



**The Top Eight Legal and
Liability Issues
That Impact Regional
Association Boards the Most**

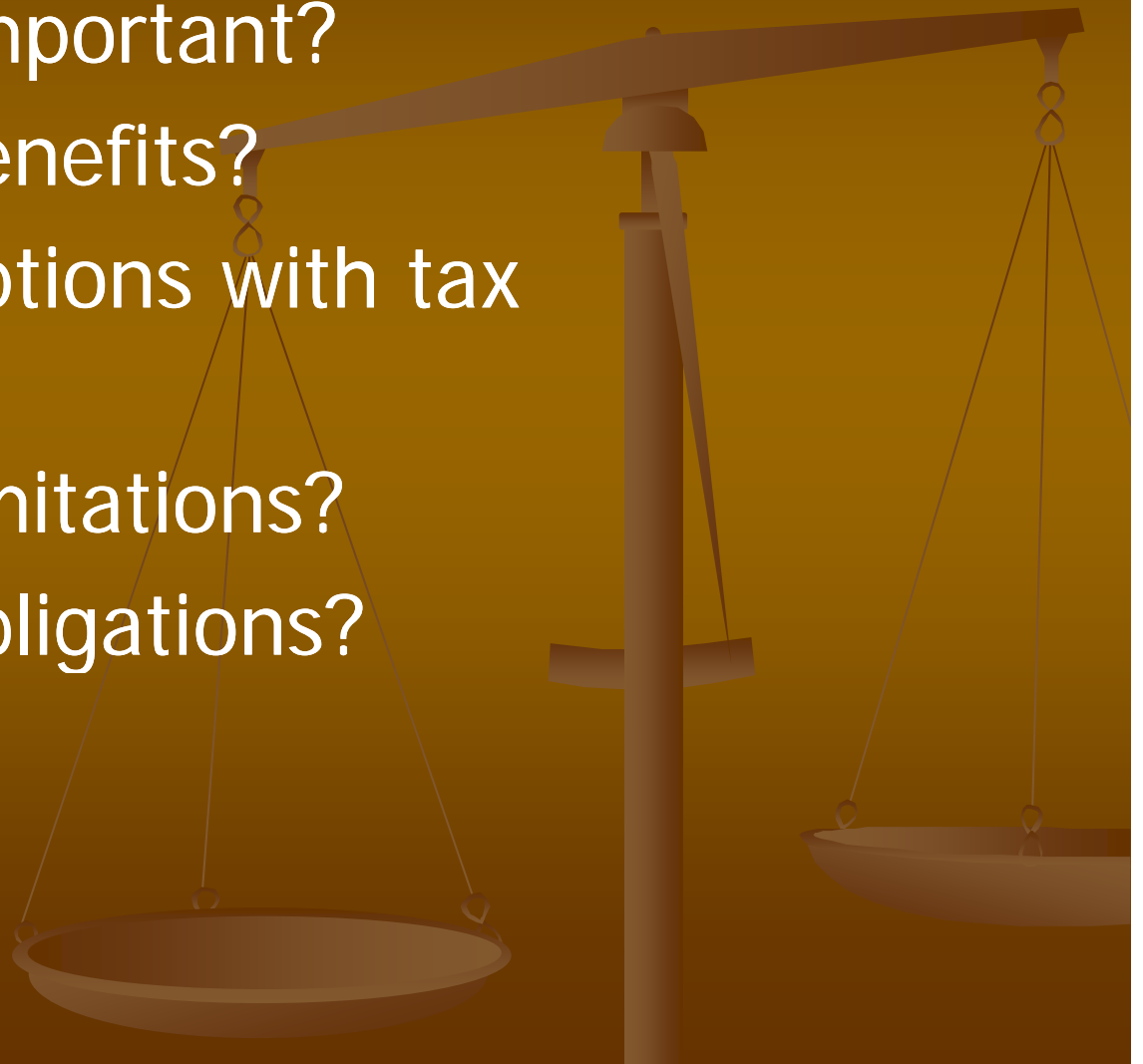
RAC Leadership Workshop

July 2008

Steve Slagle, CAE

Incorporation and Tax-exemption

- Why are they important?
- What are the benefits?
- What are the options with tax exemptions?
- What are the limitations?
- What are the obligations?



