Antitrust Talking Points

ASLA Policy and Antitrust Law

- ASLA’s policy on antitrust and restraint of trade **strictly prohibits** any discussions or actions among its trustees, volunteers, members, employees, and/or representatives that may have the effect of improperly restraining trade and competition in the marketplace. Bottom line: ASLA members need to be free to make their own independent business decisions.

- ASLA has never had antitrust trouble—and doesn’t want to have it!

Antitrust and Collective Action

- Whenever groups of competitors get together, the Department of Justice and Federal Trade Commission start paying attention. Professional and trade associations are essentially groups of competitors, so antitrust regulators scrutinize these groups carefully to make sure that nothing is happening that would restrict the marketplace.

- One area that is especially sensitive is salaries and fees.

  - It is **OKAY** for ASLA to survey members for compensation and benefits data and to publish the results. It’s okay because: 1) the data is always a little bit old (at least three months old); and 2) you can parse the data down to the regional level, but you can’t parse it down to the level of seeing what the firm across the street from you is charging or paying its employees.

  - It is **NOT OKAY** for a group of members at a chapter meeting to share information about what they are charging their clients and how much they pay their staff. Regardless of whether or not the exchange of information caused any of the firms to change their practices, it **could** have that effect, so it could be considered an antitrust violation.

  - Important side note: If ASLA members do something that is an antitrust violation outside of ASLA activities, it could cause problems for the individuals—which would be unfortunate—but ASLA would not be liable. But if members or even non-members have those discussions in an ASLA forum, then ASLA is also liable. We want to make sure that nothing that could be an antitrust violation happens under the ASLA umbrella—in chapter or national meetings, or in ASLA publications, sponsored listservs, or web discussion forums like LinkedIn and Facebook.

Antitrust Law Exception: The Right to Petition the Government

- There is one very important exception to the antitrust laws that relates to the first amendment right to petition the government. It is absolutely fine for individuals or groups to petition the government to take an action that could restrict the marketplace.

  - Licensing laws are a prime example. Licensing laws by their very nature divide up the marketplace and define who can or can’t provide certain services. It is absolutely legal and appropriate for ASLA and its members to lobby for licensing laws. It is **OKAY** and very appropriate for ASLA chapters to sit
down with engineers, architects, landscape contractors, or other similar groups in their states to discuss what services each group can provide—as long as it is in the context of state licensing laws or regulations. Those discussions have to happen on a state by state basis—because licensing is a state function. ASLA National **NOT** sit down with other national design professional organizations to collectively decide what each profession’s scope of services should be—that would be an antitrust violation.

- **Another example:** If a city government started to use a contract for professional services that included provisions that were detrimental to landscape architecture firms, an ASLA chapter **COULD** take a position opposing the city’s use of those provisions and **COULD** lobby the city to change the contract. The chapter could **NOT** encourage its members not to accept city work or sign the contract. That would be a boycott, which is a violation of the antitrust laws.

- Further, if the same situation existed with a private client, the chapter could **NOT** take a position and lobby the client to change its contract. It is only okay if the client is a public entity, because that falls under the antitrust exception for petitioning the government.

**Antitrust and Membership**

- **Another area of potential liability under the antitrust laws relates to fair and equal application of membership criteria.** Membership in an organization is viewed by Justice and the FTC as conferring a competitive advantage. Therefore, someone cannot be denied that advantage unfairly. As a professional organization, ASLA has the absolute right to determine criteria for membership. However, once those criteria are established, they must be applied fairly.

- For example, an individual cannot be denied membership because he/she isn’t well liked or doesn’t play well with other members of a chapter. Important note: By joining, ASLA members agree to abide by the ASLA Code of Ethics. Members who commit violations of the code can have their membership suspended or revoked. The Ethics Committee handles those issues with the benefit of legal counsel and following a set of legally vetted due process procedures.

- In addition, individuals within a membership category need to be treated equally and have equal access to programs and services.

- **Bottom line:** We all need to be aware—and be vigilant. ASLA has never had antitrust trouble, but AIA and some of the engineering associations have had trouble—and it is costly!

- **We recommend that you read ASLA’s antitrust policy so you are familiar with it. And if you see something that could be a problem, let us know. If you have questions, let us know. Contact the ASLA staff you work with and they will get the answer for you. There are no stupid questions in this area!**