

BY-LAWS
OF THE
OILHEAT MANUFACTURERS ASSOCIATION
(OMA)

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PROPOSED
BY-LAWS
OF THE
OILHEAT MANUFACTURERS ASSOCIATION
(OMA)
A DELAWARE CORPORATION

ARTICLE 1

Purposes

OMA is a business league of manufacturing companies who supply oilheat equipment and components to the residential and commercial oilheat markets/industry/users. The purposes of the Association are:

1. To develop and provide technical product information to the residential and commercial oilheat markets/industry.
2. To develop and encourage the use of industry standards to assure safe, reliable and quality products and services.
3. To promote and maintain public awareness of the benefits of these products and services to society.

No part of the net earnings of the Association shall inure to the benefit of, or be distributable to, any of its members, directors, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above.

Notwithstanding any provision of the Articles of Incorporation of the Association or any other provision of these By-Laws, the Association shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States internal revenue law).

ARTICLE 2

Powers

Except as provided otherwise by the Articles of Incorporation or by these By-Laws, the Association shall have all powers that a not for profit corporation has when organized under the General Corporation Law of the State of Delaware, as amended, and shall have all such additional powers as are permitted by any applicable law.

ARTICLE 3

Members

Section 3.1. Classes of Members, Qualifications. The Association shall have two classes of members.

Section 3.1.1. Full Member. Any company that is in the business of manufacturing oilheat equipment and/or oilheat equipment components and actively sells/markets/distributes those items/products in North America and has paid applicable membership dues shall be a full member. Each full member must provide a representative for the Board of Directors.

Section 3.1.2. Affiliate Member. Any company that provides related services to the oilheat industry.

Section 3.2. Dues. The Board of Directors may determine the amount of an initial membership fee, if any, and annual dues payable to the Association by members.

Section 3.3. Voting Rights. Each full member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 3.4. Resignation, Removal. Any member may resign by filing a written resignation with the Secretary/Treasurer. Any member may be removed, with just cause (such as nonpayment of dues), by affirmative vote of a majority of the directors, provided that thirty days' written notice is given to such member in advance of such vote and provided that such member is offered an opportunity to be heard by the Board of Directors before such vote.

Section 3.5. Reinstatement. Upon written request signed by a former member and filed with the Secretary/Treasurer, the Board of Directors may by affirmative vote of two-thirds of the directors reinstate such former member to membership upon such terms as the Board of Directors may deem appropriate.

Section 3.6. Annual Meeting. The annual meeting of the members for the election of Directors of the Association and for the transaction of such other business as may properly be brought before the meeting shall be held at such times as the Board of Directors may provide.

Section 3.7. Special Meetings. Special meetings of members may be called by the Board of Directors or such officer as the Board of Directors may designate.

Section 3.8. Place of Meeting. All meetings of members shall be held at such place, either within or without the State of Delaware, as the Board of Directors may provide.

Section 3.9. Notice of Meetings. Written or printed notice, and an agenda stating the place, day, and hour of the meeting, and in the case of a special meeting or one required by law or by these By-Laws, stating the purpose or purposes for which the meeting is called, shall be delivered to each member of record entitled to vote at such meeting not less than thirty (30) nor more than sixty (60) days before the date of the meeting. Such notice shall be given by or at the direction of the Chairman, the Secretary/Treasurer, or the officer or persons calling the meeting in accordance with the provisions of Article 11 of these By-Laws.

Section 3.10. Meeting Procedures

In addition to avoiding behavior that is unlawful, it is important for trade associations to conduct their activities in a way that will not present the appearance of possible illegality. The following procedures should be followed in all trade association meetings:

1. There should be a written agenda, prepared in advance, for all association meetings, including committees and subcommittees.
2. Minutes should be prepared which accurately reflect the matters discussed and action taken.
3. Agendas and minutes should be precise in describing matters discussed and action taken. Antitrust counsel should have an opportunity to examine agendas prior to meetings and should review all minutes in draft form.

4. No informal or secret meetings should be held.
5. Members should avoid discussion of business matters of substance outside formal meetings.
6. If possible, antitrust counsel and association staff should be present at all general meetings of the association and Board of Directors meetings.
7. The association's bylaws or internal policies should provide that no final action of the association may be taken without the approval of its Board of Directors.

