

Nonprofit Chapters and Affiliates: Finding Structures and Relationships That Address Your Challenges and Work Well for Everyone

Thursday, February 4, 2016, 12:30 – 2:00 pm ET

Venable LLP, Washington, DC

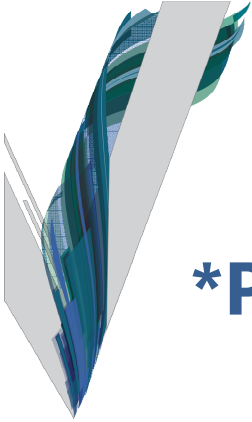
Moderator

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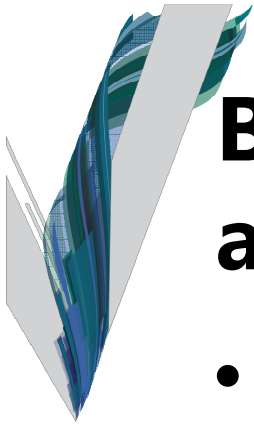
Today's Agenda

- Background about Chapters and Affiliates
 - Why have chapters or affiliates?
 - Trends
- Legal and Tax Framework
 - Separateness vs. control
 - IP, tax, and contractual liabilities
- Practical Strategies
 - Case study for a new chapter structure
 - Other examples
- Conclusion



Background—Why Have Chapters and Affiliates

- Chapters give local base for:
 - Membership
 - Sponsorship
 - Contributions
- Chapters can be “farm system” for new organization leaders
- Affiliates usually formed for liability and tax reasons
 - E.g., 501(c)(3) establishes 501(c)(4) affiliate for more aggressive lobbying
 - E.g., 501(c)(6) establishes 501(c)(3) affiliate to solicit tax deductible charitable contributions



Background—Evolution of Chapters and Affiliates

- Every nonprofit is different—size, type, scope—but they are also in many ways fundamentally the same
- Not the '60s, '70s, or '80s, the heyday of local organizations
- World has changed—networking is different
- iPad, iPhone, Internet, chat rooms—the communications of today
- Few want to attend local meetings or participate



Background—Evolution of Chapters and Affiliates

- Greater emphasis on compliance
 - Discouraging formation of separate entities without strong business case
- Many related foundations, advocacy arms, for-profit subs not reaching potential
- Tax advantages sometimes overstated



