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ASSOCIATION DIRECTORS' AND OFFICERS' CODE OF ETHICAL CONDUCT

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A trade association organized and operated under Section 501(c)(6) of the Internal Revenue Code is a business league, chamber of commerce, real estate board, board of trade or professional football league not organized for profit and no part of the earnings of which inures to the benefit of any private shareholder or individual. This statutory requirement has historically been interpreted to mean the association, formed by a group engaged in a particular line of commerce or industry, must operate for the good of the industry as a whole and not for particular members of that industry. If a trade association is organized to benefit a particular industry but in operation benefits only those specific members of the industry who belong to the association, the association will be deemed to not be operated in accordance with the requirements of Section 501(c)(6) of the Internal Revenue Code and could lose its income tax exempt status. It therefore is important that the trade association operate for the enhancement of the trade or industry as a whole and not for the benefit of those in the position of authority or management of the association.

The dichotomy a trade association faces is that while it must operate for the good of the industry as a whole, the association will only be successful to the extent it

achieves membership and participation by the business entities engaged in the particular trade or industry the association encourages. Since a business will only participate in an organization where economic benefit will justify the participation, the question arises “What is in it for me?” The temptation therefore is great to provide specific services for members of the association to the exclusion of non-member participants in the industry.

In developing services and benefits for association members (and hence to justify the members’ dues payments) the association through its employees or member participants will necessarily develop proprietary assets of value to the association in its operations. The same proprietary assets may also be of value to the individual association member in the conduct of its business. For example: ABC Association develops an accounts receivable software program to be used in its business. The program may be sufficiently unique to sell to business members of the general public. XYZ Corporation is exposed to the software by way of one its employees working with ABC as a volunteer Director. XYZ Corporation decides to appropriate the software for use in its own business. This example raises the issue of whether the association has protected its proprietary interests by way of intellectual property protection and nondisclosure documentation, whether XYZ, as a member and through its employee as a volunteer director of ABC has a fiduciary obligation to protect and not exploit the property rights of ABC and whether there exists an inurement to XYZ of specific services of ABC that could jeopardize the tax exempt status of ABC.

Association self regulation is a voluminous area of legal study and work product. Needless to say, the fact situation of ABC Association and the acts of XYZ Corporation would raise issues of potential antitrust regulation, corporate law regulation, fiduciary obligations of the participants, contract law and tort law issues exhaustive in pursuit. While a trade association must never abdicate its obligations to its members in enforcing its legal rights against intrusion, it must also operate by sound business practices. As a consequence, the concept of the adoption of a Code of Conduct on the part of officers, directors and members of the trade association has significant merit. Instead of putting the association, its members, officers and directors in the position of becoming legal adversaries (a situation which may arise notwithstanding the existence of a Code of Conduct), for association management to be more practical, the existence of such a Code in the bylaws of the association provides an internal standard of due process for regulating unethical conduct (which may incidentally be illegal or not) for the betterment of the relationships of members of the association and for the protection of the association's assets. Such a code puts everyone on notice in a general sense as to sanctioned activity and would make the continuation of membership or the status of an officer or director of the association dependant upon adherence to the Code. The following is offered as an outline of standards of conduct for the members, officers and directors of an association:

1. Conduct of association activities by legal and ethical means which includes upholding the laws and regulations set forth in association policies and bylaws.

2. Adherence to all association internal and external statements and policies and the maintenance of the association's proprietary rights in all information and assets.
3. Provision of no special privilege to any individual member and acceptance of no consideration from the association or its members except with full disclosure and consent of the association's board of directors.
4. Adhere to the fiduciary obligations of the officers and directors of the association; taking all necessary and reasonable steps to protect against the misappropriation of association property and opportunities.
5. Association officers, directors and members must agree to not assume a position in conflict of interest with the policies, procedures or programs pursued by the association.
6. Failure to adhere to the Code of Conduct (as determined by disinterested directors of the association) constitutes a breach of the bylaws standard of conduct and shall be adequate grounds to sanction the conduct, including expulsion from office, directorship or membership and forfeiture of association benefits.

It is important that an association adopt a procedure for protecting its interests that is evenly applied and provides a sure consequence for those who choose not to act properly. While legal process has its place, the ability by a board of directors of an association to act with internal due process in regulating itself for the good of its members and the industry as a whole and for the maintenance of the integrity of membership in the association is of vital importance.

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