Section 3.11. Action Without a Meeting. (1) Any action required by law to be taken at any annual or special meeting of members entitled to vote, or any other action which may be taken at a meeting of members entitled to vote, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed (i) by all members entitled to vote with respect to the subject matter thereof, or (ii) by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voting. Prompt notice in writing of the taking of such action without a meeting shall be delivered to those members entitled to vote who have not consented in writing. Such consents shall be delivered to the Association by delivery to its registered office in the State of Delaware, its principal office, or the Secretary/Treasurer of the Association. Delivery made to the Association's registered office shall be by hand or certified or registered mail, return receipt requested.

Section 3.12. Action at a Meeting. If a quorum is present, the affirmative vote of a majority of the votes present and voted, either in person or by proxy, shall be the act of the full members, unless the vote of a greater number is required by law, the Articles of Incorporation, or these By-Laws.

Section 3.13. Quorum. Unless otherwise provided by the Articles of Incorporation or these By-Laws, full members of the Association holding one-half of the votes entitled to be cast on a matter, represented in person or by proxy, shall constitute a quorum for consideration of such matter at a meeting of full members except that in the absence of a quorum, a majority of the full members present may adjourn the meeting to another time without further notice.

Withdrawal of full members from any meeting shall not cause failure of a duly constituted quorum at that meeting.

Section 3.14. Proxies. A full member entitled to vote may vote in person or by proxy executed in writing by the member or that member's duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. The proxy must state the issue or motion that the vote is intended to cover.

ARTICLE 4

Board of Directors

Section 4.1. General Powers. The affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 4.2. Number and Qualifications. The maximum number of directors of the Association shall be the number of full members of the Association.

Section 4.3. Appointment and Tenure. Directors shall be elected by vote of the members at each annual meeting, and each director shall hold office until the next annual meeting of members and until successor has been elected and qualified. If the election of directors shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. Elections of directors may be conducted by mail.

Section 4.4. Compensation of Directors. The Corporation shall not pay any compensation to directors for services rendered to the Corporation, except that directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation in reasonable amounts as approved by a majority of the entire Board.

Section 4.5. Resignation. A director may resign at any time by written notice delivered to the Secretary/Treasurer of the Association. A resignation is effective when the notice is delivered unless the notice specifies a date later than the date of delivery.

Section 4.6. Presiding Officer. The presiding officer at any meeting of the Board of Directors shall be the Chairman of the Board, or, in his absence, the Vice Chairman, or in the absence of both the Chairman and the Vice Chairman, any other director elected chairman by vote of a majority of the directors present at the meeting.

Section 4.7. Executive Director. The Board of Directors may contract with an individual, who is not a member of the Board, to serve as the Executive Director. The Executive Director shall perform administrative functions including organizing and conducting committee meetings, distributing technical data and minutes, attending industry meetings at the direction of the Board of Directors and other functions as assigned by the Board of Directors.

Section 4.8. Vacancies. A vacancy in the Board of Directors by reason of resignation, death, or removal shall be filled, as necessary, by the Board of Directors, taking into account the nomination of the member company represented by the former director. Any vacancy occurring in the Board of Directors by reason of an increase in the number of directors may be filled by the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office or, if the director is elected because of an increase in the number of directors, the term of such director shall expire at the next annual meeting of members entitled to vote.

Section 4.9. Regular Meetings. A regular annual meeting of the Board of Directors shall be held without notice other than these By-Laws, immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide by resolution the time and place, either within or without the State of Delaware for the holding of additional regular meetings of the Board without notice other than such resolution.

Section 4.10. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board.

The Chairman must also call or request a special meeting if more than half of the directors request the Chairman to do so. These meetings may be conducted either within or without the State of Delaware.

Section 4.11. Notice of Meetings. Notices and agenda of any special meeting of the Board of Directors shall be given in accordance with Article 11 of these By-Laws at least ten (10) days in advance thereof by written notice to each director at the address shown for each director on the records of the Association. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, unless specifically required by law, the Articles of Incorporation, or these By-Laws.

Section 4.12. Action Without a Meeting. Any action required by law to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors or a committee thereof, may be taken without a meeting, if a consent setting forth the action so taken shall be signed by all directors or by all the members of such committee entitled to vote with respect to the subject matter thereof, as the case may be. The consent may be evidenced by two or more written counterparts, each of which sets forth the action taken and bears the signature of one or more directors or committee members. All approvals evidencing the consent shall be delivered to the Secretary/Treasurer to be filed in the records of the Association.