Chapters and Affiliates—Legal and Tax Framework

Reasons to Affiliate

Tax
Restrictions

Fundraising
Opportunities

Maximizing
Resources

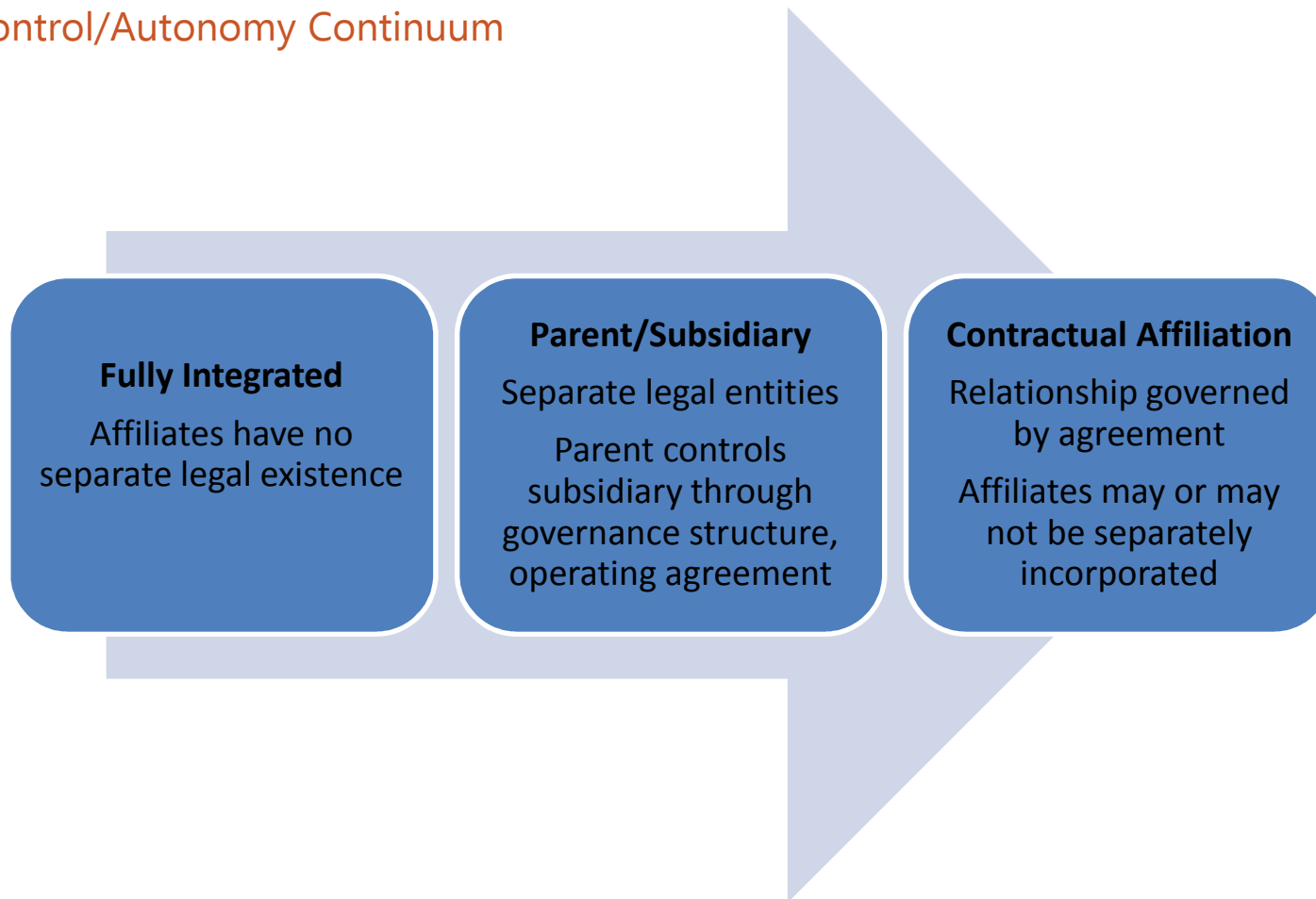
Geographic
Focus

Managing
Liability
Exposure



Chapters and Affiliates—Legal and Tax Framework

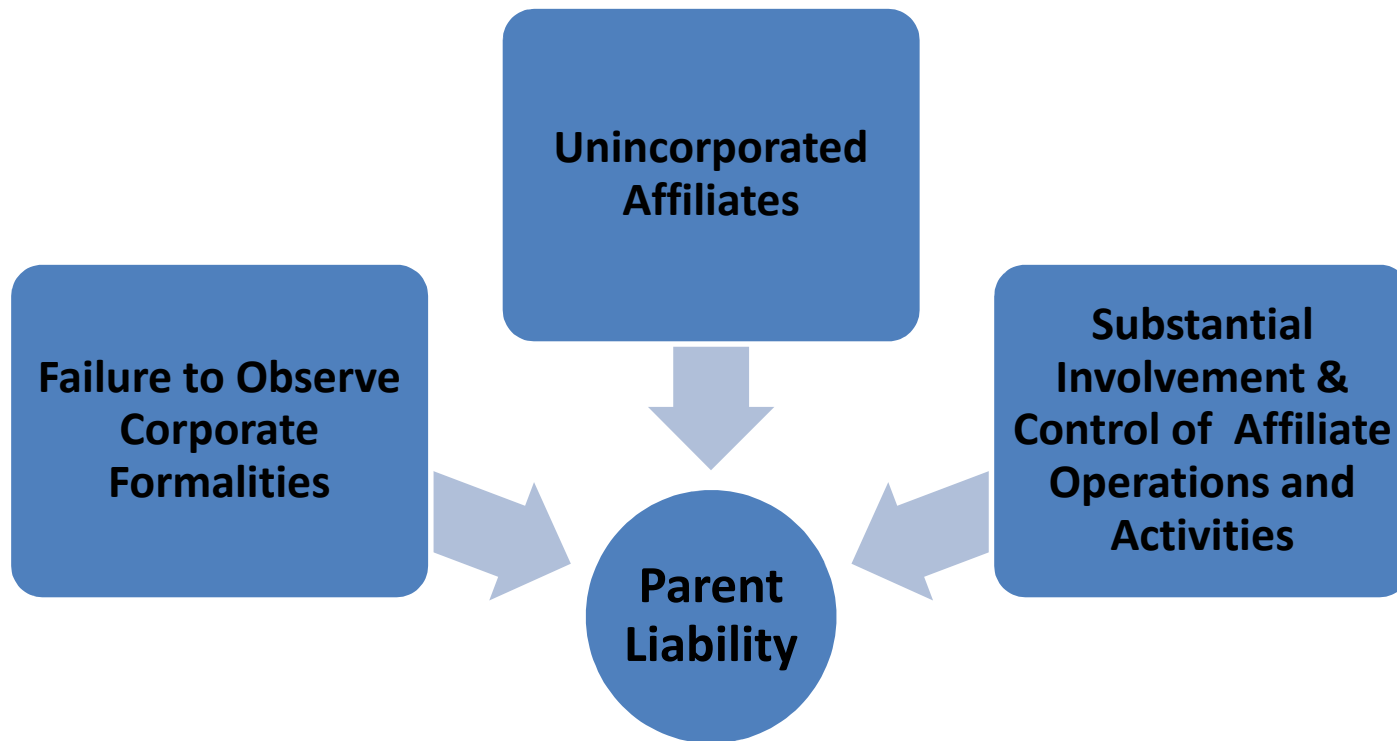
Control/Autonomy Continuum





Chapters and Affiliates—Legal and Tax Framework

Attribution of Liability to Parent (Tort, Contract, etc.)





Chapters and Affiliates—Legal and Tax Framework

Intellectual Property Ownership and Use

Names & Logos

- Common practice for affiliate name to include parent's name
- Disputes over use of name likely in the event of disaffiliation
- Specify trademark license terms in affiliation agreement and/or bylaws or policies
- Consider trademark registration (U.S. and foreign, if operating internationally)

Publications & Data

- Address ownership and licensing of membership lists, data, and works created by or through affiliates in affiliation agreement or on a project-by-project basis as necessary
- Consider 501(c)(3) tax implications before assigning rights to a non-501(c)(3)



