

Legal Glossary

Q: I consistently come across legal terms in contracts, bylaws and professional journals. Some are more familiar than others, and I am concerned about misusing a term or missing its significance. Can you help?

A: The following are legal terms frequently used in association governing documents, contracts and litigation matters. Each term has been defined in the context of its relevance to associations. Although not a comprehensive list, it's a start.

Amicus: Latin for “friend.” An association may submit, on its own or with others, an “amicus curiae” or “friend of the court” brief to provide its perspective on issues being considered in a lawsuit not directly involving the association. Such briefs are most appropriate when the association represents the affected profession or industry or otherwise has a strong interest in the matter.

Consent agenda: A subset of a meeting agenda, which includes those items considered routine or non-controversial and appropriate for approval without discussion. Unless a meeting participant specifically requests that an item be pulled for discussion, all items on a consent agenda are approved through a single motion.

Ex-officio: Latin for “from the office,” a phrase commonly used in bylaws to refer to an officer who serves in one position by virtue of his or her position in another. For instance, the bylaws of an association’s related foundation may provide

that one or more association officers will serve “ex officio” as directors of the foundation. Unless otherwise noted, a director’s ex officio appointment has all the rights and duties of directorship, including the right to vote.

Fiduciary: From the Latin for “trust,” one who bears the obligation to act for the benefit of another. Most state nonprofit corporation laws impose “fiduciary duties” on the corporation’s directors, which obligate them to carry out their responsibilities for the corporation with the same care, loyalty and obedience they would exercise in conducting their own business. Fiduciary duties do not extend to committee members and other volunteers as a matter of law; thus, an association that wishes to impose “fiduciary-like” duties on its volunteers must do so by other means.

From time to time: Depending on the context, a term meaning either “from one time to the next” or “as desired.” For example, a bylaw that allows directors to “adjourn the meeting from time to time” is intended to permit the directors to adjourn the meeting until a later date. On the other hand, a policy that, by its terms, may be amended “from time to time” can be revised whenever the decision makers find it appropriate.

Indemnification: An agreement in which one person or entity (the “indemnifying party”) holds a second person or entity (the “indemnified party”) harmless, usually through reimbursement or other payment, in the event the indemnified party is held liable for a loss resulting from

the actions or inactions of the indemnifying party or someone else. Most state nonprofit laws allow associations to indemnify officers, directors and other volunteers against liability arising for actions taken in good faith on behalf of the association. In addition, agreements between associations and service providers often include an indemnification provision. In those agreements, associations should avoid indemnifying service providers against liability arising from their own negligence or misconduct.


Joint and several liability: Liability involving multiple parties, in which each may be held fully liable, irrespective of its individual responsibility for the wrongful act. If, for example, an association and its publisher are jointly and severally liable for copyright infringement under a publishing agreement, a claimant may recover the full amount of any damages from either the publisher or the association, even if the publisher committed the copyright violation without any involvement by the association.

Not-for-profit: Status gained by an association when incorporated as a “not-for-profit” or “non-stock” corporation under the laws of a state or other jurisdiction (e.g., the District of Columbia). A not-for-profit corporation has no shareholders and does not distribute income or confer other economic benefit on its officers, directors or members. The terms “not-for-profit” and “tax-exempt” are often confused. While “not-for-profit” status is conferred under state law, “tax-exempt” status is commonly conferred by the Internal Revenue Service for federal income tax purposes.

Prevailing party: An individual or entity that receives a court judgment in its favor, although not necessarily to the extent of an original claim. Many association contracts provide for the award of attorneys’ fees to the “prevailing party” in a dispute. It is important to understand that an individual or entity may be deemed to “prevail” in a lawsuit even if the court awards it only \$1 in damages.

Recusal: To remove from participation, typically to avoid a conflict of interest. For example, a director may recuse him or herself, or be asked by the board’s remaining directors to do so, when a matter in which he or she has an actual, potential or perceived conflict of interest is being considered by the board. The subject director may be allowed to participate in the discussion, but not vote, or the recusal may extend to both the discussion and vote.

Subrogation: The substitution of one who succeeds to the rights of another with respect to a debt or claim. Insurance policies typically grant the insurer a right to subrogation (i.e., to succeed to the rights of the policy holder after the insurer pays a claim).

While this glossary does not cover all legal terms, it should raise awareness regarding the application and importance of certain legal terms to a variety of association matters. 

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