The action taken shall be effective when all the directors or the committee members, as the case may be, have approved the consent unless the consent specifies a different effective date. Any such consent shall have the same force and effect as a unanimous vote.

Section 4.13. Quorum. One-half of the directors then in office shall constitute a quorum for the transaction of business at any meeting, provided if less than one-half of the directors are present, a majority of the directors then present may adjourn the meeting to another time without further notice. Withdrawals of directors from any meeting shall not cause failure of a duly constituted quorum at that meeting, provided that a quorum shall not be present if the number of directors present following the withdrawal of a director is less than one-third of the total number of directors.

Section 4.14. Action at a Meeting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these By-Laws.

Section 4.15. Manner of Acting. The vote of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. In connection with all actions taken by the Board of Directors with respect to any contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, firm association, or other entity in which one or more of the directors or officers of the Corporation are directors or officers or have a substantial financial interest,

affiliation, or other significant relationship, each such interested director or officer of the Corporation shall:

(a) disclose to the Board of Directors the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorships, officerships, or significant financial interest, affiliation, or other significant relationship, which disclosure shall be duly recorded in the minutes or resolutions relating to such actions, and

(b) abstain from voting on any such contract or transaction.

Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors that authorizes such contract or transaction.

Section 4.16. Meeting by Conference Telephone. Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE 5

Committees

Section 5.1. Committees of the Board of Directors. A majority of the Board of Directors may create one or more additional committees of the Board, which committees, to the extent specified by the Board and not otherwise prohibited by law, may have and exercise authority of the Board of Directors in the management of the association. (11)

The designation of any committee and the delegation thereto or authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by these By-Laws.

(a) Working Committees. The Board of Directors may from time to time, in its discretion, by resolution passed by a majority of the Board of Directors, designate, and appoint other committees of one or more directors which shall have and may exercise such lawfully delegable powers and duties conferred or authorized by the resolutions of designation and appointment. The Board shall have power at any time to change the members of any such committee, to fill vacancies, and the discharge any such committee.

(b) The Board of Directors, at their discretion, can also create Special Interest Committees, in which each Director is free to be a participating member. If any cost is incurred by the Special Interest Committee, the Board will levy an assessment in accordance with the fee schedule in Section 4.2 to fund such activities.

Section 5.2. Action of Committees of the Board. A majority of a committee of the Board of Directors shall constitute a quorum. The Act of a majority of committee members present and voting at a meeting at which a quorum is present shall be the act of the committee. A committee may act by unanimous consent in writing without a meeting in the manner provided by these By-Laws for written consents of the Board of Directors. Some or all committee members may participate in and act at any meeting through the use of a conference telephone or other similar communications equipment by which all members may hear each other.

No member of a committee of the Board may act by proxy. Subject to these By-Laws and to action by the Board of Directors, a majority of the members of a committee of the Board shall determine the time and place of meetings and the notice required for meetings.

Section 5.3. Advisory Committee. The Board of Directors may create one or more advisory committees or other advisory bodies and appoint persons to such advisory committees or bodies who need not be directors. Such advisory committees or bodies may not act on behalf of the Association, the Board of Directors or the officers.

Section 5.4. Executive Committee. The Executive Committee shall be comprised of the officers of the Association. The Chairman of the Board shall be the Chairman of the Executive Committee. The Executive Committee shall have general supervision of the affairs of the Association in the interim between Board meetings and at such time shall have all the powers of the Board of Directors except as provided by §141(c) of the Delaware General Corporation Law. It shall meet upon call of the Chairman. Notice of any special meeting of the Executive Committee shall be given at least five (5) days previous thereto by written notice delivered personally or sent by mail, fax or telegram to each member of the Executive Committee at his address as shown by the records of the Association. Neither the business to be transacted nor the purpose of any regular or special meeting of the Executive Committee need be specified in the notice of such meeting unless specifically required by law or these By-Laws.

A majority of the Executive Committee shall constitute a quorum for the transaction of business at any meeting of the Executive Committee, provided that if less than a majority of the members of the Executive Committee are present at such meeting, a majority of those present may adjourn the meeting from time to time without further notice. The act of a majority of the members of the Executive Committee attending a meeting at which a quorum is present shall be the act of the Executive Committee, except where otherwise provided by law or these By-Laws. Interim vacancies occurring in the Executive Committee, other than officer members, shall be filled through appointment by the Chairman from the industry segments which designated the previous holder of such position, and such appointment shall serve for the unexpired term of his predecessor.