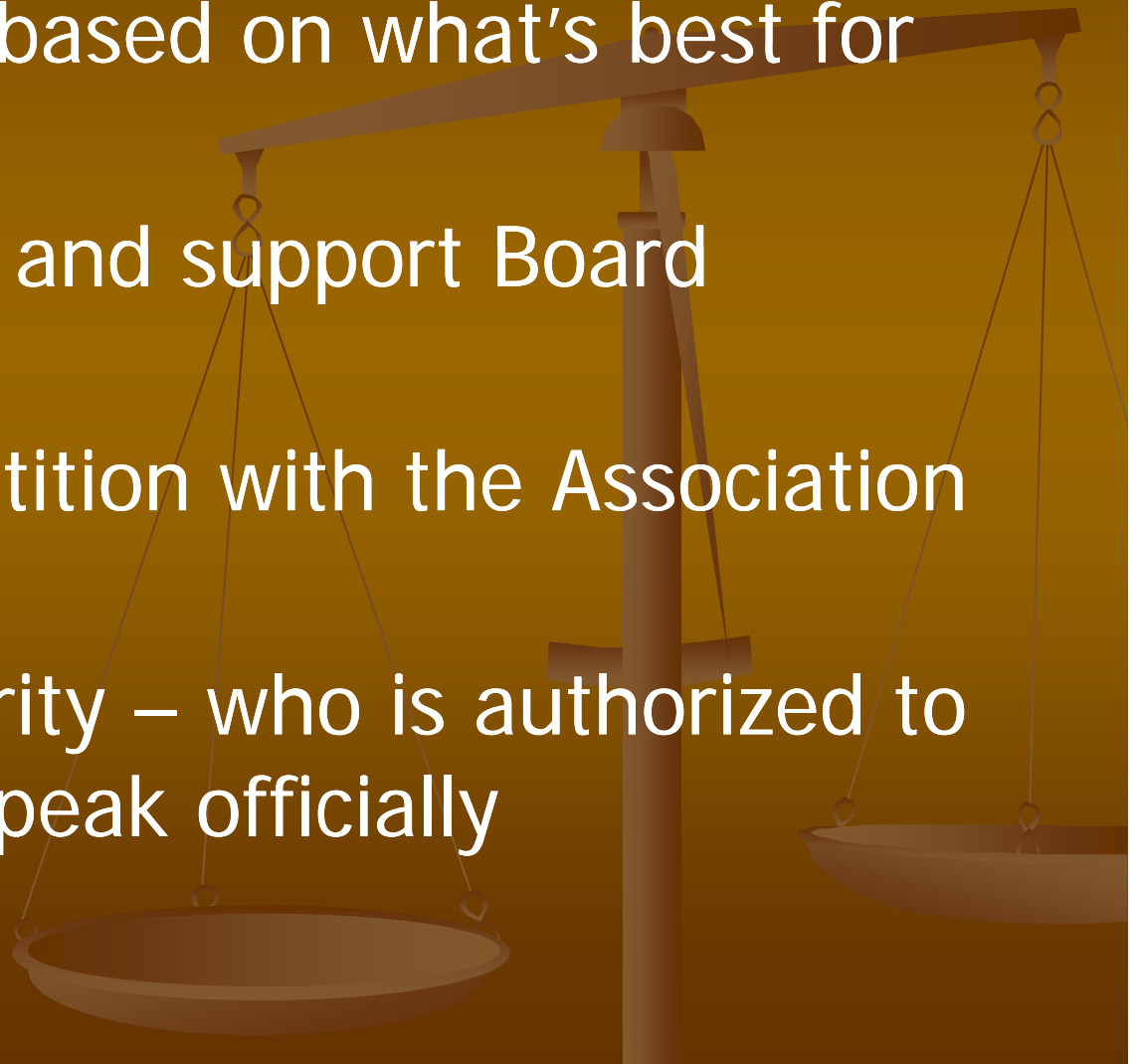
Duty of Care

- Based on trust
- The law requires a standard of performance
- Requirement to take matters seriously, act prudently, and be good stewards of assets
- Speaks to confidentiality



