



Guidelines for CMAA Chapters on Selected Legal Issues

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I. Introduction

Chapters are an invaluable and integral part of the CMAA structure, and the granting of a charter permits a chapter to be affiliated with, and use the name of, CMAA. However, from a legal standpoint, chapters are separate, independent entities, and are solely responsible for their own activities. Each chapter is a separate legal entity which must not only comply with CMAA requirements for chapters but also must perform all legal obligations incumbent upon any self-governing organization.

II. Relationship between CMAA and its Chapters

From a legal standpoint, the relationship between CMAA and its chapters is a contractual one. That is, there is considered to be an agreement between CMAA and its chapters pursuant to which each has certain obligations. This structure gives chapters a significant amount of autonomy and independence in conducting their affairs. Unlike many other associations, CMAA does not control the day-to-day affairs of its chapters, nor does it wish to do so.

III. Incorporation

All chapters are required to be incorporated as nonprofit corporations. The corporate form of organization gives each chapter the greatest freedom of action with minimum oversight from State government; ensures that the chapter will be recognized as a separate entity (from the CMAA itself or any other chapter); and, in the absence of fraud, generally insulates the incorporators, directors, officers, and members from personal liability for debts or other liabilities of the corporation.

IV. Procedure for Incorporating

Incorporation is accomplished by filing "Articles of Incorporation" or a "Certificate of Incorporation," depending upon the terminology used by the state, with the Secretary of State of the chapter's State of residence, or with The Company Corporation (www.corporate.com) along with a small fee. Articles of incorporation must comply with all the requirements of state law; subject to the state nonprofit corporation law, are the highest authority for corporate governance; and should contain all provisions necessary to qualify the chapter for exemption under §501(c)(6).

V. Registered Agent

All corporations must have a registered agent. This person is the official "contact" of the corporation for communications from the State and other third parties. For example, annual report forms are sent to this person by the State.

While the role of a registered agent is largely passive and rarely burdensome, it is very important. Significant documents, including notices of lawsuits, often are transmitted to the corporation through the

registered agent. If the individual originally designated as the registered agent ceases involvement with the chapter, but the Secretary of State is not notified of a replacement, these vital documents can go undelivered to the chapter, with potentially adverse consequences.

Therefore, chapters should be conscientious in ensuring the registered agent position is held at all times by someone who is responsible and is active in the chapter. As an alternative which CMAA recommends, The Company Corporation will, for a fee, will serve the registered agent. This company has the advantage of not being as transient as individuals.

VI. Bylaws

A chapter's bylaws are the next document in the hierarchy of governance. The bylaws are, in essence, an operating agreement among the members, and amendments usually must be approved by the members. While articles of incorporation are drafted in a very general form to provide maximum flexibility, the Bylaws contain more detailed rules for the operation of the chapter, including provisions for amendment of the bylaws, election of officers and directors, and operation of committees. Bylaws must conform to the Bylaws of the CMAA and must be approved by the CMAA in advance.

Bylaws are not filed with the Secretary of State.

VII. Employer Identification Number

Every chapter must have a taxpayer or employer identification number (EIN), even if it has no employees. This is particularly important with respect to opening and maintaining a bank account. The social security number of one of the officers or members of the chapter should never be used. The bank will consider all funds to be funds of that individual, and will report this to the Internal Revenue Service for tax purposes.

Chapters may never use CMAA's EIN.

An EIN can be obtained by filing the IRS Form SS-4, which may be filed online through the IRS website, www.irs.gov.

VIII. Tax-Exempt Status

All chapters must be qualified as exempt from federal income taxation under section 501(c)(6) of the Internal Revenue Code. Section 501(c)(6) exempts from Federal income tax organizations whose purpose is to "promote the common business interests" of participants in a profession or line of business. To be recognized as tax-exempt, chapters must file the IRS Form 1024 Application for Exemption, also available on the IRS website. However in this instance, CMAA provides for the chapters' tax exempt status through the annual filing of the group exemption letter, naming each chapter as "a subordinate unit under CMAA's general supervision or control."

Traditional activities that are considered consistent with Section 501(c)(6) include conferences, publications, trade shows, networking, information gathering and reporting, and marketing and promotion. In addition, a 501(c)(6) organization may engage in unlimited legislative activity--attempts to influence the enactment (or defeat) of legislation. However, the chapter must report to its members the percentage of its dues (and other similar amounts) that it spends on lobbying activity, and that is, therefore, not deductible as a business expense. Alternately, the chapter may simply report the amount it

spends on lobbying on IRS Form 990-T, and pay a 35% "proxy tax" in lieu of telling its members how much of their dues is nondeductible.

Section 501(c)(6) organizations may also engage in limited political activity, i.e., activities designed to advance or defeat the nomination, election, or confirmation of an individual for public office. However, if the chapter spends money for this purpose it may be subject to a 35% excise tax on the lesser of its investment income or its political expenditures. In addition, before engaging in any political activity, the chapter should ensure that its actions will be in compliance with Federal and state election laws, and that all required reports will be filed.

Section 501(c)(6) prohibits the net earnings (or assets) of a chapter from "inuring" to the benefit of any private shareholder or individual. This simply means that the chapter's assets and earnings may not be paid to any "insider," other than in exchange for fair value in goods or services. Thus, a chapter may not pay a dividend to a member, but may pay any employee a reasonable salary and benefits, and may reimburse the expenses incurred by its employees and volunteer leaders in serving the chapter. A chapter may also contract with other individuals and with exempt and non-exempt entities, to obtain goods or services.

IX. Other Taxes

Chapters should also seek income tax-exemption on the State level. The procedures for doing so vary widely, so the relevant State taxing authority should be contacted for guidance and forms. In most States, exemption under federal law is required prior to filing for State or local exemption. This Federal exemption has been obtained for the chapters via the Federal group exemption letter filed annually by CMAA.

