

NABE Annual Meeting
Wednesday, August 6, 2003 10:15am- 10:45am
Marriot Hotel, San Francisco
Presenter: Jim Seely

CSO Responsibility for Association Risk Management

Risk management can be exciting when you are asked these questions: Why was the Board not advised of this situation? What did you do to prevent it?

The risk to your own employment status should be obvious if your answer is “duh,” or even, “huh?” However, if your answer is that you recommended a viable policy to the Board, that the Board adopted it and that all policy requirements were met you may have succeeded in managing this risk quite well.

1. **Risk Management.** Identifying potential or actual risks of liability and addressing them with effective strategies.

Additional Risks: Failure to develop and monitor a viable risk management program may be risky to your employment status

2. **Corporate Structure.** The CSO is responsible for risk management by virtue of delegation by Board of the responsibility for the management of the affairs of the association/corporation. However, that authority must be exercised within the limitations of Articles of Incorporation, Bylaws, and policies All of these must be observed to avoid challenges on the legal validity of any action.

Example: Who has the authority to enter into hotel contract? Apparent authority can be a risk of liability.

3. **How can you identify risks of legal liability?**
 - A. What resources are available to use?
 - B. Proper use of legal counsel.

4. **What are some of the more common risks of liability to you and your association?**

Here are some of the risks commonly encountered by associations:

- A. **Have you reviewed your basic governance documents to satisfy yourself that they are adequate for your current needs?** (Articles of Incorporation, Bylaws, tax-exemption, and trademark registrations)

B. Policies and Procedures. These can be very powerful risk management tools. They can help prevent liability and demonstrate due diligence in addressing risks.

C. Executive Employment Contract. Have you ensured that your Executive has adequate resources to do her job? Does she have access to qualified professional advices? (Attorneys, accountants etc.)

D. Tax-exemption. Is your association organized and operated to maintain its tax-exemption?

E. Unrelated Business Income Tax. Do you have ready access to professionals to address UBIT issues as they arise?

Example: NYU Law - Spaghetti Factory.

F. Insurance. Do you have an appropriate process to ensure that your risks are covered by adequate insurance?

G. Contracts. Do you have policies and procedures which specify the authority to enter in a particular contracts, such as website designers, website maintenance, hardware, software, real estate, meeting and event contracts (hotels, convention centers, exhibitors, sponsors)?

H. Do you own your website? Are you sure?

I. Copyrights. Do you have policies and procedures which address not only protection of your copyright rights but also those of others?

J. Employment Practices. This area is responsible for the largest percentage of D&O claims. Are you adequately prepared?

K. Antitrust. Have you identified antitrust risks that apply to your association?

L. Internet. Have you reviewed your potential liabilities?

1. Hyperlinks and banners to a member's or sponsor's website
2. Your potential liability for defamation on your listserv
3. Antitrust violations

M. Listserv. Pay special attention to this area because of volatility.

Note: If you attend the afternoon session you will receive a copy of the CalCPA listserv policy.

N. Audit/Audit Committee. Have you adopted appropriate audit, compilation or review policies and procedures?

O. Referrals. Do have adequate policies and procedures concerning referrals by association personnel of persons and firms in the profession or industry you serve?

P. Other Risks. Are there other risks your association faces?

5. **Conclusion.** This session is designed to start you thinking in earnest about risk management in preparation for the afternoon sessions. Susan Waters and I look forward to your questions and comments.

Contact Information:

James G. Seely
Attorney
Association Legal Services
www.assnlegalservices.com
assnlaw@pacbell.net