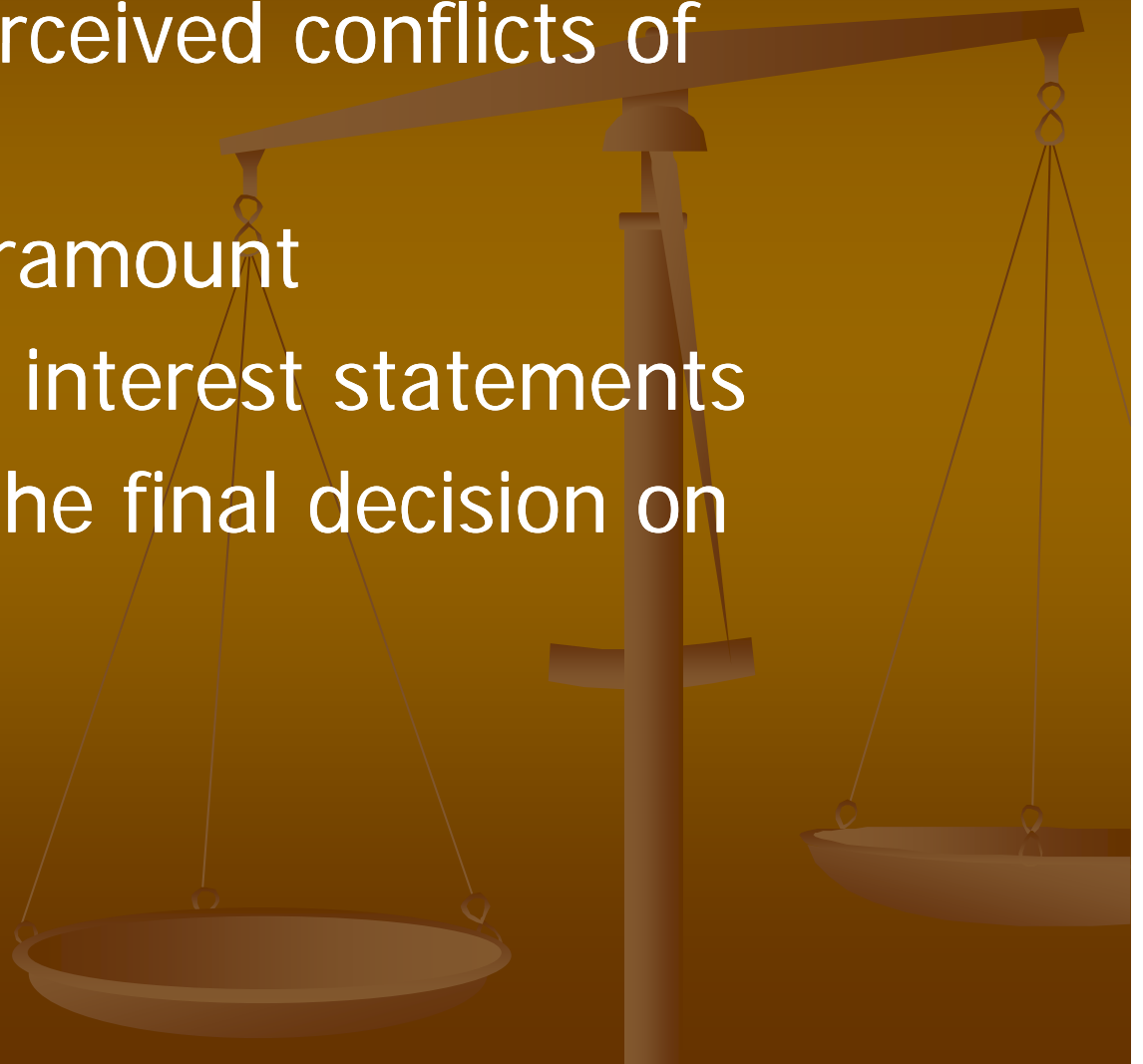
Duty of Loyalty

- Make decisions based on what's best for the Association
- Act consistently and support Board decisions
- Prohibits competition with the Association by a director
- Apparent authority – who is authorized to represent and speak officially

