National Association of Professional Organizers

ANTITRUST COMPLIANCE POLICY
REVISED – Board Approved September 12, 2016

1.0 Antitrust Compliance Policy

The policy of the National Association of Professional Organizers ("the Association") is to comply with all federal, state and local laws, including the antitrust laws. It is expected that all individual members and member company representatives involved in Association activities and all Association staff will be sensitive to the unique legal issues involving associations and, accordingly, will take all measures necessary to comply with U.S. antitrust laws and similar foreign competition laws. The Association recognizes the potentially severe consequences of failing to comply with these laws.

While the Association brings significant, procompetitive benefits to participants in the profession and their suppliers, and customers, it must not be a vehicle for members to reach unlawful agreements regarding prices or other aspects of competition, or to boycott or exclude firms from the market.

2.0 Antitrust Violations Can Have Severe Consequences

Violations of the antitrust laws can have very serious consequences for the Association, its members and their employees.

2.1 Criminal Penalties

Antitrust violations may be prosecuted as felonies and are punishable by steep fines and imprisonment. Individual violators can be fined up to $1 million and sentenced to up to 10 years in federal prison for each offense, and corporations can be fined up to $100 million for each offense. Under some circumstances, the maximum fines can go even higher than the Sherman Act maximums to twice the gain or loss involved. The events that give rise to an antitrust violation often provide the basis for other charges, such as wire fraud, mail fraud, and making false statements to the government. Those charges, if proven, carry additional penalties.

The consequences of a criminal antitrust violation for an association or corporation include: exposure to follow-on treble damages suits, exposure to enforcement actions in other jurisdictions or countries, disruption of normal business activities, and the expense of defending investigations and lawsuits. The consequences for an individual who commits an antitrust violation include: loss of freedom (jail), loss of job and benefits, loss of community status and reputation, loss of future employment opportunities, and exposure to litigation.

2.2 Civil Penalties

In contrast to criminal actions, civil cases can be initiated by individuals, companies, and government officials. They can seek to recover three times the amount of the damages, plus

attorney's fees. Even unfounded allegations can be a significant drain on the financial and human resources of the Association and its members and an unproductive distraction from the Association's mission. For these reasons, the Association strives to avoid even the appearance of impropriety in all its dealings and activities.

3.0 Basic Antitrust Principles and Prohibited Practices

3.1 Antitrust Statutes

The principal federal antitrust and competition laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

- The Sherman Act in broad terms prohibits "every contract, combination . . . or conspiracy" in restraint of trade, as well as monopolizing, attempting to monopolize, or conspiring to monopolize any part of trade or commerce.
- The Clayton Act prohibits exclusive dealing and "tying" arrangements, as well as corporate mergers or acquisitions which may tend substantially to lessen competition.
- The Robinson-Patman Act prohibits a seller of goods from discriminating in price between different buyers when the discrimination adversely affects competition. This statute applies only to sales of commodities; it does not cover sales of services or intangibles.
- The Federal Trade Commission Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices" in or affecting commerce.

3.2 "Hard Core" Offenses (Criminal Prosecution Likely)

Certain antitrust violations are referred to as "hard core" or "per se" offenses. Conduct that falls in this category is automatically presumed to be illegal by the courts, and the absence of any actual harm to competition will not be a defense. Conspiracies falling in the hard core category are likely to be prosecuted as criminal offenses, and include the following:

- *Price-fixing agreements:* Agreements or understandings among competitors (or potential competitors) directly or indirectly to fix, alter, peg, stabilize, standardize, or otherwise regulate the prices paid by customers are automatically illegal under the Sherman Act ("illegal per se"). An agreement among buyers fixing the price they will pay for a product or service is likewise unlawful. "Price" is defined broadly to include all price-related terms, including discounts, rebates, commissions, credit terms and warranty terms. Agreements among competitors to fix, restrict, or limit the amount of product that is produced, sold or purchased, or the amount or type of services provided, may be treated the same as price-fixing agreements.
- *Bid-rigging agreements:* Agreements or understandings among competitors (or potential competitors) on any method by which prices or bids will be determined, submitted, or awarded are per se illegal. This includes rotating bids, agreements

regarding who will bid or not bid, agreements establishing who will bid to particular customers, agreements establishing who will bid on specific assets or contracts, agreements regarding who will bid high and who will bid low, agreements that establish the prices firms will bid, and exchanging or advance signaling of the prices or other terms of bids.