The Executive Committee, in addition to the customary duties and responsibilities of such committee, shall consider and make recommendations on all matters of Association financing and expenditures, formulate and recommend changes in these By-Laws and procedures of the Association, select and supervisor the Executive Director and approve selection of other executive staff members, consider, formulate and make recommendations on matters and policy relating to immediate and long range planning, organizational structure, management and personnel and functioning not within the scope of existing standing or special committees.

ARTICLE 6

Officers

Section 6.1. Enumeration. The officers of the Association shall be a Chairman of the Board, Chairman Elect, Vice Chairman, Secretary/Treasurer, Assistant Secretary/ Treasurer, and such other officers or assistant officers as may be elected or appointed by the Board of Directors. Officers whose authority and duties are not prescribed in these By-Laws shall have the authority and perform the duties prescribed from time to time by the Board of Directors. Only owners or employees of full members shall be eligible to hold office. A director may be an officer. An officer may only serve in one position concurrently.

Section 6.2. Election and Term of Office. The officers of the Association shall be elected annually at the annual meeting of the Board of Directors, or as soon thereafter as conveniently possible. To maintain Association continuity, the Chairman Elect shall succeed the Chairman and the Assistant Secretary/Treasurer shall succeed the Secretary/Treasurer. Each officer shall hold office until a successor is elected and qualified or until such officer's earlier death, resignation, or removal in the manner hereinafter provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Election or appointment of any officer or agent shall not itself create any contract rights.

Section 6.3. Resignation and Removal.

(a) Any officer may resign at any time by giving notice to the Board of Directors. A resignation is effective when the notice is delivered unless the notice specifies a date later than the date of delivery.

The resignation of an officer need not be accepted in order to be effective.

(b) The Board of Directors may remove any officer, either with or without cause, whenever in its judgment the best interests of the Association would be served thereby.

Section 6.4. Vacancies. A vacancy in any office, however caused, may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.5. Compensation. The officers of the Association shall serve without compensation unless otherwise specified by the Board of Directors.

Section 6.6. Chairman of the Board. The Chairman of the Board shall in general supervise and control all of the business and affairs of the Association. The Chairman of the Board or any other proper officer of the Association may sign any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed, and in general he shall perform all duties incident to the office of the Chairman of the Board and such other duties as from time to time may be prescribed by the Board of Directors. When present, he shall preside at all meetings of the members and of the Board of Directors.

Section 6.7. Vice Chairman. In the absence of the Chairman of the Board or in the event of his inability or refusal to act as Chairman of the Board, the Vice Chairman shall perform the duties of the Chairman of the Board and, when so

acting, shall have all the powers of, and be subject to all the restrictions placed upon, the Chairman of the Board.

Section 6.8. The Secretary/Treasurer. The Secretary/Treasurer shall:

(a) Keep the minutes of meetings of members and of the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose;

(b) See that all notices are duly given in accordance with the provisions of these By-Laws or as required by law;

(c) Be custodian of the corporate record and of the seal of the Association;

(d) Affix the seal of the Association or a facsimile thereof, or cause it to be affixed and, when so affixed, attest the seal by his or her signature, to all documents the execution of which on behalf of the Association under its seal is duly authorized by the Board of Directors or otherwise in accordance with the provisions of these By-Laws (provided, however, the Board of Directors or the Chairman of the Board may give general authority to any other officer to affix the seal of the Association and to attest the affixing by his or her signature); and

(e) Keep a register of the mailing address of each member, director, or committee member, which shall be furnished to the Secretary/Treasurer by such member, director, or committee member.

The Secretary/Treasurer shall also have charge and custody of and be responsible for all funds and securities of the Association, receive and give

receipts for moneys due and payable to the Association from any source whatsoever, deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected by the Chairman of the Board, disburse the funds of the Association as ordered by the Board of Directors or the Chairman of the Board or as otherwise required in the conduct of the business of the Association, and render to the Chairman of the Board or the Board of Directors, upon request, an account of all his transactions as Secretary/Treasurer and on the financial condition of the Association. The Secretary/Treasurer may contract with an individual, who is not a member of the Board, to perform certain functions with the prior approval by the Board. Any such contracted functions that involve the assessment, receipt, or transfer of monies shall require periodic audits of all transactions by the Secretary/Treasurer.

