agency relationship is automatically terminated.

Example: Valarie contracts Sally to sell her house. Sally sells the house. Once the sale of the house is complete, the agency relationship is automatically terminated.

- **TERMINIATING AN AGENCY RELATIONSHIP: (Cont.)**
- **Mutual Agreement**: Both parties decide to end the relationship. The reason behind the termination is irrelevant because both decide that the relationship is over. This should be expressed in an agreement.
- **Certain Events**: Agency relationship terminates when certain events occur. Events include, death, bankruptcy, pandemic, natural disasters, destruction of property, dissolution of corporation or partnership.

COPORATE GOVERNANCE:

CORPORATE GOVERNANCE : Are the rules, processes, and practices by which a corporation is directed and controlled.

The goal of Corporate Governance is to balance the interest of the company's stakeholders, which include shareholders, management, customers, suppliers, lenders, and government.

A s**takeholder** is: a person who has a vested interest in the company.

Vested: an established right or privilege.

- **The 4 P’s of corporate governance are People, Process, Purpose, and Performance.**
- **People**: Who is doing it and why?
- **Process**: How is it being done?
- **Purpose**: Why is it being done?
- **Performance**: What are the results?

The Basic Principles of Corporate Governance are:

- **Accountability**- Board must be able to explain what the company is doing and the results of its conduct. Must communicate important information to shareholders.

- **Transparency**-Timely, accurate and clear information on financial performance, conflicts of interests, and risks to shareholders and other stakeholders.

- **The Basic Principles of Corporate Governance are: (Cont.)**

- **Fairness-** Shareholders, employees, vendors, community members must be treated with the same consideration.

- **Responsibility**-Responsible for the oversight of corporate matters. Its purpose is to support the growth of the company.

- **Risk Management-** Must determine risks and how to control them.

- **Ways To Assess Corporate Governance:**
- Disclosure practices: How often and how well the corporation discloses what they are doing and the results of what they are doing.
- How they deal with conflict of interest?
- How frequently are they audited, and issues raised in audits have they been taken care of?
- Social obligations: How they handle issues like climate change.
- Compensation of their board and executives (Why would this be an issue?)

HYPO:

ABC Company, a large national corporation, is interested in having you and some of your partners invest in the company. You have your counsel do a basic search of the company and they find that the company has not been audited for two years; compensation for their executives is 50% more than profits, and that they are constantly being fined by the government for dumping illegal toxins in water. You and your partners decide not to invest in ABC because:

- You know some of the executives and they don’t deserve the pay that they are receiving.
- ABC doesn’t know how to assess risks.
- Their overall corporate governance is bad.

BOARDS:

- Some companies have either a board of directors or an advisory board or they may have both.
- **Board of Directors**: Are responsible for setting agendas, running
successful board meetings, establishing committees, and other duties. They normally represent the company at public events.
- **Board of Advisors**: Provides non-binding advice on how to run the company.

BOARDS:(Cont.)

The main difference between an advisory board and a board of directors lies in their respective legal statuses within companies. Advisory boards do not have any legal powers compared to boards of directors who have full authority over corporate matters such as appointing executives and shareholders voting rights on major decisions.

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Question slide

How many board members are currently employed in the U.S.?

15,000 ##.##%

32,000 ##.##%

19,360 ##.##%

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Results slide

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RESULTS SLIDE

CHARACTERSITICS OF AN ADVISORY BOARD:

Advisory Boards*:* An advisory board is a group of individuals who provide advice or counsel to an organization that is not involved in its day-to-day operations .

Advisory boards are created for special circumstances.

An advisory board is useful when:

- Day to day operations of a company is needed.
- When a company needs to deal with various social issues.
- When counsel or advice is needed for a particular event or special circumstance.

CHARACTERISTICS OF A BOARD OF DIRECTORS:

- **BOARD OF DIRCETORS** is central to corporate governance because: They are individuals trying to operate as a group. They are typically chosen for their experience managing or directing other large companies. Independents are considered helpful for governance because they dilute the concentration of power and help align shareholder interests with those of the insiders.
- **Independents** don’t share the ties that insiders of the company have.

- **CHARACTERISTICS OF A BOARD OF DIRECTORS**: **(CONT.)**

- They hire the company’s CEO or chief managing officer- Manage day to day activity of the company.
- Manage the overall direction and strategy of the business.
- The board has a strategic function in providing the vision, mission and goals of the organization. These are often determined in combination with the CEO or general manager of the business.