- *Market or customer allocation agreements:* Agreements or understandings among competitors (or potential competitors) to allocate or divide markets, territories, or customers are always illegal.

3.3 Sensitive Activities

There are other activities that, though typically not subject to criminal prosecution, are nevertheless sensitive, and may lead to investigations or litigation.

- *Group boycotts:* An agreement with competitors, suppliers, or customers not to do business with another party may be found illegal as a boycott or "concerted refusal to deal."
- *Exclusionary standard setting, certification or code of ethics:* Association standards-development, certification programs, and codes of ethics generally are procompetitive and lawful. Such activities may be found unlawful, however, if they have the effect of fixing prices or if they result in competitors being boycotted or unreasonably excluded from the market.
- *Vertical price-fixing agreements:* Agreements between suppliers and resellers that establish minimum resale prices may be unlawful.
- *Tie-in sales:* A supplier conditioning the sale of one product on the customer purchasing a second product may be unlawful.
- *Exclusionary membership criteria:* An association having membership criteria with the intent or effect of excluding and disadvantaging others is a red flag for careful legal review.

3.4 Other Activities

- *Joint research and development programs:* While not discouraged by the antitrust laws and potentially subject to some legislative protection, proposals for Association involvement in joint research and development programs undertaken by members must undergo legal or executive approval. Association research or statistical reporting programs, as opposed to joint research programs by members designed to equip participating members with a technological or other significant competitive advantage, are not as sensitive from an antitrust perspective, but still require legal or executive clearance.

  NOTE: The NAPO Statistics Database is a resource tool for collecting and accessing previously published industry information on topics of importance to NAPO members, colleagues and the general public.

- *Lobbying:* While the Association's right to lobby is subject to First Amendment protections, lobbying activities will be undertaken only after executive and legal review.

4.0 Guidelines for Meetings and Other Association Functions

Association meetings, conference calls, and other activities by their very nature bring competitors together, and although they generally are lawful and procompetitive, they also might provide opportunities to reach unlawful agreements. It is important to remember that an antitrust violation does not require proof of a formal agreement. A discussion among competitors of a sensitive topic, such as the desirability of a price increase, followed by common action by those involved or present, could, depending on the circumstances, be enough to convince a jury there was an unlawful agreement.

In light of the costs involved in defending antitrust claims, even when they are without merit, it is necessary to conduct Association meetings in a manner that avoids even the appearance of improper conduct. Generally, the best way to accomplish this is by following regular procedures and avoiding competitively sensitive topics.

4.1 Meetings

Meetings of the Association will be conducted according to these procedures:

- Whenever feasible, written agendas will be prepared in advance. Agendas will not include any subjects that are identified in this Policy as improper for consideration or discussion.
- Meeting handouts and presentations should, whenever feasible, be distributed in advance of meetings.
- Meetings should follow the written agenda and not depart from the agenda except for legitimate reason, which should be recorded in the minutes. Informal or "off the record" discussions of business topics are not permitted at meetings or other activities of the association.
- Accurate and complete minutes should be prepared. The minutes should include the time and place of the meeting, a list of all individuals present and their affiliations, a statement of all matters discussed and actions taken with a summary of the reasons therefor, and a record of any votes taken.

Because of their sensitive nature, certain topics will not be discussed at meetings of the Association unless otherwise advised by legal counsel. These prohibitions apply equally to all Association sponsored social functions or other informal Association gatherings. Off-limit topics include:

- prices or terms or conditions of sale;
- pricing practices or strategies, including methods, timing, or implementation of price changes;

- discounts, rebates, service charges, or other terms and conditions of purchase and sale;
- price advertising;
- what constitutes a fair, appropriate, or "rational" price or profit margin;
- whether to do business with certain suppliers, customers, or competitors;
- complaints about the business practices of individual firms;
- the validity of any patent or the terms of a patent license;
- confidential company plans regarding future product or service offerings; and
- any ongoing litigation.

The foregoing prohibitions will generally not be interpreted to preclude discussion of positive experiences with suppliers. In addition, with appropriate legal guidance, Association-sponsored educational sessions regarding determining true costs of doing business and identifying alternative pricing methodologies are permissible, provided that the Association's staff has reviewed the presenter's materials in advance, and provided further that there is no recommendation regarding a preferred pricing methodology.