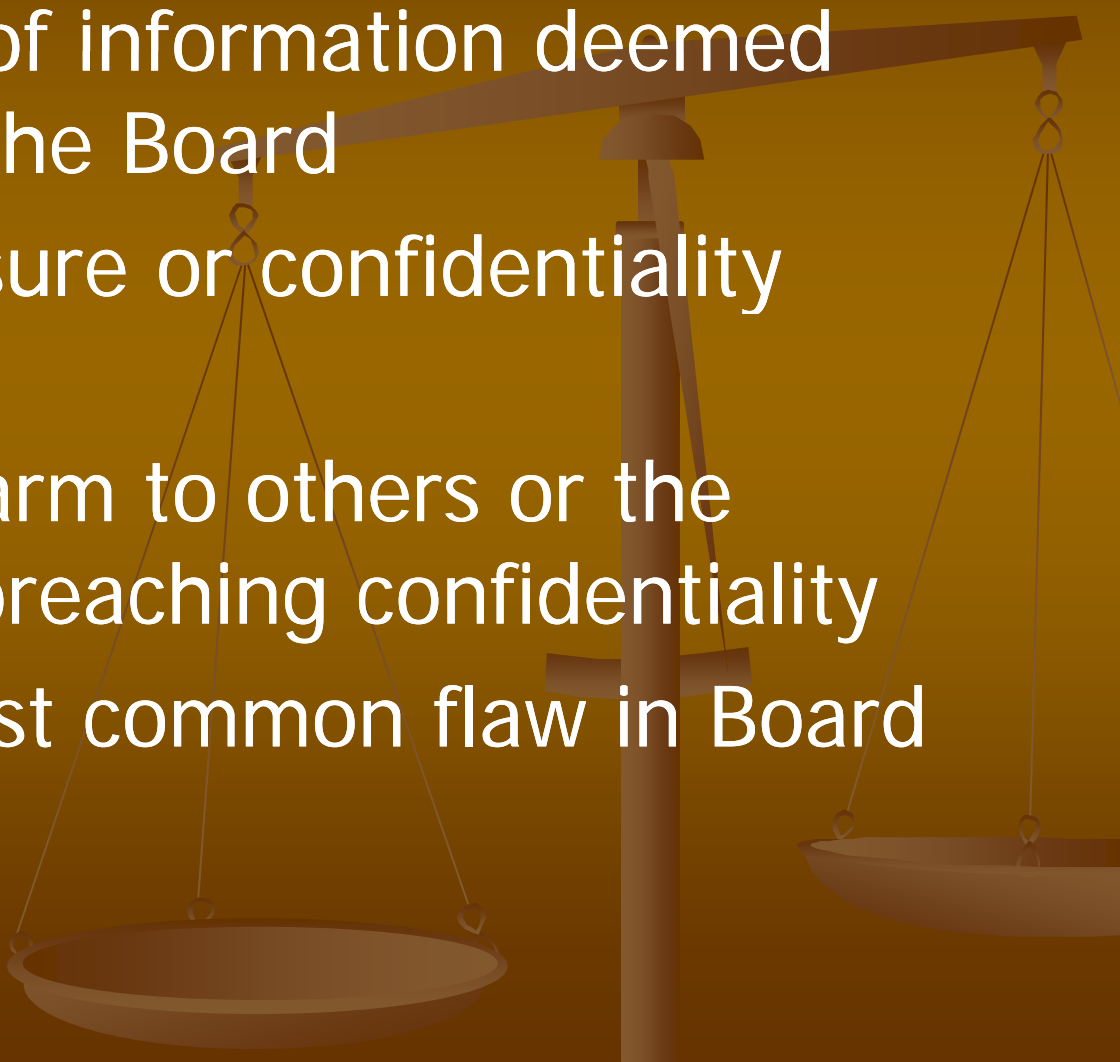


Duty to Avoid Conflicts of Interest

- Avoid real or perceived conflicts of interests
- Disclosure is paramount
- Sign conflicts of interest statements
- The Board has the final decision on conflicts