Chapters and Affiliates—Legal and Tax Framework

Governance-related Challenges

- Fiduciary duties
 - Overlapping directors on parent and affiliate boards
 - Affiliate representatives on parent board
- Common governance structure requirements
 - What works for parent might not be best for affiliate
- Common membership requirements
 - Qualifications
 - Termination
- Managing Affiliate Status
 - Threshold for granting charter
 - Dispute resolution
 - Inactive or probation status
 - Disaffiliation
- Financial management
 - Dues collection arrangements
 - Internal controls at affiliate level



Chapters and Affiliates—Legal and Tax Framework

Federal Group Tax Exemption

Application Process

Increasingly Lengthy & Expensive Process

Changes May Be Forthcoming

Benefits & Limitations

Substantial Benefit for Subordinates

“General Supervision or Control” Element & Liability Risk

UBIT
Federal Employment Taxes
State & Local Taxes

Compliance

Annual Filings & Automatic Revocation

Monitoring Subordinate Activities

Training



Chapters and Affiliates—Legal and Tax Framework

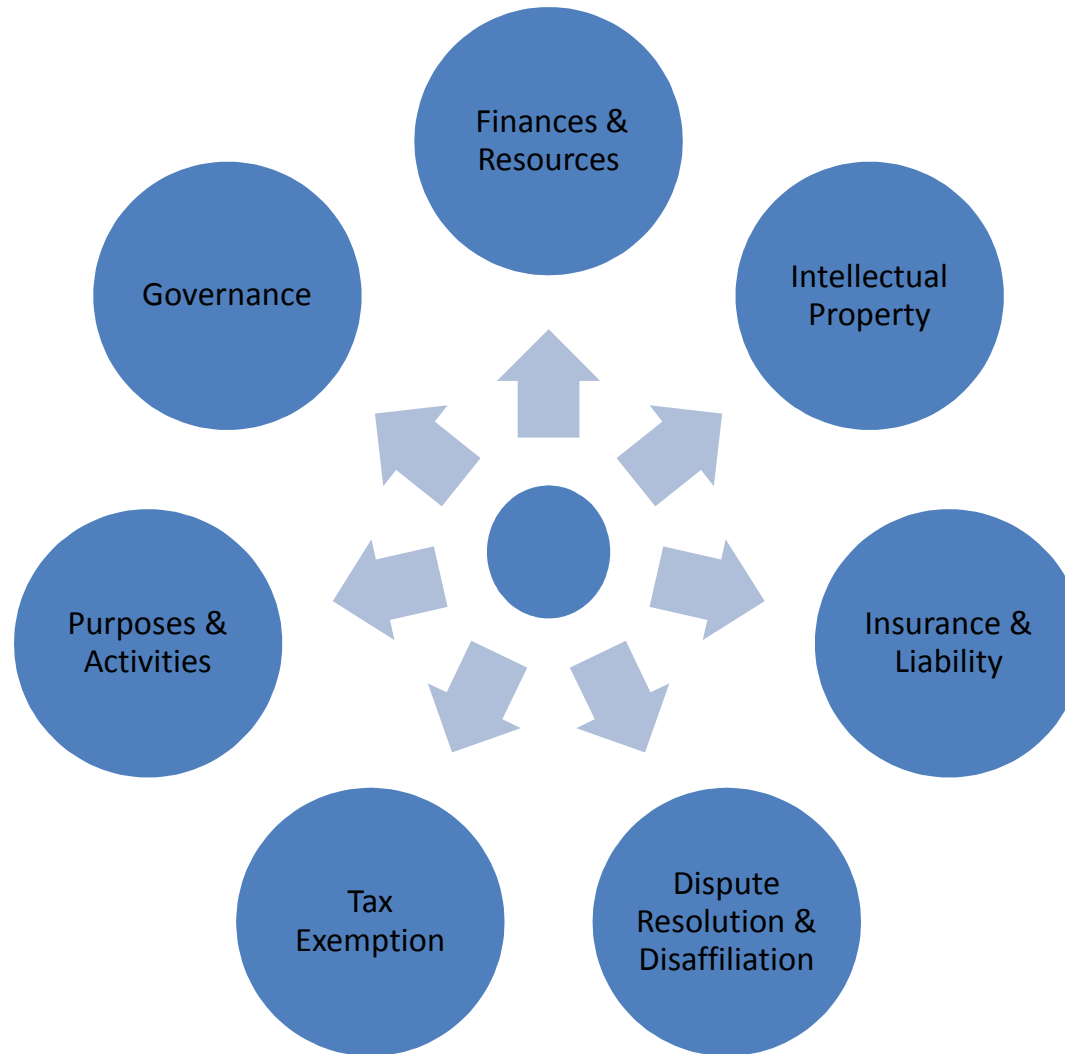
501(c)(3) Affiliates of Non-(c)(3) Entities

