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ROOTS**

2017

Financial Responsibility and Risk Awareness

Bob Harris, CAE

www.nonprofitcenter.com

an **AIA** leadership event



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Robert C. Harris, CAE

THE NONPROFIT CENTER: PROMOTING THE ASSOCIATION MANAGEMENT PROFESSION

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Welcome

Bob has 25+ years experience with **associations, chambers and other nonprofits**. His seminars are interactive, focused on core-knowledge and member needs. He utilizes case studies, trends and headlines board orientation, training, strategic planning, staff training and consulting. He is the author of Association Management 101 Online®; creator of the Association Self-Auditing Process® and co-author of "Building an Association Management Company."

He is known around the world for sharing best practices and promoting sustainability of associations and chambers.

"Your Association Efficiency Symposium was the most practical, idea generating, 'light a fire' meeting that I've been to in a long while."

"Based on your leadership program I'm excited to start my year as president."

"Your session is the most practical I have ever attended."

"Congratulations on being honored as an ASAE All-Star Award winner for professional development! Our association couldn't agree more with the selection."

"You've made major differences in our association, and the ripple effect just keeps multiplying the benefits! It's nice to see that your commitment is recognized by your peers as well as your clients!"



"My philosophy is to promote the association management profession and share the tools of success."

Policies

Tool Kit Policy Management

Policies serve many purposes in an association. They represent the wisdom of the board of directors in interpreting the governing documents and identifying methods to advance and protect the organization.

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Tool kit developed by Bob Harris, CAE. For samples and tips on association governance and management, visit www.nonprofitcenter.com.

Risk Awareness-Avoidance

Financial Risks

- Form 990 Filing/Review
- Financial Report Review
- Audits
- Policies
- Safeguards
- Credit Card Safeguards – PCI
- Record Retention
- Dues Notices

Legal Risks

- Antitrust
- Apparent Authority – Speaking
- Copyright, IP
- Electronic Meetings
- Endorsements
- Harassment
- Dues Notices
- Protections for the Board
- Record Retention
- Public Records
- Social Media
- Software Licenses
- Voting on Members

Section B. Policies *(This Section B requests information about policies not required by the Internal Revenue Code.)*

	Yes	No
10a Did the organization have local chapters, branches, or affiliates?	10a Yes	
b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	10b Yes	
11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	11a	No
b Describe in Schedule O the process, if any, used by the organization to review this Form 990		
12a Did the organization have a written conflict of interest policy? <i>If "No," go to line 13</i>	12a Yes	
b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b	No
c Did the organization regularly and consistently monitor and enforce compliance with the policy? <i>If "Yes," describe in Schedule O how this was done</i>	12c	No
13 Did the organization have a written whistleblower policy?	13	No
14 Did the organization have a written document retention and destruction policy?	14 Yes	
15 Did the process for determining compensation of the following persons include a review and approval by		

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to lines 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI

Section A. Governing Body and Management

		Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year		
	If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O		
1b	Enter the number of voting members included in line 1a, above, who are independent		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	Yes	
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?		No
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		No
5	Did the organization become aware during the year of a significant diversion of the organization's assets?		No
6	Did the organization have members or stockholders?	Yes	
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	Yes	
7b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		No
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following		
8a	The governing body?	Yes	
8b	Each committee with authority to act on behalf of the governing body?		No



IRS Policies

- Public Records – Form 990
- Financial Audit
- Conflicts of Interest
- Record Retention/Document Destruction
- Whistle Blower
- Compensation
- Minutes – Board and Committee

PCI Policy Statement

(12.1) All card processing activities and related technologies must comply with the Payment Card Industry Data Security Standard (PCI-DSS) in its entirety. Card processing activities must be conducted as described herein and in accordance with the standards and procedures listed in the Related Documents section of this Policy. No activity may be conducted nor any technology employed that might obstruct compliance with any portion of the PCI-DSS.

(12.1.1) This policy shall be reviewed at least annually and updated as needed to reflect changes to business objectives or the risk environment

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- Voting on Members

Photo Release

Audio/Video Release Statement

SCCAOR is permitted to reproduce photographs/video footage featuring my image in SCCAOR's promotional publications.

