



## **ASSOCIATION LEGAL AUDIT CHECKLIST**

### **Organizational Issues**

1. Corporate form (incorporated/unincorporated; non-profit or for-profit)
2. Statement of registered agent for service/or Assn. Executive is registered agent
3. Articles of Incorporation; By-Laws up to date/adhered to:
  - a. Provide for indemnification of officers, directors, employees
  - b. Set membership criteria: Board composition; basic operating parameters
4. Annual meeting of membership of corporation(use to elect directors and or officers)
  - a. Held at time and place in accordance with By-Laws
  - b. Agenda
  - c. Quorum present
  - d. Minutes retained
5. Rules of Order (Roberts)
6. Election of Directors (at annual meeting; mail permitted?)
7. Annual Report filed with state corporations office
8. Disaster survival notebook (IRS Form 990 for 3 years; IRS Letter of Determination; current financial statement; Articles of Incorporation; By-Laws; current rosters of board/membership; policy manual; insurance policies; disks to backup computers; software licenses; list of passwords)
9. Intellectual Property
  - a. Association name and logo trademarks; registered; state/federal; symbols
  - b. Copyrights; notices; registrations
  - c. Websites URL, etc.

### **Administrative/Operational Matters**

1. Board of Directors
  - a. Board of Directors notebook w/articles, bylaws, minutes, meeting briefing materials
  - b. Elections held; proper notice
  - c. By-Laws provide for method of election (mail, meeting)
  - d. Board meetings with proper notice; printed agenda in advance; quorum present; Rules of Order
  - e. Minutes retained



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- f. Committee structure, member selection, duties defined
  - g. Conflict of Interest Policy
  - h. Whistleblower Policy
  2. Meetings
    - a. Special considerations/limitations on location of Membership or Board meetings: in-state; out-of-state; out of country
    - b. Meeting notices (mail or electronic permitted?)
  3. Insurance
    - a. General comprehensive liability (property/casualty)
      - i. Additional insured for when requested
      - ii. Special property items insured separately (artwork, historic memorabilia)
    - b. Directors and officers errors and omissions
    - c. Fidelity bond for employees; volunteers
    - d. Defamation
    - e. Renewal reminders for contacting agent
  4. Contracts/Leases
    - a. President/CEO employment agreement
    - b. Independent contractor
      - i. Vs employee
        1. Agreements (contract lobbyist, outside legal counsel retainer, website host/webmaster/developer)
    - c. Alternative Broadcast Inspection Program (ABIP)
      - i. Inspector contract with Association
      - ii. FCC Enforcement Bureau contract
      - iii. Station contract with Association for inspection
    - d. Office space lease
    - e. Real estate purchase
    - f. Equipment
    - g. Hotel agreements for conventions and seminars
    - h. ASCAP/BMI licenses for association events
    - i. NCSA/PEP clients
    - j. Indemnification/hold harmless clauses
    - k. Expiration/renewal deadlines for all agreements & leases
  5. Physical plant safety reviewed; emergency plans
  6. Federal & state labor law posters posted



7. Personnel forms and procedures compliance (ADA; EEO; minimum wage; overtime; FLSA; state labor laws)
  - a. Employment applications
  - b. Job Description
  - c. Personnel manuals (including anti-sexual harassment policy)
  - d. Pension plans
  - e. Immigration Form (I-9) for new employees
8. Bank signature resolutions; signature cards; check signing authority
9. Financial and accounting controls
  - a. Annual audited financial statement by outside CPA firm
  - b. Internal financial controls (payables authorization, check creation, signing, bank account reconciliation)
  - c. Financial records kept for required period (bank statements, cancelled checks, payables documentation, annual audit reports, tax payment receipts)
  - d. Quarterly income statement and balance sheet reports to Board of Directors
10. Business license for city where assn. has office
11. Certificate of occupancy for office location
12. Record Retention policy (financial records, such as dues billings and bill paid; tax forms/documentation; corporate articles, by-laws, minutes; employee records, including wages, taxes withheld; contracts; deeds; annual independent audit reports; NCSA records, summaries, station affidavits)
13. Logically, well-organized filing system (paper files; computer files; archives/backup)
14. "Tickler" system for advance reminders of deadlines for notices of contract renewal/expiration and other "can't forget" deadlines

### **Taxation**

1. Application for tax exempt status and retention of tax exempt status IRS Determination letter
2. Protection of tax exempt status
  - a. Activities of the association within the scope of its exempt purpose
  - b. Income/UBIT
    - i. Affinity programs
    - ii. For profit subsidiaries
  - c. Private inurement
  - d. Discounts for certain members based on NCSA participation
  - e. Notice of non-charitable deductibility on all solicitations



- f. Lobbying % of dues non-deductibility on dues statements, or payment of lobbying proxy tax
- g. Filing of 990-N series returns and 990T ( if applicable); can file 990-N e-postcard if income normally <\$50,000
  - i. Changes to By-Laws or Articles filed with return
- h. Availability of Form 990 to public for inspection
- i. State taxes (income/business/property/sales/use)
- j. Payroll taxes
  - i. Employees vs independent contractor
  - ii. Electronic deposit (EFTPS)
  - iii. Quarterly Form 941 filed and kept; payroll tax deposit receipts
- k. State employment taxes paid (unemployment; industrial insurance)
- l. Federal unemployment tax (FUTA)
- m. IRS Forms W-4; W-2/W-3; W-9 – 1099/1096

### **Antitrust**

- 1. Assn as a group of competitors; cannot do as a group what they cannot do individually
- 2. Antitrust areas of concern
  - i. Price fixing; division of territory/products/customers
  - ii. Credit history programs
  - iii. Information sharing on price, costs, future plans, marketing
  - iv. Group boycotts of suppliers, vendors, competitors
  - v. Standard setting; professional credentialing
  - vi. Codes of conduct or ethics must not restrict competition
- 3. Objective criteria for admission to membership, discipline and expulsion (vis a vis LPFM)
  - a. Agendas for all meetings and stick to them
  - b. Non-member access to assn. benefits, services of assn.
    - i. Exclusion entirely or premium paid by nonmembers for access
    - ii. Access required if service is critical to competitive success and as is only place service can be obtained
    - iii. Premium cannot be de facto membership cost or so high so to be per se exclusionary
  - c. Antitrust Compliance Program (education of staff, board, officers, members on areas of concern; formal policy against antitrust violations)



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### **Government Relations**

1. Lobbyist registration (state; federal, if necessary)
2. Lobbying reports filed with governing agency (state; federal, if necessary)
3. Restrictions on activity
  - a. Contingent fee lobbying contracts legal or illegal?
4. PAC
  - a. State or federal
  - b. Registration; reports filed on time
  - c. Contribution limits; corporate contributions legal or illegal
5. Contributions to candidates
  - a. CEO: Board expectation; reimbursement legal or illegal
  - b. Association: IRS \$100 limit (or balance taxed)
6. Danger of taking sides on issues where membership is/may be divided

### **Publications/Website**

1. Liability (defamation, invasion of privacy, copyright infringement)
2. Copyright notice on all publications & website
3. Privacy policy
4. Terms of use