

Legal Issues FAQs

RAC Leadership Workshop July 2010

During the past several years in which the legal and liability issues session has been offered during the RAC Leadership Conference, session attendees have posed several similar questions related to the management of their own associations. Following are some of the key questions asked with responses that fit the majority of the regional associations attending the conference.

Q: Should our association be incorporated and if so, how do we go about getting that done.

A: Yes, to provide the proper liability insulation and protection for volunteers and members. An attorney familiar with non-profit law should be consulted and he/she can file the appropriate documents with the state in which the regional association is wholly located, or in the state where the central office, if any, is located. If an association engages an association management company for its administrative support and the AMC is located outside the geographic boundaries of the regional association, it is probably best to choose one of the states within the regional boundaries, guided perhaps by where the majority of the members are located.

(Most if not all the regional associations are currently incorporated.)

Q: Should our association have a tax-exemption from federal income tax and what type of exemption should we have, or seek?

A: Tax-exemption is desirable for the obvious reasons and following the most common type of exemption for our industry, a 501(C)(6) status is the most appropriate. An attorney familiar with non-profit law can assist the association in applying for the exemption.

Q: How detailed should our bylaws be and what is the difference between bylaws and policies and procedures?

A: The organization's bylaws speak to the association's central purpose, who has a right to be a member and how the association is governed. The bylaws should include several important elements that describe the purpose, classes, types and requirements of membership, rights of membership, termination of membership, election/selection and duties of the governing board, election/selection and duties of the officers, reference to any committees, the conduct of official meetings, provisions for maintaining the official records and finances, provision for amending the bylaws, indemnification and a provision for dissolution, or merger. Bylaws should not include elements that are subject to frequent change, nor should they include much about the process, or procedures for managing the association.

Policies and procedures should include more of the management processes and more detail on governance matters, as in the purposes of committees and the manner in which committees operate. Various programs and services of the association can also be included in the P&P handbook, as could various decisions by the board over time related to how the association manages its affairs and its programs.

Q: Should we have a provision for removing members and if so, what should be included?

A: Yes and the provision should spell out in some detail the reasons a member might be suspended, or expelled, who has the authority to make the decision and a due process for a member to contest the action. (See sample statement attachment.)

Q: Are we required to file a tax return if we're tax-exempt?

A: Yes, if your organization has \$25,000 in revenue annually. Tax-exempt organizations file a Form 990 and a Form 990T if they have unrelated business income to report. Additionally, your association may be required to file an annual registration fee to maintain your status as a corporation. Obtaining the assistance of a qualified CPA firm familiar with non-profit law and taxes is certainly preferred.

Q: Are we required to have an audit of our financial records every year?

A: Not required, but it's desirable. Given the nature of smaller associations having turnover among board members and even staff, ensuring that the financial records are accurate, in compliance with general accounting practices and that the members' monies are safeguarded against any real, or perceived misuse would demonstrate the board's commitment to its fiduciary responsibility.

Q: What types of insurance should our association have in place to protect our assets and our members and volunteers?

A: Director's and Officer's insurance, often called errors and omissions insurance, is essential to protect volunteers and staff as well as the association itself if some action unintentionally is perceived to harm another party. Some D&O insurance can be obtained that includes protection against antitrust claims, too, but the coverage is generally costly.

A general liability policy, an event cancellation policy, employee bonding and publisher's insurance, unless provided for in the general liability, or D&O policies, are pretty commonplace and necessary.

Q: If we discover that our association hasn't filed tax returns for the past three years, what should we do and who is responsible?

A: First, the returns should be completed and submitted as quickly as possible with the help of an accountant, using the records you have and to the best of your ability. Whether, or not there is a culpable party against whom some disciplinary action can be taken should not keep you from taking care of business. The current board is responsible, regardless of who was serving on the board at the time the returns weren't filed.

Q: Who has ultimate accountability for filing tax returns, maintaining financial records, ensuring that the proper insurance is in effect and for avoiding violations of any pertinent state, or federal laws?

A: Your board. You can delegate authority to staff, but not ultimate responsibility.