

# Selecting Association Counsel

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Selecting a suitable firm or attorney as Association counsel is vitally important, given the significant role which counsel must often play in the Association effectively and efficiently accomplishing its objectives. The following considerations should be incorporated into the process of choosing an attorney or firm to represent the Association. Careful identification of counsel with the capabilities and willingness to serve the Association's unique needs is necessary to establishing a sound relationship between the Association and its counsel.

## **1. Appropriate Legal Expertise Coupled with a Practical Understanding of the Association's Needs:**

The Association's counsel should possess a knowledge of the law as it applies to both the real estate industry and trade associations. Specifically, he should have experience in, or at least a working knowledge of, real estate transactions, agency law, corporate law, anti-trust, civil rights, and employment law. He should be familiar with state and federal tax law applicable to the Association. He should be capable of handling the myriad of developing legal trends relating to trade associations. Counsel, or his firm, should have the staff and facilities to represent the Association in litigation and to serve all other legal needs of the Association. The scope of these needs will depend upon the Association's size, current legal issues affecting the Association, the Association's goals, and other factors.

In addition to possessing the requisite legal expertise, the attorney must possess or develop a thorough understanding of the Association's structure and its operations. The attorney must possess a complete awareness and understanding of the various legal risks facing the Association in order to provide the legal services necessary to reduce or eliminate those risks. He must be capable of devising workable solutions to Association problems and issues, consistent both with the law and the Association's objectives.

## **2. Open Lines of Communication**

It is imperative that a convenient and comfortable line of communication be established between the Association and its counsel. The Association must never be hesitant or reluctant to call on the attorney for advice when necessary, and the attorney must be easily accessible and willing and able to communicate his advice to the Association. Counsel must also be able to communicate in terms with which his audience is most comfortable.

## **3. Commitment to the Association**

Although rather subjective and intangible, the attorney's commitment to working with and representing the Association are also of great importance in selecting counsel for the Association. Association counsel should demonstrate a clear commitment to providing the full array of legal services required by the Association, including reasonably prompt response to unforeseen questions and issues that arise, attendance at all meetings and proceedings of the Association where such

attendance is necessary, and availability to provide or assist with education programs for the Association and its members. Because the attorney will be selected based to a significant extent on his personal attributes and capabilities, the attorney and the Association should discuss and agree on the circumstances in which other members of the attorney's firm may be involved in providing needed services to the Association in place of the principal Association attorney.

Of the highest importance is the trust placed in the Association attorney by the leadership and membership of the Association. This trust is crucial to open and frank discussions between the Association and its attorney. All parties must recognize that each is working toward the common goal of the Association providing the best possible service to the members. Inevitably, the attorney will feel compelled to advise against a proposed Association action which the membership or the leadership feels is highly desirable. This trust must exist so that the Association understands that the attorney's recommendation is based on his view of the best interests of the Association, considering the risks involved in such action balanced against the benefits which are envisioned.

#### **4. Professionalism**

Since the attorney will be the Association's representative in legal matters, his professionalism and demeanor must always reflect positively upon the Association. Counsel must possess and maintain a reputation for the highest standards of integrity in the legal, real estate and business communities. It is also advantageous for Association counsel to be a recognized figure in these communities, so that he has complete credibility among Association members as well as others who see him engaged in his role as legal spokesman for the Association.

#### **5. Conflicts of Interest**

The Association should be aware of possible conflicts of interest in its selection or employment of counsel. It is preferable that the Association counsel not be a REALTOR® or a member of the Association, since such status could impair the credibility, impartiality or effectiveness of counsel. Any close relationships between counsel and members of the Association should also be identified and explored, so that in any matters involving such members the potential conflict between the attorney's allegiance to the Association and to such member(s) can be addressed and resolved in advance.

#### **6. Compensation**

Fees are important because the Association must never feel restrained in calling on counsel because of the expense of doing so. The costs of not seeking professional legal advice when it is needed virtually always outweighs the financial costs of seeking such advice.

Fees, billing schedules and the extent of explanatory detail to be provided with each bill must be discussed, negotiated and agreed upon in advance. The Association should also never feel constrained from requesting additional information or explanation about a particular bill.