



Sigma Phi Epsilon Fraternity  
310 South Boulevard  
Richmond, Virginia 23220  
804 353-1901 • www.SigEp.org

## Asset Protection Agreement Frequently Asked Questions

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### ***What is the purpose of the Asset Protection Agreement?***

The Asset Protection Agreement exists to ensure that all of the property and assets belonging to a Sigma Phi Epsilon chapter and its Alumni and Volunteer Corporation (AVC) are:

- 1) Held in trust for that specific chapter of Sigma Phi Epsilon
- 2) Preserved for the chapter's future use
- 3) Managed and controlled by the local AVC when possible

### ***What does the Asset Protection Agreement do?***

The Asset Protection Agreement creates a legally binding obligation on the AVC to use all assets in the best interests of the particular SigEp chapter it serves. In the event the chapter's charter is surrendered or revoked, the AVC retains full power to manage and control all of its assets provided they are held in trust for the benefit of SigEp at that campus. The agreement permits, but, **does not require**, AVCs to transfer property to the National Fraternity for safeguarding. If an AVC elects to delegate asset management to the National Fraternity, then the National Fraternity assumes the duty to hold the property "in trust" for that chapter.

### ***Why should an AVC sign an Asset Protection Agreement?***

Signing the agreement helps AVC Board members to fulfill the "duty of loyalty" they owe to the Alumni Volunteer Corporation they serve as directors. It also ensures that corporate assets are preserved for the use of that chapter in the future. Too many times, chapters have lost valuable real estate or monetary assets when AVC members have made short-term decisions that deprive its chapter of vital assets down the road. The Asset Protection Agreement exists to ensure that chapter assets - accumulated in many cases over decades through the hard work and generosity of countless undergraduates and alumni - are safeguarded for the chapter.

### ***Where is the authority for the Asset Protection Agreement?***

The legislation creating the Asset Protection Agreement was first passed by vote of the Grand Chapter, composed of one undergraduate from each Sigma Phi Epsilon chapter and all District Governors, at Conclave in 2003. In 2007, the legislation was revised to give more control of assets to the local AVC. The legislation and its changes are outlined in *2007 Conclave Resolution 15* and reflected in *Grand Chapter Bylaws Article V. 23-28*.

### ***Does the Asset Protection Agreement require an AVC to transfer assets to the National Fraternity?***

No, there is no requirement to transfer assets when a chapter's charter is surrendered or revoked. The AVC retains sole power to decide who manages its assets, including any and all property as long as it:

- 1) Maintains a valid corporation in good standing according to the laws of its state
- 2) Holds all assets in trust for and acts in the best interests of that particular SigEp chapter

Should the AVC elect not to assume these obligations, the agreement permits the National Fraternity to assume custody of the assets. It requires that the National Fraternity hold these assets in trust for that chapter.

### ***If an AVC does not own property, must it execute the Asset Protection Agreement?***

Yes, the Asset Protection Agreement is not limited to real estate assets. Bank accounts, CDs, and securities are examples of other assets covered by this agreement. There may also be a day when the AVC acquires property.

### ***Does an AVC need to sign an Asset Protection Agreement if it leases property?***

Yes, a leasehold interest can, in some situations, carry asset value for an AVC.

***Are there assets the Asset Protection Agreement does not cover?***

The Asset Protection Agreement does not cover undergraduate chapter assets such as the Chapter Investment Fund. Additionally, funds held for scholarship by a 501(c)3 non-profit charitable organization such as the Sigma Phi Epsilon Educational Foundation, a University scholarship fund, or a local chapter foundation are not covered by the Asset Protection Agreement.

***Will the Fraternity make a good faith effort to return to the campus if assets are being held in trust by the AVC or the National Fraternity?***

While the final decision to return to campus rests with the National Board of Directors, dormant chapters with active alumni and trust assets are always given priority in consideration for expansion.

***What restrictions does this agreement place on the AVC?***

The Asset Protection Agreement places no new restrictions on the AVC. It formalizes and codifies the responsibilities of an AVC as currently contained in the Grand Chapter Bylaws, specifically:

1. The AVC must act as a fiduciary for the undergraduate chapter
2. All assets owned by the AVC must be used for benefit of undergraduate chapter
3. The AVC must be incorporated and not suspended, dissolved, or deactivated.

***What is the immediate impact of the Asset Protection Agreement on an AVC?***

AVCs should continue to act in the best interests of the undergraduate chapter. This includes maintaining a corporation in good standing and not entering into other agreements that run counter to both the Asset Protection Agreement and Grand Chapter Bylaws.

***What are the duties of the National Fraternity under the Asset Protection Agreement?***

The duties of the National Fraternity are outlined in Article V Section 23-28 of the Grand Chapter bylaws. To summarize, it depends on the avenue selected by the AVC with regards to its assets:

1. If the National Fraternity holds assets in trust, it shall:
  - a. Hold assets in the Chapter Continuation Fund for twenty-one (21) years
  - b. Provide annual accounting of the income and expenses of the Trust Assets to the AVC
2. If the AVC chooses to hold assets in trust, it shall:
  - a. Monitor the annual accounting of the Trust Assets as provided by the AVC.
  - b. Ensure assets are held in trust for the reactivation and housing of the undergraduate chapter

***How does an AVC properly execute the Asset Protection Agreement?***

1. AVC Directors vote to accept the agreement and record the vote in AVC meeting minutes
2. AVC amends its bylaws to include Grand Chapter Bylaw trust language.
3. AVC President executes the Asset Protection Agreement by signing and notarizing the document.
4. AVC returns the agreement via mail or email to:

Sigma Phi Epsilon Fraternity  
Attn: Kathy Johnston  
310 South Boulevard  
Richmond, VA 23220  
kathy.johnston@sigep.net
5. Executive Director Brian Warren executes on behalf of the National Fraternity
6. Copies of the executed document are returned to the AVC and filed at SigEp Headquarters
7. Optional: AVC records the agreement in local housing records if property is involved

***Will signing this Asset Protection Agreement make it difficult for AVCs to obtain a loan?***

No, on the contrary, it should be easier for an AVC to obtain a loan. SigEp National Housing requires an executed Asset Protection Agreement before doing business with any AVC. The National Fraternity will subordinate its interests from the Asset Protection Agreement to those of the lender.

***Will pre-existing agreements such as mortgages or specialized arrangements with host institutions be impacted if an AVC signs a Asset Protection Agreement?***

No, the National Fraternity, through the Asset Protection Agreement will take a subordinate interest to those agreements as long as AVC assets are protected for the long term use of the undergraduate chapter.

***Does the signing of the Asset Protection Agreement by an AVC expose that board and its members to liability?***

No, as long as the AVC board and its members continue to act in the best interests of the undergraduate chapter. Execution of the Asset Protection Agreement insulates AVC Board members by ensuring that chapter property and assets are not endangered or squandered to the detriment of the undergraduate chapter both now and in the future. It puts into black-and-white what has previously been merely implied or assumed—that current and future Board members have a fiduciary duty to hold all property and assets “in trust” for their particular chapter.

**Have Additional Questions? Need More Information?**

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- Contact SigEp Director of Risk Management Kathy Johnston ([kathy.johnston@sigep.net](mailto:kathy.johnston@sigep.net); 804.612.1402)
- Consult local legal counsel with experience in real estate and/or corporate law.

**Additional Documentation for Review**

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- 2007 Grand Chapter Conclave Resolution 15 “Individual Chapter Asset Ownership”
- Grand Chapter Bylaws Article V. Section 23 – 28
- Asset Protection Agreement