- **CHARACTERISTICS OF A BOARD OF DIRECTORS**: **(CONT.)**

- Establish a policy-based governance system or structure: In other words, the board develops policies to guide its own actions and the actions of the manager. The policies should be broad and not rigidly defined as to allow the board and manager leeway in achieving the goals of the business.
- Govern the organization and the relationship with the CEO: Manages its relationship with the CEO based on governance structure.
- Fiduciary duty to protect the organization's asset and member's investments.

What is the average salary for a Fortune 500 board member?

Approximately $321,000.00 ##.##%

Approximately $150,000.00 ##.##%

Approximately $98,000.00 ##.##%

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Results slide

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##.##%

RESULTS SLIDE

- GOVERNANCE MODELS

- **Manager Focus**: When you have a charismatic CEO who is dominant in the organization. The manager or CEO dominates the board. In this case the board becomes an advisory board and reacts to the views of the CEO or manager.
- **Proactive Board**: Speak as one for the board in addition to having a proactive CEO that speaks with one combined voice for the organization. Good model because both the CEO and board are on the same page.

•GOVERNANCE MODELS (CONT.)

•**Geographic Representation:** With this model, the board member feels that they have been elected to the board to represent individuals in a geographic location or special interest group. Usually found in large boards. Doesn’t work well because many times what is right for the corporation can be ignored in favor of the interests of the geographic groups.

In your opinion which one is the “best” model and why?

- Manager Focus: Dominant CEO
- Proactive Board: Both the Board and CEO are proactive.
- Geographic Representation: Represents individuals in particular geographic locations.

Can you think of another (combination of the above and your experience) model that represents the business structure of Russia?

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Question slide

What percentage of board members in the U.S. are female?

44%

##.##%

54%

##.##%

29%

##.##%

##/##

Join at: **vevox.app** ID: **XXX-XXX-XXX**

Results slide

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44% ##.##%

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29% ##.##%

RESULTS SLIDE

- THE CORPORATE VEIL
- **Corporate Veil**: protects the shareholders/board from being liable for the company's actions. Clear distinction between the corporate person and the owners of the corporation.
- When the corporate veil is pierced the corporation’s shareholders or directors are held responsible for corporate debt or actions.

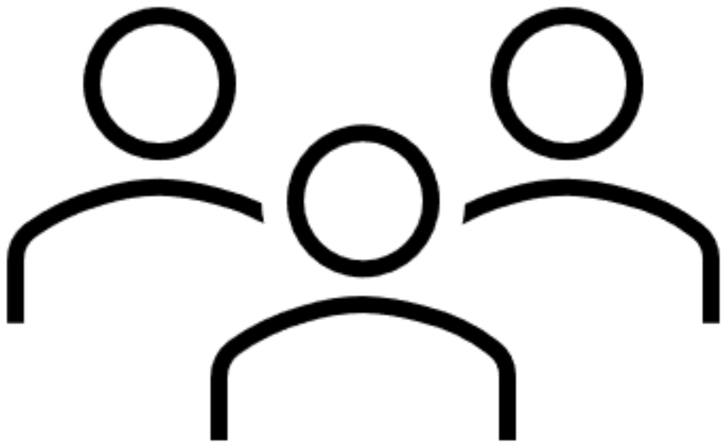
- Three instances when a court pierces the corporate veil:
  - There is no real separation between the company and its owners…(comingling of assets, conflict of interest)
  - The company's actions were wrongful or fraudulent.
  - The company's creditors suffered an unjust cost or loss.

- "Can't use the corporate veil as a sword and shield": Can't use it to do wrongful or fraudulent things and then claim it as your protection. For example: Yes, we did wrong, but we are protected… Sorry ☹️.

- **Boards Have Certain Fiduciary Duties:**
- **FIDUCIARY DUTIES**: Legal responsibility to act in the best interest of another party.
  - **Duty of Care**.- Legal obligation to protect the safety and wellbeing of others.

  - **Duty of Loyalty**-requires the directors to place the interests of the company and the shareholders before any of their personal interests.

Fiduciary Duties (CONT)



- **Duty of Confidentiality-** Must not share confidential information pertaining to the business.

- **Duty to Disclose**- requires the directors to disclose to the shareholders etc. “all of the facts and circumstances” relevant to the directors' decision.

John sits on the board of Perfume Company. He voted along with the board, that Perfume Company should buy Smell Good Company. John owns stock in Smell Good and know that the value of his stock will substantially increase if it is bought by Perfume Company. He did not tell the other board members that he owns stock in Smell Good.

John breached his fiduciary duty of:

Care

Loyalty

Confidentiality

Disclosure

THE END

THANK YOU!

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