

THE TOP EIGHT THINGS ASSOCIATIONS SHOULD DO FROM A LAWYER'S STANDPOINT

by
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Association industry lawyers get a lot of repeat business. That is, we see similar legal problems and challenges cropping up all the time. Of course, we love repeat business, but we also want to make things as easy as possible on our clients. With these factors in mind, the following is a list of the top eight things associations should do from a lawyer's standpoint, listed in order of importance:

1. Establish a relationship with legal counsel in advance of need. Just as it is best to have a physician or dentist before you have an emergency, there are numerous advantages to having established a relationship with an attorney before you need it. If you don't have an attorney before you need one, you will have less time to select one, you might be racing the clock against critical legal deadlines, and there will be little if any opportunity to talk about and negotiate fees.

It will probably cost the association nothing to establish the relationship, and the attorney will be an asset even if the legal issue is outside of the attorney's area of expertise; the attorney can make a referral to a qualified specialist.

2. Conduct annual director training and legal orientation. Every association board should receive at least some legal training once a year. This training reminds even experienced directors of their fiduciary responsibilities, as well as the complications inherent in operating associations, such as antitrust risks, and tax and regulatory compliance issues. The training is essential to new directors who may have great expertise in the trade or profession, but who know very little about nonprofit associations.

Perhaps the person who benefits most from annual legal training is the association executive. A well-trained board is clearer on its role compared to that of the executive. Additionally, counsel – as an outside expert – is in a much better position to tell the board things that it needs to know, but might not want to hear.

3. Unless you are a lawyer, refuse to practice law. Association executives and staff should not practice law unless they are qualified to do so. The fact that there is no money in the budget for legal issues might sound compelling, but guess work can be far more expensive than preventive legal advice. The fact that money is not available in a budget is the board's problem, and smart association executive's will avoid the trap of making it their own personal problem (and liability).

4. Have legal counsel with depth in association law. Association law is an area of legal specialty. The industry lawyer known for serving the local automotive service shops is probably very experienced in that subject, but may know little or nothing about association law, tax exemptions, antitrust law, and etc. If so, the association is likely to receive slow service, expensive bills (the association ends up paying for hours of lawyer time to come up to speed), conflicts of interest (since the lawyer probably works for individual members of the association, and there could be conflict between individual members and the association itself) or borderline competent advice. Make sure your association lawyer has plenty of depth in nonprofit organization law.

5. Get legal advice when you should. An association executive should be trained in the fine art of knowing when it is time to call a lawyer, or at least when it is time to ask a lawyer if it is time to call a lawyer. By the way, just for the record, the time to call the lawyer is when you are negotiating the hotel or employment contract, not after the situation has deteriorated into a mess.

6. Abide in the advice of counsel. Generally speaking, it is wise to abide in the advice of counsel. Corporate directors are even protected from liability when they do so. Conversely, corporate directors who have ignored the advice of counsel could be legally vulnerable, especially if problems arise later.

7. Follow your own rules. Unless legal counsel advises otherwise, stick to your bylaws, policies and rules. Failing to do so leaves the plain appearance of impropriety and unfairness.

8. Conduct a periodic legal audit. There are circumstances in which it makes a lot of sense to do a legal audit of the organization. A legal audit is a methodical review of legal status, practices and contracts of the organization. It would be wise, for example, to conduct a legal audit when a new executive is taking the place of a recently terminated executive, particularly if there are questions about past legal practices or the legal status of the organization.

Each of these eight recommendations can play a significant role in keep an association out of legal trouble, and in the best possible legal position should problems arise. These recommendations will also protect the association executive, and make the job easier.

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