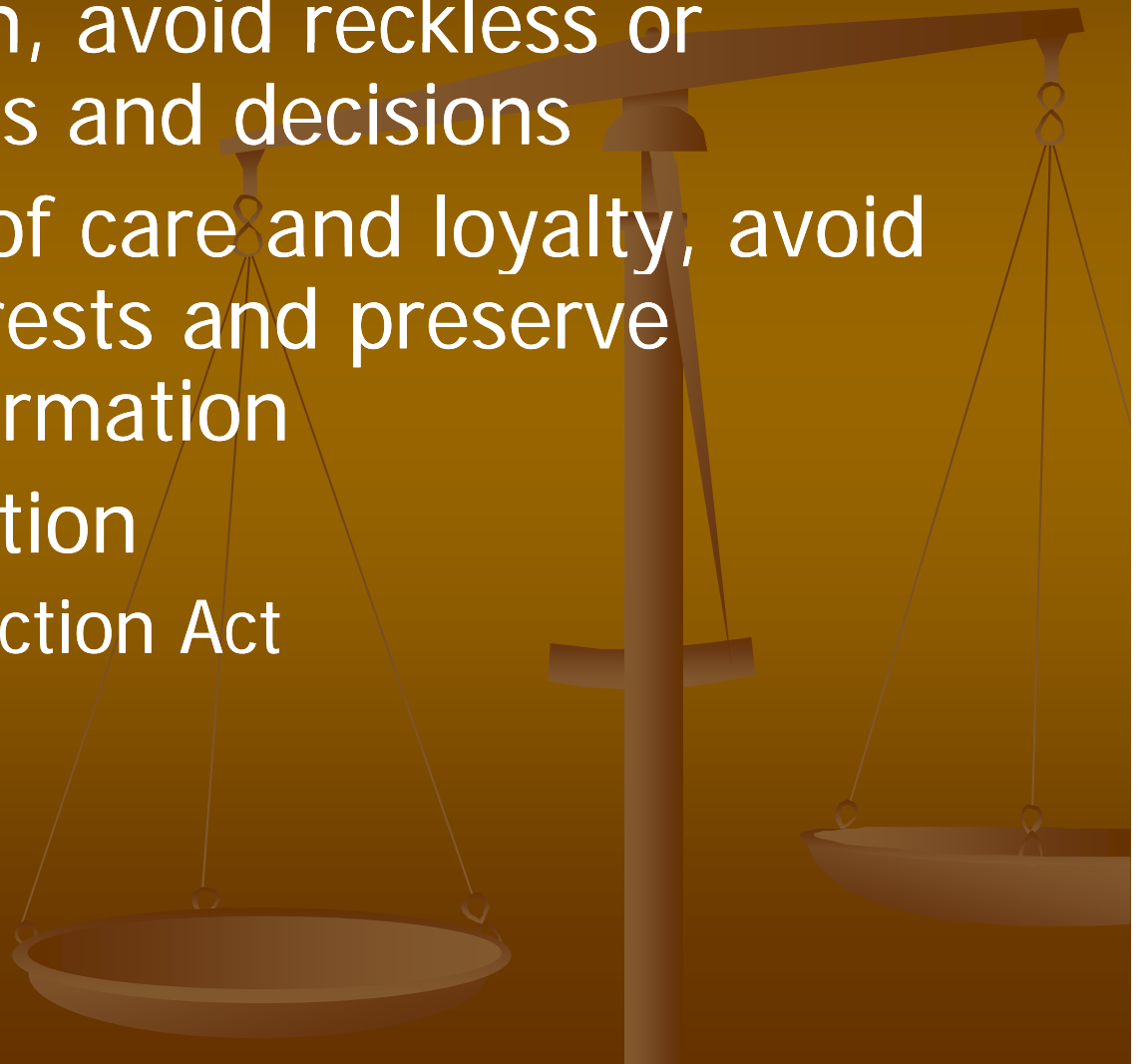


Duty to Preserve Confidential Information

- Non-disclosure of information deemed confidential by the Board
 - Sign non-disclosure or confidentiality statements
 - Avoid serious harm to others or the Association by breaching confidentiality
 - Perhaps the most common flaw in Board governance
- 

