

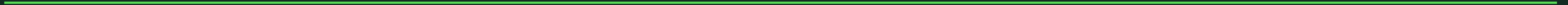
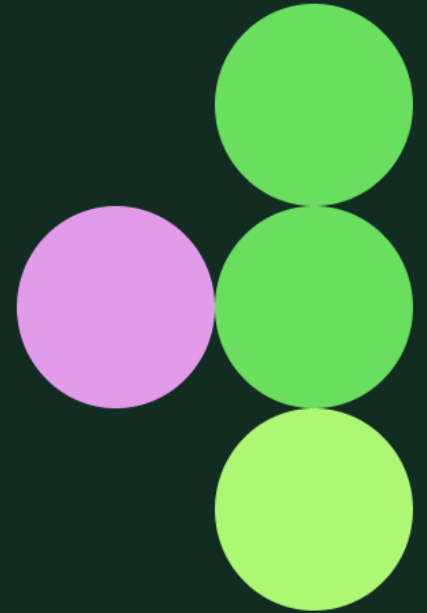


# **Legal and Practical Considerations for Real Estate Investor Associations**

Kathie Russell  
NCREIA

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## Choice of Entity



- Register the legal name of your association, if appropriate.** Starting a business doesn't always require a trademark name. In fact, the act of publicly beginning to use a business name is legally equivalent to establishing your rights to that business name.

**Determine the legal structure.** Associations can be incorporated or unincorporated.

**Consider your leadership structure.** When you start the association, you may not need a large leadership body. But think about the future and what the ideal board or governing entity for your association would look like

- Create bylaws/operating agreement.** Make it clear how a person can become a member and how the membership starts and ends. Decide if the association will have the power to terminate a membership. Having rules is important, as is having rules for how to change them.

- Draft and adopt policies and procedures.** How do you want your association to function? Creating a procedure for an association's operation is the best way to make it run smoothly.

- Establish membership requirements.** Your membership requirements should be clear, as should your membership approval process

# Overview of Entity Types

## Entity Type Impact

The choice of entity type significantly influences liability, governance, and tax obligations, affecting the overall operational framework of the REIA.

## Liability Considerations

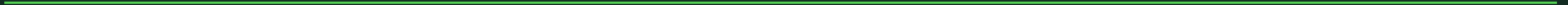
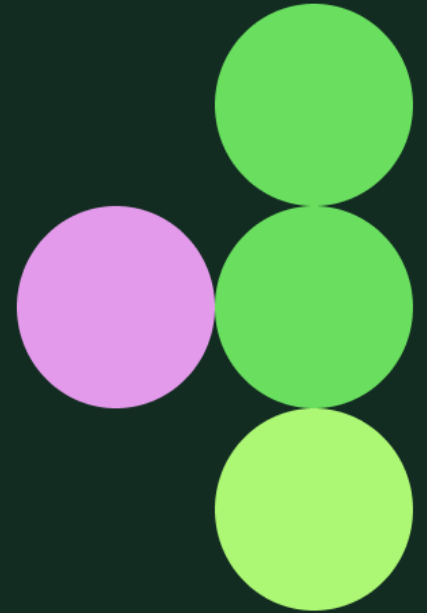
Different entities offer varying levels of personal liability protection, with LLCs and corporations providing stronger safeguards compared to sole proprietorships and partnerships.

## Tax Treatment Variability

Each entity type has distinct tax implications, influencing financial strategies and profitability, necessitating careful evaluation during the selection process.

Business structure	Ownership	Liability	Taxes
<b>Sole proprietorship</b>	One person	Unlimited personal liability	Self-employment tax  Personal tax
<b>Partnerships</b>	Two or more people	Unlimited personal liability unless structured as a limited partnership	Self-employment tax (except for limited partners)  Personal tax
<b>Limited liability company (LLC)</b>	One or more people	Owners are not personally liable	Self-employment tax  Personal tax or corporate tax
<b>Corporation - C corp</b>	One or more people	Owners are not personally liable	Corporate tax
<b>Corporation - S corp</b>	<ul style="list-style-type: none"> <li>• 100 people or fewer</li> <li>• certain trusts and estates</li> <li>• no partnerships, corporations, or non-resident aliens</li> </ul>	Owners are not personally liable	Personal tax
<b>Corporation - benefit corporation</b>	One or more people	Owners are not personally liable	Corporate tax
<b>Corporation - Nonprofit</b>	One or more people	Owners are not personally liable	Tax-exempt, but corporate profits can't be

