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THEME: MEMBER RECRUITMENT & RETENTION

**A Lesson that
Transcends Time**
The Consequences of
Forcing a Square Peg
into a Round Hole

**Creating
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Your Association



Pay it Forward



The Value of Nonmembers to Your Association

What does the phrase “Pay It Forward” mean to you? To me, it means showing someone kindness or appreciation in advance. In order to improve another individual’s circumstances, we sometimes give that person opportunities in advance of his future success and prior to him bringing significance to the community we serve.

That’s “pay it forward” and it has significant relevance to the association community. In this article, we examine

the future value that nonmembers can bring to your organization. Association industry attorney Mark Accorn also helps address a few of the legal issues your association may encounter if you incorrectly handle the sometimes delicate issue of nonmembers.

First and foremost, we must always remember our true mission as association professionals. At all times, we must provide our members with the highest level of respect and improve the trade or profession in which they serve.

Now, let’s look at the next question you might have encountered during your years as an association professional: even during, with, or without attending your event.

Regular Monthly Meetings

Most membership associations have regular meetings of some kind, and if they meet to discuss a particular issue, other networking opportunities frequently, we meet with a nonmember who would like to attend

one of our functions. Our long-time members sometimes see that as unfair. After all, your current members have joined the association, paid their dues and put in their time on committees or in leadership positions for many years.

From a legal standpoint, these circumstances trigger various issues. First of all, most associations are private entities and are not required to permit anyone who was not invited to attend a meeting. A rule that requires having an active membership to attend a meeting is not unreasonable. After all, if you want the benefits of membership, then you should become a member.

A second important point is that associations must always be wary of antitrust risks. Antitrust laws are aimed at keeping a competitive marketplace. A basic antitrust violation is a combination of competitors in restraint of trade. Given that most associations are, by definition, combinations of competitors, all that is lacking is a restraint of trade to constitute an antitrust violation. So, it is essential that associations avoid anticompetitive acts.

The question then becomes: Is it anticompetitive for the association to refuse to allow a nonmember to attend this event? In other words: Does the nonmember have alternatives to

attending your meeting? Would the nonmember be permitted to join the association if he or she wished to do so? Would exclusion from this event leave the nonmember at a competitive disadvantage such that he or she could not compete fairly with meeting attendees? Is a particular nonmember being excluded because he or she is disliked by association leaders, or for some other non-association related reason?

The following are generalizations of how the answers to these questions might apply, but the analysis varies by specific facts. *An important note, this is not legal advice and should never be relied upon as such.*

Generally, if the nonmember has alternative ways of getting access to the kinds of things discussed in the meeting, exclusion from the meeting would probably not be anticompetitive. If the nonmember may simply join the group, or obtain access to similar information or services by other means, exclusion from the meeting would not be anticompetitive. If a nonmember is excluded because he or she is disliked, or believed to be unethical, or disliked because he or she is dating the president's daughter or similar reasons not related to the interests of the

association, serious antitrust implications are present, and legal advice should be sought.

For example, a real estate association creates a Multiple Listing Service (MLS) that includes an electronic record of all listings. No available alternative to the MLS exists. Exclusion from access to the MLS is plainly detrimental to service as a real estate agent. May the association require membership in the association as a condition to access to the MLS? No. The courts have held that exclusion from the MLS is an unreasonable restraint on trade. Must the association provide access free of charge or at the same price it provides the access to members? No.

Applying these principles to a dinner meeting, unless the content of the dinner meeting would be difficult to duplicate in other settings (such as joining other groups like the chamber of commerce or similar business group, or calling a handful of other attendees to speak with them directly), the association is probably not required to permit the nonmember to attend the meeting.

Within reason, an association may charge a nonmember more to attend its events, but the additional charge should be reasonable and not prohibitive. It's

How Can You Pay It Forward?