The Secretary/Treasurer shall in general perform all the duties incident to the office of Secretary/Treasurer and such other duties as from time to time may be assigned to him by the Chairman of the Board or by the Board of Directors. If required by the Board of Directors, the Secretary/Treasurer shall give a bond (which shall be renewed regularly), in such sum and with such surety or sureties as the Board of Directors shall determine for the faithful discharge of this duties and for the restoration to the Association, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind, in his possession or under his control belonging to the Association.

receipts for moneys due and payable to the Association from any source whatsoever, deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected by the Chairman of the Board, disburse the funds of the Association as ordered by the Board of Directors or the Chairman of the Board or as otherwise required in the conduct of the business of the Association, and render to the Chairman of the Board or the Board of Directors, upon request, an account of all his transactions as Secretary/Treasurer and on the financial condition of the Association. The Secretary/Treasurer may contract with an individual, who is not a member of the Board, to perform certain functions with the prior approval by the Board. Any such contracted functions that involve the assessment, receipt, or transfer of monies shall require periodic audits of all transactions by the Secretary/Treasurer.

The Secretary/Treasurer shall in general perform all the duties incident to the office of Secretary/Treasurer and such other duties as from time to time may be assigned to him by the Chairman of the Board or by the Board of Directors. If required by the Board of Directors, the Secretary/Treasurer shall give a bond (which shall be renewed regularly), in such sum and with such surety or sureties as the Board of Directors shall determine for the faithful discharge of this duties and for the restoration to the Association, in case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind, in his possession or under his control belonging to the Association.

Section 6.9. The Assistant Secretary/Treasurer. The Assistant Secretary/Treasurer shall assist the Secretary/Treasurer in conducting his or her responsibilities.

ARTICLE 7

Contracts and Financial Transactions

Section 7.1. Contracts. The Board of Directors may authorize any officer(s) or agent(s) of the Association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 7.2. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in the name of the Association unless authorized by a resolution by the Board of Directors or by action of a duly empowered committee of the Board. Such authority to make loans may be general or confined to specified instances. No loan shall be made by the Association to a director or officer of the Association.

Section 7.3. Checks, Drafts, Etc.. All checks, drafts, or other orders for the payment of money, notes, or other evidence of indebtedness, issued in the name of the Association, shall be signed by such officer(s) or agent(s) of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination, such instruments may be signed by the Chairman of the Board.

Section 7.4. Gifts. The Board of Directors may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

The Board of Directors may, in its absolute discretion, refuse any conditional or restricted gift, grant, bequest, or contribution and return to the donor any such contribution actually received.

ARTICLE 8

Records

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and committees having any authority of the Board of Directors, and shall keep a record giving the names and addresses of the members entitled to vote. All books and records of the Association may be inspected by any director, any member entitled to vote, or any director's or such member's agent or attorney, for any proper purpose at any reasonable time.

ARTICLE 9

Fiscal Year

The fiscal year of the Association shall be the calendar year.

ARTICLE 10

Seal

The Board of Directors may provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words and figures "Oilheat Manufacturers Association, Not for Profit Seal 1993 Delaware".

ARTICLE 11

Notices

Section 11.1. Manner of Notice. Whenever under the provisions of law, the Articles of Incorporation, or these By-Laws, notice is required to be given to any member, director or member of any committee designated by the Board of Directors, it shall not be construed to require personal delivery. Such notice may be given in writing by depositing it in a sealed envelope in the United States mails, postage prepaid and addressed to such member, director, or committee member at his or her address as it appears on the books of the Association, and such notice shall be deemed to be given at the time when it is thus deposited in the United States mails; or such notice may be given in writing by any other means and if given by such other means, shall be deemed given when received. Such requirement for notice shall be deemed satisfied, except in case of meetings of members with respect to which written notice is required by law, if actual notice is received orally or in writing by the person entitled thereto as far in advance of the event with respect to which notice is given as the minimum notice period required by law, the Articles of Incorporation, or these By-Laws.

Section 11.2. Waiver of Notice. Whenever any notice is required to be given by law, by the Articles of Incorporation or by these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE 12

Indemnification and Insurance

Each person who at any time is or shall have been a director, officer, employee, or agent of the Association or is or shall have been serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall be indemnified by the Association in accordance with and to the full extent permitted by the General Corporation Law of the State of Delaware as amended from time to time. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors, or otherwise. If authorized by the Board of Directors, the Association may purchase and maintain insurance on behalf of any person to the full extent permitted by the General Corporation Law of the State of Delaware as amended from time to time.