5.0 Document and E-Mail Guidelines

Many antitrust investigations and lawsuits are fueled by poorly phrased or exaggerated statements in internal documents, with e-mails being a leading culprit. Common sense should be used when composing documents and e-mails. No matter how informal or private a communication is intended to be, it must be assumed that anything written in a document or e-mail is potentially discoverable in an investigation or lawsuit. As a general rule, nothing should be put in writing that you would not want read aloud to a prosecutor, plaintiff's lawyer, or jury composed of people who know nothing about you or your business.

Examples of statements that should be avoided:

- Language suggesting guilt (such as "read and destroy").
- Words of aggression or competitive exclusion (such as "dominate the market," "kill the competition," or "get rid of the discounters").
- Statements or speculation regarding the legality or legal consequences of any action of the Association, except appropriate, confidential and/or privileged discussions at meetings of the Board of Directors.
- Statements suggesting or advocating that members of the Association make joint decisions on pricing, production, capacity or other aspects of competition, such as references to "industry consensus," "industry understanding," "industry acceptance," or "rational competition."

6.0 Standards, Certification, and Codes of Ethics

Association standard-setting and certification programs and codes of ethics can be highly procompetitive and beneficial to suppliers and customers. Antitrust problems will arise, however, if a standard or certification program or a code of ethics is used as a device for fixing prices, restraining output, or chilling innovation, or if it has the effect of boycotting or unreasonably excluding competitors from the market.

Standards and certification programs and codes of ethics must serve identifiable public interests, such as preventing false or deceptive marketing practices, and they must do so in a manner that does not unreasonably restrict competition. Standards and certification programs and codes of ethics must not have the purpose or effect of unreasonably restraining price or quality competition, limiting output of products or services, or discouraging innovation. No one should be denied certification on grounds that he or she is a nonmember of any association or organization, a "discounter," or a foreign competitor. No entity should be boycotted on any grounds, including lack of certification or noncompliance with a code of ethics.

Standards and certification programs and codes of ethics should adhere to principles of *voluntariness* and *due process*. Due process means that all those with a direct and material stake have a right to participate through the standards development organization in the formation of the standard, certification criteria, or code of ethics; the process is open and free from dominance by any particular segment of the profession or a single entity; and there is a right to appeal from adverse actions.

More specifically, any standard, certification, or code of ethics activity of the Association will be conducted in accordance with the following basic rules:

- Participation in the creation of a standard, certification program, or code of ethics will be voluntary and will be open on reasonable terms to all persons who are directly and materially affected. Any fee or cost charged to participants will be reasonable, and membership in the Association will not be a requirement to participate.
- Timely notice of standards-setting, certification or code of ethics activities should be provided to all parties known to be directly and materially affected.
- No segment of the profession, interest group, or single entity should be allowed to dominate the process. All views and objections should receive fair and equitable consideration.
- Written procedures should govern the methods used to develop standards or certification criteria, and these procedures should be available for review by any interested person.
- The written procedures should specify realistic, readily available, and timely appeals procedures for the impartial handling of complaints concerning any action or

inaction by the Association with regard to its standards, certification, or code of ethics activities.

7.0 Executive Responsibilities

The Board of Directors has the responsibility to oversee the implementation of the Association's Antitrust Compliance Policy. The chief staff executive is responsible for day-to-day management and implementation of the Policy.

8.0 Training

All members of the Association will receive a copy of this Policy when they join the Association; all members of the Association's Board of Directors will be required to sign an acknowledgment that they have read the Policy and have been given an opportunity to ask questions. In addition, directors may be asked to attend an antitrust orientation session presented by the Association's legal counsel. The Policy will be maintained on the Association's website.

9.0 Complaint Investigation and Internal Enforcement

Reports of noncompliance with this Policy should be promptly communicated to the Association's chief staff executive. If there is reason to believe that an antitrust violation may have been committed, an investigation will be undertaken promptly. If an instance of questionable conduct is presented, the chief staff executive will consult with the Association's legal counsel promptly to determine whether an internal investigation is appropriate.

Members who or which violate or fail to comply with this Policy will receive a letter from the Association's legal counsel. Because compliance with Association policies is a membership requirement, membership may be terminated as a result of any violation of the Association's Antitrust Compliance Policy.