

Antitrust Compliance Program

Organizations can minimize their risk of violating antitrust laws with these steps.

1. An antitrust policy statement should be included in the association's documents, used at board meetings and discussed at an annual leadership orientation.
2. At least annually the leadership should receive a copy of the antitrust policy statement; have it signed and dated. The association and/or the individuals should keep a copy.

3. Leadership orientation should include a review of topics that should not be discussed at association meetings. These topics may include membership expulsion and denial of services, setting prices, defining territories, boycotting a supplier, setting standards, inventorying and collecting data, and other issues particular to the trade or profession.

***Antitrust:** Laws designed to preserve the free enterprise of the open marketplace by making illegal certain private conspiracies and combinations formed to minimize competition. Most violations of antitrust laws in the real estate business involve either price-fixing (brokers conspiring to set fixed compensation rates) or allocation of customers or markets (brokers agreeing to limit their areas of trade or dealing to certain areas or properties).*

4. Minutes should be drafted so as not to include comments that may lead to antitrust violations; and then reviewed *before* they are distributed and approved.
5. Publications of the association should be monitored for items that may be perceived or actual antitrust violations. Writers, contributors and staff should be able to recognize items that may trigger antitrust concerns.
6. Membership standards of acceptance and delivery of services should be consistent. Any deviation from consistent delivery of services, or expulsion from membership, should be considered for antitrust implications.
7. At meetings, agendas should be carefully set and followed to avoid side bar discussions of potential antitrust violations.
8. The leadership and staff should be prepared to detach themselves from any discussion or actions that may be an antitrust violation.
9. Legal counsel should be involved in reviewing documents such as minutes and codes of standards, where antitrust violations could occur.

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Antitrust Policy

Sample Association Statement

Introduction

The XYZ Association is a not-for-profit organization. The association is not organized and may not play any role in the competitive decisions of its members, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of *diverse opinions without in any way attempting to encourage or sanction any particular business practice.*

The Association provides a forum for exchange of ideas in a variety of settings including its annual meeting, educational programs, committee meetings, and Board meetings. The Board of Directors recognizes the possibility that the Association and its activities could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this statement supports the policy of competition served by the antitrust laws and to communicate the Association's uncompromising policy to comply strictly in all respects with those laws.

While recognizing the importance of the principle of competition served by the antitrust laws, the Association also recognizes the severity of the potential penalties that might be imposed on not only the Association but its members as well in the event that certain conduct is found to violate the antitrust laws. Should the Association or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment for up to 3 years as well as fines up to \$350,000 for individuals and up to \$10,000,000 for the Association plus attorney fees. In addition, damage claims awarded to private parties in a civil suit are tripled for antitrust violations. Given the severity of such penalties, the Board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.

Policy⁸

To ensure that the Association and its members comply with antitrust laws, the following principles will be observed:

- The association or any committee, section, chapter, or activity of the Association shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors with regard to prices or terms and conditions of contracts for services or products. Therefore, discussions and exchanges of information about such topics will not be permitted at Association meetings or other activities.
- There will be no discussions discouraging or withholding patronage or services from, or encouraging exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services, any actual or potential competitor or group of actual

⁸ Contact legal counsel to insure you are using an antitrust statement that properly covers the activities and structure of your specific organization. This is provided as an example only and was adapted with permission from an association.
Bob Harris , CAE * 335 Beard St. * Tallahassee, FL 32303 * 850 570-6000 * bob@RCHCAE.com

potential competitors, or any private or governmental entity.

- There will be no discussions about allocating or dividing geographic or service markets or customers.
- There will be no discussions about restricting, limiting, prohibiting, or sanctioning advertising or solicitation that is not false, misleading, deceptive, or directly competitive with Association products or services.
- There will be no discussions about discouraging entry into or competition in any segment of the marketplace.
- There will be no discussions about whether the practices of any member, actual or potential competitor, or other person are unethical or anti-competitive, unless the discussions or complaints follow the prescribed due process provisions of the Association's bylaws.
- Certain activities of the Association and its members are deemed protected from antitrust laws under the First Amendment right to petition government. The antitrust exemption for these activities, referred to as the Noerr-Pennington Doctrine, protects ethical and proper actions or discussions by members designed to influence: 1) legislation at the national, state, or local level; 2) regulatory or policy-making activities (as opposed to commercial activities) of a governmental body; or 3) decisions of judicial bodies. However, the exemption does not protect actions designed to cover-up anticompetitive conduct.
- Speakers at committees, educational meetings, or other business meetings of the Association shall be informed that they must comply with the Association's antitrust policy in the preparation and the presentation of their remarks. Meetings will follow a written agenda approved in advance by the Association or its legal counsel.
- Meetings will follow a written agenda. Minutes will be prepared after the meeting to provide a concise summary of important matters discussed and actions taken or conclusions reached.

At informal discussions at the site of any Association meeting all participants are expected to observe the same standards of personal conduct as are required of the Association in its compliance.

It is recommended that Association volunteer read, date and retain a copy of this statement for their personal files.

Antitrust Sample 2002.doc