ARTICLE 13

Amendment

A majority of the Board of Directors at a meeting at which a quorum is present may alter, amend, or repeal the By-Laws or adopt new By-Laws. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given in accordance with Article 11 of these By-Laws.

ARTICLE 14

Guidelines for Full Member & Affiliate Member Conduct

I. Introduction

The federal and state antitrust laws are intended to insure that there be free and open competition to the maximum extent possible. The antitrust laws prohibit most business behavior that unreasonably restrains competition. As a general rule, any practice or agreement that tends to limit competition is inherently suspect and should be avoided. Trade association members should not discuss any activity or agreement that would tend in any way to limit competition among members of the association, their suppliers or their customers without first consulting antitrust counsel. The antitrust laws are complex and it is impossible in a brief outline to set out all of the principles they embody. These guidelines are intended therefore only to alert trade association members and staff to those types of trade association activities which are most likely to present antitrust law compliance problems.

Violation of the federal antitrust laws is a felony subject to very large fines (for corporations up to the greatest of ten million dollars, twice the pecuniary gain the corporation derived from the crime, or twice the pecuniary loss caused to the victims of the crime, and up to three hundred and fifty thousand dollars for individuals) and jail sentences. In addition, individuals, businesses and the U.S. government may recover three times the actual damages sustained as a result of a violation of the antitrust laws plus attorneys' fees.

In light of these extremely costly consequences of a violation of the antitrust laws, it is obviously important for trade association members and staff to adopt a conservative approach to compliance.

II. Subjects Which Should Not be Discussed At All Among Trade Association Members

Some trade association activities are clearly unlawful and viewed by the antitrust laws as unjustifiable in any circumstances. The following subjects therefore should not be discussed in any manner by association members:

1. Member or non-member competitor's current or future prices. Past prices should not be discussed by members, but in some circumstances may be reported through a statistical reporting program which preserves the anonymity of members reporting. Such a program should be conducted only after thorough evaluation and with the close supervision of antitrust counsel.

2. All matters that affect price (maximum as well as minimum price), such as discount for cash payments, profit levels and credit terms. These subjects, and any others that affect price or are elements of the terms and conditions of sale, such as warranty or delivery provisions, must be subject to competitive forces as much as price. Accordingly, they should not be discussed.

3. Costs. Since costs and profit margin in most instances are the elements of price, the subject of costs should not be discussed by members. Statistics reflecting past costs paid by members, but not revealing individual companies' responses, may be collected and distributed to participants, but only under the close supervision of antitrust counsel.

4. Allocation, division or "rationalization" of markets or customers. These practices are similar in effect to price fixing and are treated accordingly in the law.

5. Boycotts or agreements not to deal with competitors, customers or suppliers. The prohibition on concerted activity directed toward third parties extends to foreign competitors, customers or suppliers as well.

6. Product quality. Associations may discuss and develop product standards, but there should be no discussion of efforts to require members to meet those standards. In general, it is best to avoid discussion of product quality unless in the context of standards. A standards development program should be followed only after consultation with antitrust counsel.

III. Subjects Which Are Sensitive And Should be Discussed With The Guidance of Antitrust Counsel

There are several areas of legitimate trade association concern which may be discussed by association members but which do require the guidance of antitrust counsel. These are practices or agreements which do not necessarily constitute unreasonable restraints of trade because they do not adversely affect competition or, if they have some adverse effect on competition, may be justified by business reasons, or possess some competition-enhancing aspects. For example, a trade association may not exclude a foreign competitor because it sells at a lower price than domestic manufacturers if membership in the association is necessary to be able to compete effectively. On the other hand, an association may exclude a competitor which has failed to pay its association dues.

Each of the following subjects requires careful consideration and should not be discussed without guidance from antitrust counsel:

1. Eligibility for membership in the association or expulsion of a member.
2. Association codes of ethics and other industry self-regulation activities.
3. Standards for certification programs.
4. Cooperative research programs.
5. Statistical programs.

Conclusion

These guidelines are intended to provide trade association members and staff with a brief outline of those activities which are clearly unlawful under the antitrust laws and those which are of questionable legality. When in doubt, it is best to consult antitrust counsel. All requests for information or documents addressed to the trade association by law enforcement agencies should immediately be referred to antitrust counsel.