# For-Profit vs Non-Profit Entities



## Differences Between For-Profit and Non Profit Structures

Aspect	For-Profit Organizations	Nonprofit Organizations
Primary Goal	Maximize profit for owners/ shareholders/ investors	Fulfill mission or address social/ environmental needs
Revenue Source	Sales of products/ services	Donations, grants, membership fees, revenue-generating activities
Profit Distribution	Distributed to owners /shareholders /investors	Reinvested into organization to further mission
Tax Status	Subject to taxation on income	Tax-exempt on income, donations may be tax-deductible
Ownership Structure	Owned by shareholders/ investors	No individual ownership, governed by a board of directors
Mission Focus	Secondary; primary focus is profit generation	Primary; focus on addressing specific cause or need
Legal Structure	Various forms (e.g., LLC, corporation)	Incorporated as a nonprofit under IRS regulations

## COMMON NONPROFIT STATUSES



501(c)(3) - Charitable Organizations



501(c)(4) - Social Welfare Organizations



501(c)(5) - Labor and Agricultural Organizations



501(c)(6) - Business Leagues and Trade Associations



501(c)(7) - Social and Recreational Clubs

*501(c)(6) Business Leagues (Trade and Professional Associations) and Chambers of Commerce.* This includes business leagues, chambers of commerce, real estate boards, boards of trade, or professional football leagues that are not organized for profit. No part of the net earnings can inure to the benefit of any private shareholder or individual.



An association's tax-exempt status could be endangered if the organization does not comply with the requirements in the Internal Revenue Code and the regulations under which it qualified for the exemption.

A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Trade associations and professional associations are business leagues. To be exempt, a business league's activities must be devoted to improving business conditions of one or more lines of business as distinguished from performing particular services for individual persons. No part of a business league's net earnings may inure to the benefit of any private shareholder or individual and it may not be organized for profit to engage in an activity ordinarily carried on for profit (even if the business is operated on a cooperative basis or produces only enough income to be self-sustaining).

## **Apply for State Exemptions and Permits – State Tax Exemption**

The state comptroller oversees collection of state and local taxes, fees, and assessments. Many state laws allow certain organizations to be exempt from paying sales tax, hotel occupancy tax, and franchise tax. You must apply for these state exemptions; it is not automatic.

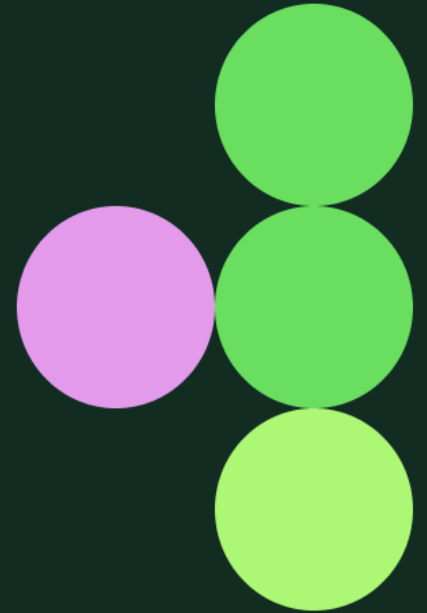
Your organization may also need to obtain applicable licenses and permits.

Some may include:

- State tax-exemption applications – sales tax, franchise tax
- State or local business license

QUESTIONS ABOUT CHOOSING FOR PROFIT VS NONPROFIT?

# Entity Formation



# Steps to Form an Entity

01

## Name Selection Process

Conduct thorough research to ensure the chosen name is unique and adheres to state-specific naming regulations to avoid legal issues.

02

## Documentation Requirements

Prepare and submit necessary formation documents, including Articles of Organization or Articles of Incorporation, (different form for nonprofits) to establish legal recognition of the entity.

03

## Governance Framework Development

Create comprehensive governance documents, such as bylaws, to outline operational procedures, member rights, and decision-making processes for the organization.