This agreement applies to both printed, film/video and electronic media including the World Wide Web. The image(s) may be retained by, and will only be accessed by, authorized persons of SCCAOR or its agents and may be used in the future in SCCAOR publications and marketing materials and the image(s) will only be retained for the stated purpose.

FTC to Associations: Lack of Antitrust Compliance Can Facilitate Coordination and Violate the FTC Act

by Richard Liebeskind, Jerald A. Jacobs, Jefferson C. Glassie, Alvin Dunn and Cynthia Robertson

*In a recent enforcement action, the Federal Trade Commission has made clear that it expects trade associations to adopt antitrust compliance measures to prevent discussions among competitors that would facilitate coordination on prices or competition. **Failure to adopt customary antitrust compliance measures, coupled with discussions of pricing policies, might constitute an “unfair method of competition” in violation of the FTC Act.***



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Antitrust compliance

AIA and its members are committed to the highest ethical standards and full compliance with all laws and regulations, including federal and state antitrust laws.

By complying with both the letter and spirit of antitrust laws, we protect the integrity of our professions and the reputation of the AIA.

Responsibility for antitrust compliance

The AIA's General Counsel provides guidance on antitrust matters, but members are responsible for ensuring that their actions, and the actions of others under their direction, comply with all antitrust laws.

Antitrust violations may result in substantial fines for corporations and in fines or imprisonment for individuals.

Antitrust guidelines

In all AIA operations and activities, members must avoid discussions or conduct that might violate antitrust laws or even raise an appearance of impropriety.

Here are some guidelines to maintaining compliance with antitrust laws.

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by Richard Liebeskind, Jerald A. Jacobs, Jefferson C. Glassie, Alvin Dunn and Cynthia Robertson

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Defenses

- Stick to the agenda – avoid side conversations.
- Have legal counsel brief the board about antitrust and review all minutes.
- Record in the minutes that volunteers were briefed and received the antitrust avoidance statement – annually.
- Keep file copies to show a paper trail that you made an effort to halt an antitrust violation.
- Include antitrust avoidance in the leadership's orientation manual.
- Buy adequate insurance coverage.
- Implement risk management strategies.

Meeting Sign-In Sheet

As the board president I should remind you that state and federal laws prohibit the exchange of information among competitors regarding matters pertaining to price, contracts to deal, market division, tying relationships and other topics which might infringe upon antitrust regulations, and that no such exchange of discussion will be tolerated during this meeting.

These guidelines apply not only to the formal meeting sessions, but also to any social gatherings, luncheons, dinners, or other events.

Sample Sign-In

ANTITRUST AVOIDANCE

Antitrust: Laws designed to preserve the free enterprise of the open marketplace by making illegal certain private conspiracies and combinations formed to minimize competition. Most violations of antitrust laws involve either price-fixing, boycotting, setting unrealistic standards, ethics or certification qualifications, member expulsion, restraint of trade, allocation of markets or agreements on contract terms.

Association Activities and Antitrust

- Pricing of Services
- Surveying
- Membership Exclusion-Expulsion
- Product Standards
- Codes of Ethics and Standard Setting
- Articles, Publications, Websites
- Littered Discussions
- Meetings, Speakers
- Certification
- Trade Shows and Advertising Exclusion
- Referrals and Recommendations
- Discount Programs

Compliance Illustration

(Sample Policy Statement – Review with Legal Counsel!)

The XYZ Association is a not-for-profit organization. The association is not organized and may not play any role in the competitive decision-making of its members, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of diverse opinions without in any way attempting to encourage or sanction any particular business practice.

The association provides a forum for exchange of ideas in a variety of settings including its annual meeting, educational programs, committee meetings, and board meetings. The board of directors recognizes the possibility that the association and its activities could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this statement supports the policy of competition served by the antitrust laws and to communicate the association's uncompromising policy to comply strictly in all respects with these laws.

While recognizing the importance of the principle of competition served by the antitrust laws, the association also recognizes the severity of the potential penalties that might be imposed on not only the association but its members as well in the event that certain conduct is found to violate the antitrust laws. Should the association or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment for up to 5 years as well as fines up to \$350,000 for individuals and up to \$10,000,000 for the association plus attorney fees. In addition, damage claims awarded to private parties in a civil suit are tripled for antitrust violations. Given the severity of such penalties, the board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.