- Private benefit and private inurement
- Transferring funds and other resources from (c)(3) to non-(c)(3)
 - Grants to non-(c)(3)s
 - Providing fair market value consideration
- Attribution of political and lobbying activities to (c)(3)
 - Shared websites



Practical Strategies—In General

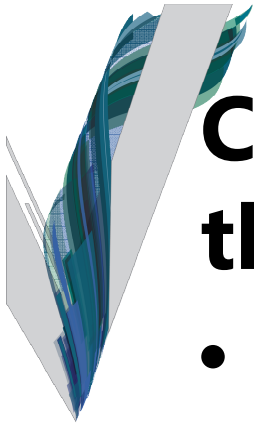
Key Elements for Agreements, Articles & Bylaws, Affiliate Charters, Policies





Practical Strategies—A Case Study: ACCA De-Federation

- Years in the making (5 years)
- Identify problems and trends to the Board
- Relate problems to growth/operational impediments
- Keep the Board focused on issues
 - Communicate often



Case Study—The Board Must Take the Lead

- Find a champion on the Board to lead
 - Person who “gets it” and has backbone, is respected
- Establish ad hoc committee to study issues
- Remind the Board members of their fiduciary responsibilities
 - They serve the national associations interest—not Chapters/States
 - Take emotions and bias out of issues—look at facts/trends



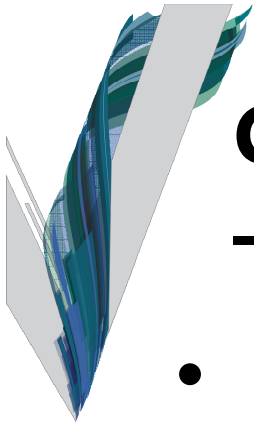
Case Study—Staff Due Diligence

- Present facts and data (membership trends)
- Present operational issues (multiple dues formulas)
 - 150 different dues formulas for same-size company member
- Explain inability to have national marketing campaign or monthly credit card dues payments
- Present “dirty linen” of chapter actions/inactions
- Impact on ACCA brand name
- Little control over independent Chapter/State corporations



Case Study—ACCA Structure

- Moved to “one ACCA” concept in 2001
- If any local or State chapter in your zip code area existed, you had to join all tiers of ACCA organization
 - Chapter, State, and National (most of country was at-large)
 - All tiers were independent corporations
 - Set own dues level
- ACCA conducted dues billing
 - Processed payment back to Chapters and State organizations
- Process enabled poor chapters (no value) to exist



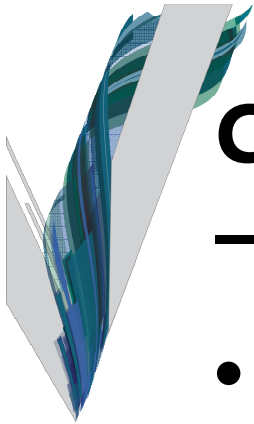
Case Study—Board Ad Hoc Committee – Round One