1. Encourage attendance at a few, select member events by nonmembers; follow up with them immediately after the event.
2. Assign current members to escort nonmembers at all association functions.
3. Offer a flat-fee savings on membership dues to nonmember attendees who join immediately following a tradeshow.
4. Track all nonmember attendance. Calculate how much a nonmember would save in a year if he had joined. Follow up with them and explain the year long saving plus the benefits they could enjoy if they joined.
5. Have a dinner meeting where members can invite a nonmember; offer discounts to the nonmember who joins that night and prizes to the members who escort that nonmember.
6. When creating event flyers and registration, make the nonmember category of payment (with the appropriate higher fee) more attractive. Call it the "future member" category. It sounds more professional and is a reminder to the nonmember that they should join your organization.
7. If nonmembers are permitted to attend association functions, establish a written policy for conduct of those members. Those policies might include banning the marketing of goods or services at meetings, disrupting meetings, claiming to speak on behalf of the association unless authorized in writing by the Board or in policy to do so, promoting other organizations during the meeting, recruiting employees or vendors during the meetings, and similar matters. The rules should generally apply to all attendees, not just members. Include the right to remove an attendee from a meeting for good cause, without a refund.

best to avoid the temptation of over-inflating a fee to demonstrate the value of membership in your organization. Generally, it is appropriate to cover your hard costs – like the cost of the meal, room rental and parking – and any additional fee that it realistically costs you to process registration for the event, plus a reasonable profit. Associations may be tax exempt, but they are not prohibited from making a profit and using that profit to carry out the purposes of the association.

For example, if your dinner meeting costs \$45 for members, it might cost \$55 to \$70 for a nonmember to attend.

An association may wish to limit the number of times a nonmember may attend its events. However, this may entail more record-keeping, and can probably be avoided through implementing an appropriate fee schedule. If the meetings are simply for networking, why not build those relationships and collect revenues from nonmembers? On the other hand, if the

meetings are critical to your business, the association may wish to consider higher fees to compensate for the value of the forum.

We recommend that association executives seek the advice of legal counsel in setting fees for nonmembers when issues of competitive and financial access to the benefits of the association product exist, when complex circumstances are present, or when policy in this subject area has not been discussed or established.

Political Action Committee Events

At first blush, you might think that no one outside your membership can be permitted to attend a political action committee (PAC) event. That might be true of donations that your PAC can accept. But, in the case of events such as an annual dinner or golf tournament, the situation can be different.

Consider this example: If a nonmember sits at a table of 10 for your annual PAC dinner, that nonmember may or may not desire to contribute to the purchased table, as one of the members at the table was covered to do so by a nonmember personally. Yet, the nonmember pays for the table, helping to reach new nonmembers who have an interest in that political topic or issue. The thing you can do as the association's professional with this type of purchases is to get the names of the nonmembers who are seated at the table and follow up with them to invite them to skip their contribution to the table and if they would like to contribute, forming an organization to conduct its political activities that is separate from their industry. This is not a political demonstration to send a message to your organization, but it is a very positive for your association. You should seize opportunities to seek to engage nonmembers.

Tradeshows and Conferences

Many organizations allow nonmembers and nonmembers paid and unpaid to attend

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tradeshows. After all, tradeshows usually supply the greatest source of non-dues income. But you still want to make the value of membership important.

You may wish to charge more for a nonmember to have a booth and show their wares. Again, fees should be reasonable – not prohibitive or punitive – and may legally include a profit to the association. When it comes to negotiating booth space, an association may wish to charge more per square foot or a higher flat fee for nonmember exhibitors. As for regular attendance at the show, allowing nonmembers to attend with an additional fee is generally acceptable.

After the event, use the earliest possible opportunity to communicate with the nonmembers to offer them membership in your organization. By allowing nonmembers to attend the tradeshow, part of your follow up could be an opportunity to deduct the cost of

the nonmember booth space from the price of the membership in the first year. Or you can apply the difference of the nonmember price to attend the show toward the dues for the first year of membership. Finally, you might wish to offer a one time flat-fee savings, say \$100, on the membership if the nonmember joins within 60 days of the show. These are ideas to consider and calculate into the budget for the year.

Access to Association Goods and Services

The same rules and principles described above also apply to goods and services an association may sell to nonmembers. The association should generally capitalize on the opportunity to demonstrate the value of membership and make a profit in the process. On the other hand, associations should consider whether the goods or services should not be made available to nonmembers, and

whether it is acceptable from a legal standpoint to refuse to make them available. Again, it may be appropriate to seek the advice of legal counsel when establishing guidelines on these matters.

IMPORTANT NOTE: This article attempted to address complex issues in a brief manner. The information provided in this article is intended for educational purposes, and does not constitute legal or professional advice. The reader is advised to seek the advice of competent advisors for specific guidance applicable to his or her own facts and circumstances.

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