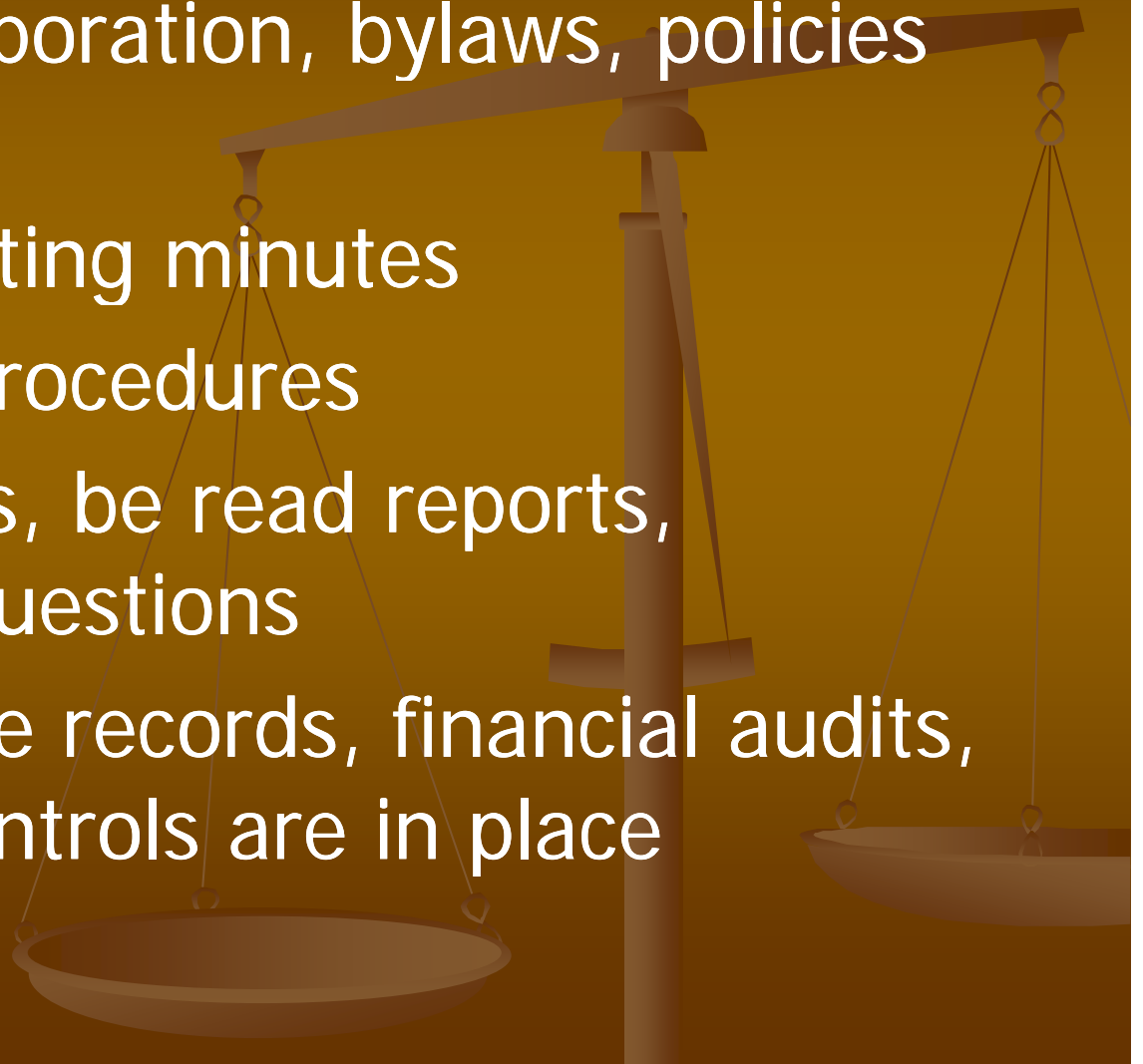
Avoiding Legal Liability

- Act in good faith, avoid reckless or negligent actions and decisions
- Perform duties of care and loyalty, avoid conflicts of interests and preserve confidential information
- Forms of protection
 - Volunteer Protection Act
 - Indemnification
 - D&O Insurance



Understanding Association Governance

- Articles of incorporation, bylaws, policies and procedures
- Past Board meeting minutes
- Parliamentary procedures
- Attend meetings, be read reports, prepared, ask questions
- Ensure adequate records, financial audits, and financial controls are in place



Antitrust Laws



- Antitrust laws prohibit agreements that unreasonably restrain competition,
- Certain anticompetitive conduct is presumed to be unreasonable,
- Agreements in violation of the antitrust laws can be inferred from similar conduct,
- The association can be implicated in unlawful conduct even if the agreement is not reached during an association meeting, and
- The board must heed the advice of legal counsel or the association's staff to discontinue a particular discussion or not to engage in certain conduct.