In addition to exemption from income tax, chapters may want to explore property or sales tax exemption, though this is usually reserved for those organizations exempt under Section 501(c)(3) of the Internal Revenue Code.

X. Information Returns

Each chapter whose average annual gross receipts for the current and two preceding fiscal years exceed \$25,000 must file IRS Form 990 (or the Form 990-EZ if gross receipts in a year are less than \$100,000 and total assets are than \$250,000). These forms are, in essence, a financial statement, together with additional information about the chapter's activities to enable the IRS to ascertain that the chapter continues to qualify for exemption.

Chapters that have been in existence for only one fiscal year must file Form 990 or 990-EZ only if their gross receipts in the first year exceed \$37,500. Chapters in existence for only two fiscal years need to file Form 990 or 990-EZ only if their average annual gross receipts exceed \$30,000.

Form 990 or 990-EZ must be filed not later than 4½ months after the end of the chapter's fiscal year. An automatic 90-day extension of time may be obtained by filing Form 8868 before the due date of the Form 990 or 990-EZ.

Beginning with tax year 2007, chapters with annual revenues that are normally less than \$25,000 will be required to file electronically an annual statement with the IRS containing certain basic information, such as the organization's name and address, website URL, name and address of a principal officer, and an annual financial statement.

Chapters that fail to make required filings can be subject to financial penalties and even revocation of exempt status.

Each Form 990 or 990-EZ filed by a chapter must be available for public inspection at its principal office (if there is one). Each Form 990 or 990-EZ filed by a chapter must also be provided to anyone who requests a copy in person or in writing (including mail, fax, or email) for three years after the date it is filed. If the request is made in person, the copy must be provided by the next business day. If the request is made by mail, the copy must be provided within 30 days. The chapter may make a reasonable charge for copying and postage.

Each chapter must also disclose or provide a copy of its Form 1024 application for exemption, all correspondence with the IRS regarding the application, and the IRS determination letter recognizing its exemption, under the same circumstances as described above for Form 990, except that the three-year rule does not apply.

It is important to be aware that CMAA does not prepare or file tax or information returns for its chapters. This responsibility resides with chapter officers acting on behalf of their individual chapters. There can be significant penalties for failure to file returns or for filing late returns, so this is one obligation that cannot be ignored.

XI. Other Filing Requirements

In addition to tax filings, chapters will be required to file an annual report with the appropriate State agency, usually the Secretary of State. This is usually a simple form that requests basic information, such as the names and addresses of the chapter officers and directors.

While completing and filing the annual report is not burdensome, it is important. Failure to do so can result in the corporate status of the chapter – and the protection and benefits such status affords – being revoked.

XII. Liability Insurance

Chapters should consider whether they wish to secure general liability and/or directors' and officers' insurance. This coverage can provide important protections from potential liability, and also provide for the payment of defense costs, even if the chapter is found not to be liable (as is often the case).

Additional spot coverage for special events may also be available under a general liability policy. This coverage might be purchased for, e.g., golf and tennis tournaments, and other events involving unusual exposures, e.g., an outing on a member's boat.

In the case of certain events, e.g., a sporting or other event posing some risk of physical injury to participants, chapters should also obtain a liability waiver or other similar agreement, indicating that participants are aware of the risks of participating, and agree to assume those risks in the absence of negligence or other misconduct by the chapter.

Bonding is a specialized kind of insurance that protects the chapter in case of misuse or mishandling of funds by “insiders,” typically officers and directors. Bonding is usually offered by the same insurance carriers that offer liability insurance. Any officer who is responsible for handling chapter funds would be

a candidate for being bonded, such as an officer who signs check requests, signs checks, or is otherwise directly responsible for the chapter's finances.

XIII. Other Legal Issues

Recordkeeping:

There are five general categories of records that should be maintained by a chapter.

- Corporate records. These include articles of incorporation; bylaws, including all amendments; minutes of all board of directors, executive committee, and membership meetings; and all annual reports filed with the State. These records should be kept on a permanent basis.
- Tax records. These include the Form 1024 exemption application, the IRS determination letter, Form 990 information returns, as well as any correspondence with the IRS or State or local taxing authorities. As with corporate records, tax information should be maintained on a permanent basis.
- Financial records. Budgets, balance sheets, financial statements, bank statements, and canceled checks should be maintained for at least seven (7) years.
- Insurance records. Policies should be kept on a permanent basis. Documents related to claims should be maintained for six (6) years following resolution of a claim.
- Contracts. Written contracts, such with a meeting facility, should be retained for at least three (3) years following termination or completion of the contract or whatever is the applicable statute of limitations for contract actions.

Antitrust:

As a general rule, antitrust laws prohibit agreements that are deemed to prevent or hinder free competition in business. The most obvious example of illegal antitrust activity in this regard is price fixing, typically in the form of an agreement by suppliers of a particular kind of product or service as to the price they will charge, rather than allowing the market to determine price and rather than competing with each other with respect to price.

Because of the sensitivity of this issue, discussions of rates, including via an online listserv, should be avoided. If a chapter wishes to provide information on rates, there are legal ways to collect and disseminate such data, and CMAA should be consulted in this regard.

Another area of antitrust concern with respect to associations in particular is threatened or actual boycotts. A "boycott" is a refusal to deal with a particular supplier or refusal to purchase a supplier's product, unless the supplier accedes to certain demands.

Defamation:

Another area that chapter's should be cognizant of is defamation. Particularly in connection with online discussion groups, some members may make remarks about other attorneys or product or service providers that are derogatory in nature, and chapters should be sensitive to the legal implications of such statements.