



# **GOLF COURSE SUPERINTENDENTS ASSOCIATION OF AMERICA**

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**Chapter Leaders/Executives Symposium**

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# LEGAL OBLIGATIONS

- **State Law Applicable to Nonprofit Corporations**
  - **Law of the state of incorporation**
  - **Most states have laws exclusively applicable to not-for-profit corporations**

# LEGAL OBLIGATIONS - DIRECTORS

## □ **Fiduciary Duties to the Association**

- **Duty of Care - level of competence**
  - Reasonable inquiry required
  - Attendance at Board meetings part of this duty
  - No Board votes by mail or email unless unanimous
- **Duty of Loyalty - faithfulness to the association**
  - Corporate opportunities may not be taken advantage of
  - Conflicts of interest – disclosure required

# LEGAL OBLIGATIONS - DIRECTORS

- **Fiduciary Duties to the Association**
  - **Duty of obedience**
  - **Duty to Respect Confidential Information**
    - **Board of Directors discussions vs. action**

# **AVOIDING PERSONAL LIABILITY**

- **Act in good faith after reasonable inquiry**
  - **Mistakes are not punished if not reckless**
- **Volunteer Protection Act of 1997**
  - **Acting within scope of responsibilities**
  - **Not willful or reckless**
  - **Believed in association's best interest**
- **State statutes apply as well**
- **Insurance should be in place to cover directors**

# ASSOCIATION STRUCTURE AND GOVERNANCE

## □ Advantages of Incorporation

- Reduced personal liability
- Perpetual existence
- Need governing documents for tax exemption

## □ Effect of revocation of corporate charter

- Treated as an unincorporated association
- Officers/directors personally responsible

# ASSOCIATION STRUCTURE AND GOVERNANCE

## □ **Articles of Incorporation**

- **Filed with the state**
- **Amendment is rare and requires member vote**

## □ **Bylaws**

- **Procedures for association governance**
- **Applicable only if consistent with state law**

# ASSOCIATION STRUCTURE AND GOVERNANCE

- **Board of Directors Policy Statements**
  - **Subordinate to Bylaws**
  - **Superior to Robert's Rules**
  - **Easily changed**
- **Parliamentary Procedure**
  - **Robert's Rules of Order**
  - **Apply only when issue not already addressed**



# ANTITRUST LAW ISSUES

## □ Basics of Antitrust Law

- **Agreements tending to limit competition**
- **Sherman Act - Section 1**
  - **Contracts, combinations and conspiracies which unreasonably restrain trade**
  - **Civil and criminal penalties**
  - **Private party treble damage actions**
  - **Associations under antitrust scrutiny**
- **Federal Trade Commission Act - Section 5**
  - **Unfair or deceptive acts/practices/methods**
  - **Consent order jurisdiction - \$11,000/day/violation**

# ANTITRUST LAW ISSUES

- **Compliance Policy and Program**
  - **Defense to a criminal charge**
  - **Must be more than on paper**
  - **Requires involvement of legal counsel/staff/officers**

# ANTITRUST LAW ISSUES

- **Conduct having the “purpose *or effect*” of restricting competition will trigger antitrust liability**
  - **Relevant market can be for services, not just products**

# CHAPTER PITFALLS

- **Administrative dissolution**
  - **Submit required state filings in a timely manner**
  - **Beware of Registered Agent issues**
- **Employment Identification Number issues**
- **Tax filing issues**
- **Bylaws issues**
  - **Compliance with state law**
  - **Compliance with parent**
- **Chapter affiliation agreement issues**



# **DIRECTOR DO'S**

- Do attend Board meetings**
- Do ask questions at Board meetings**
- Do decide based on the association's best interest**
- Do disclose actual and apparent conflicts**
- Do keep Board discussions confidential**
- Do become familiar with the bylaws**
- Do treat directors and staff with courtesy**



# **DIRECTOR DON'T'S**

- ❑ Don't be afraid to ask a "stupid" question**
- ❑ Don't record association-related telephone conversations without consent**
- ❑ Don't enter to any agreements that may restrict competition**
- ❑ Don't speak on behalf of the association unless specifically authorized to do so**



# QUESTIONS

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