Visit www.fto.gov

for a copy of the publication: *A Plain English Guide to Antitrust Laws.*

Apparent Authority

An association can be held responsible for anticompetitive conduct of volunteers (i.e. committees) and staff who have no authority but take actions (statements, letter writing, interviews) that appear to represent the organization and violate antitrust laws.

ANTITRUST AVOIDANCE

Posting the Antitrust Statement

If the organization is inclined to discuss prices, terms, supplies, etc. then communicate an antitrust avoidance message in various ways:

- On the backside of table tent-water cards
- In a folder on the meeting agenda
- On the top or bottom of the meeting sign-in sheet
- As an insert in board packets
- In the leadership manual
- Verbal notice recorded in the minutes
- On a sign posted in the meeting room

Severe Penalties

The government takes violations of the antitrust laws very seriously. Depending on the price, for instance, is a felony with a potential fine of \$10 million for organizations and \$350,000 for individuals, plus prison time and damages.

The Antitrust Statutes

- The Sherman Act – 1890
- The Federal Trade Commission Act – 1914
- The Clayton Act – 1914
- Individual State Laws

Antitrust Avoidance
 Addressed Copies: Order #22
 Available Now - **FREE/PPCR***
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 Association Self-Auditing Process
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ANTITRUST AVOIDANCE

Associations represent the interests of professionals and industry members. They facilitate meetings and promote communication among competitors. **There is potential for actions that may be "anticompetitive."** Association professionals and leaders should be observant of antitrust risk and association activities. Be sure to consult with legal counsel.

It doesn't take much for a discussion, newsletter article, or a statement recorded in meeting minutes to grab the attention of government authorities.

Opportunity for Violations

Members may not realize they are joining in antitrust violations as they participate in activities. Consider these instances:

- How much do you add for supplies. I'm trying to recoup all my costs?
- Let's decide to close at 5 pm on Saturdays. We can't lose any business if we all shut down.
- What was negotiating to take the client?
- I don't see any agencies, let's make it private.
- I've tried my customers buy insurance elsewhere.
- By going to I know for the...
- Didn't see that we were...
- We can do others are c...
- We pay a fee, let's be re smaller.

Precautions

Organizations can minimize their risk of violating antitrust laws with these steps:

- An antitrust policy statement should be included in the association's documents, read at board meetings and discussed at an annual leadership convention.
- At least annually the leadership should review a copy of the antitrust policy statement, have it signed and dated. The association and/or the individuals should keep a copy.
- Leadership orientation should include a review of topics that should not be discussed at association meetings. These topics may include: membership expansion

ANTITRUST COMPLIANCE

Antitrust Compliance Guide for Association and Board Leadership



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Meeting Minutes

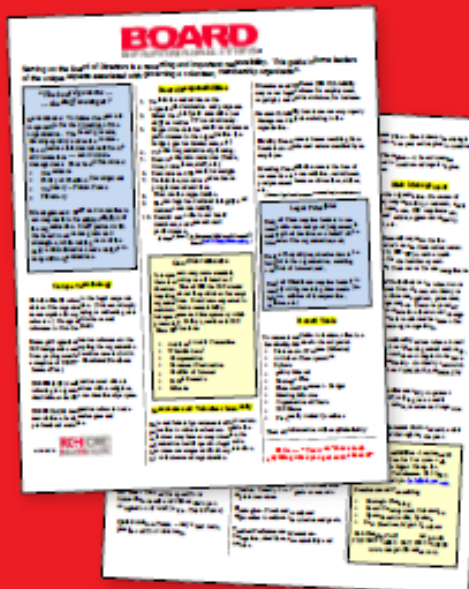
1. Audio Recordings
2. No Side Bar Conversations
3. Protect Organization w/ Self
Serving Statements
4. Distribution Policy
5. **Committee Minutes, too.**

Counsel

Be sure to rely on the counsel of legal, accounting, insurance and personnel professionals.

Revised 2013

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- Volunteer Immunity and Insurance
- Board Legal Duties
- Board Tools and Common Sense
- Meeting Rules of Order
- Committees and Trends
- Strategic Planning
- Risk and Liabilities
- IRS Policies

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