- Have a cross section of association constituency
- Involve Chapter executives and leaders (local volunteer members)
- Present staff due diligence
- Let the ad hoc committee draw its own conclusions
 - Complex dues formulas
 - Inability to nationally market ACCA
 - ACCA brand name being tarnished
 - No control over Chapter finances, dues, or operations
 - Weak at state advocacy



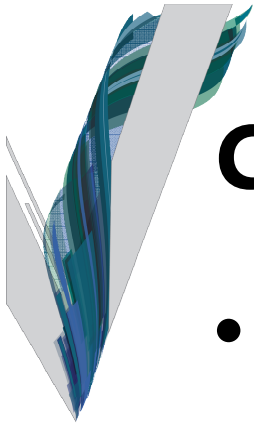
Case Study—Ad Hoc Committee Report

- Acknowledged structural impediments
- Recommended a new affiliation agreement be implemented
- But could not determine how to address the most serious flaw—DUES



Case Study—Board Ad Hoc Committee – Round Two

- Put a band-aid on problems—New Affiliation Agreement
- Staff continued to advise Board of (same) problems
- CEO laid out a strategic plan and challenged board
- Fix federation, fix dues
- Appointed special committee to handle issue



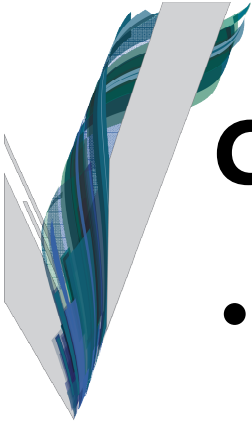
Case Study—Basic Principles

- **Face Reality**—A problem exists
- **Determine Relevance**—Define purpose/need of organization
- **Find North Star**—Develop direction/strategies to get organization where it needs to be
- **Be Bold**—Have courage to make painful but necessary decisions



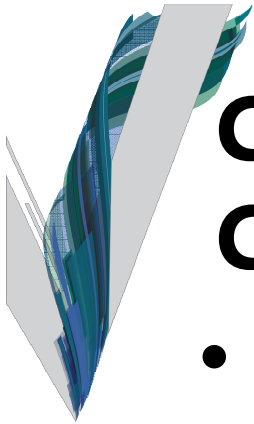
Case study—Special Committee

- Chaired by highly respected and influential ACCA past chair (woman)
- Committee of ACCA officers
- No Chapters/State association involvement (had their chance)
- Keep emotions and prejudices out
- Make recommendations based on facts and realities
- What was best for ACCA?



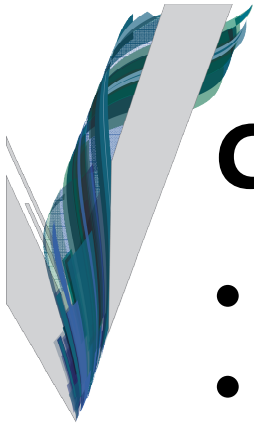
Case Study—Final Board Action

- ***Remind Board members of their fiduciary responsibilities***
 - Made tough but obvious decisions
- Move to open membership
 - Each entity to set and collect own dues
 - Each entity must show its own worth and value
 - Canceled all existing affiliation agreements with Chapters/State affiliates
- Move to MOU with State organization only
 - State advocacy purpose
 - Created designation of Affiliated Contractor Organizations (ACOs)
 - MOU a simple agreement to recognize each other



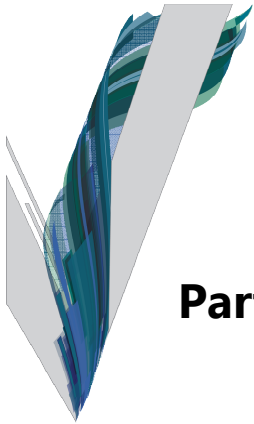
Case Study—Communication to Chapters/State Executives

- No easy way to handle or right/wrong approach
- Decided to just be bold and not sugarcoat things
- Board chairman announcement at annual conference (March)
- Shock, anger, resentment
- New structure took place in four (4) months (effective Aug. 1)



Case Study—Post De-federation

- Dues billing processes separated (some quirks)
- Licensing of name “ACCA” an issue
- New State MOUs signed (some new, some old)
- Some Chapters folded, others strengthened—focus on member values
- ACCA membership marketing streamlined, flat fee or monthly credit card
- Membership has grown, retention steady
- Envy of many other national associations with chapters/state organizations
- The evolution of chapters/state organizations is unavoidable



Questions?

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