# Filing Requirements and Fees

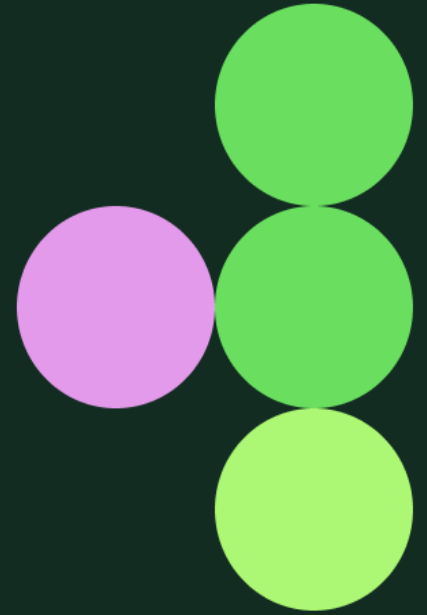
01

The filing requirements for a REIA differ based on entity type and state regulations, necessitating careful attention to formation documents, governance structures, and compliance with local laws.

02

Filing fees associated with establishing and maintaining a REIA can fluctuate significantly, influenced by the entity type and state, impacting overall budget and financial planning for the organization.

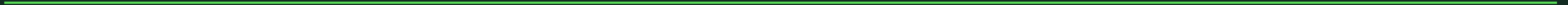
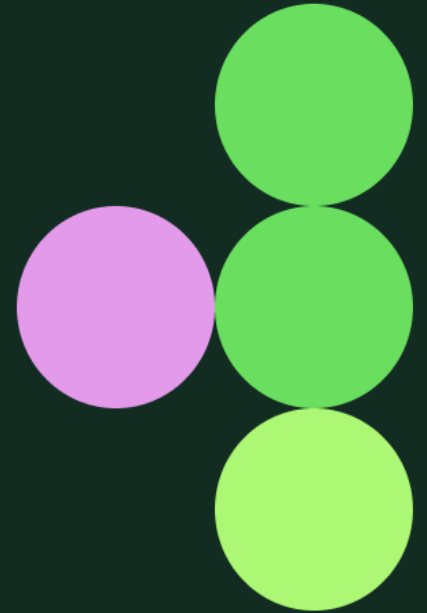
**Employer Identification Number (EIN)**







## Bylaws or Operating Agreement



# Importance of Governance Documents

01

## Foundation for Compliance

Governance documents establish essential legal frameworks, ensuring adherence to regulations and protecting the REIA from potential legal disputes and penalties.

02

## Clarity in Structure

These documents define roles, responsibilities, and decision-making processes, fostering accountability and enhancing member participation in organizational governance.

03

## Enhancing Trust and Transparency

By outlining operational procedures and financial reporting guidelines, governance documents promote transparency, building trust among members and stakeholders within the REIA.

# Key Components of Bylaws/Operating Agreements

## 01

### Organizational Purpose

Clearly defined organizational purpose in bylaws guides member expectations and aligns activities with the REIA's mission, fostering a unified direction and commitment among members.



## 02

### Membership Rights Specification

Detailed membership criteria and rights ensure transparency regarding member roles, responsibilities, and privileges, promoting active participation and informed decision-making within the association.



## 03

### Amendment Procedures Importance

**Amendment Procedures:** Establish how the operating agreement or bylaws can be amended, including voting requirements and notice procedures.

- Number of directors
- Number of independent directors
- Number of directorships of an independent director
- Length of service of an independent director
- Multiple positions
- Director's compensation
- Audit and other committees

# Key Components of Bylaws/Operating Agreements

04

## Management Structure

- **Board of Directors/Officers:** Define the roles, responsibilities, and powers of the board or officers, including their term lengths and removal procedures.
- **Decision-Making:** Establish how decisions are made, including voting procedures, quorum requirements, and majority rules.
- **Meetings:** Outline the frequency, notice requirements, and conduct of meetings (both regular and special).

05

## Financial Matters

**Dues and Assessments:** Specify the amount and method of collecting dues or assessments, as well as how they will be used.

**Budgeting and Accounting:** Establish procedures for creating and managing the association's budget, including financial reporting and record-keeping.

**Profit Distribution/Loss Allocation:** If applicable, outline how profits will be distributed or losses allocated among

06

## Dispute Resolution

• **Dispute :**

**Conflict Resolution:** Establish procedures for resolving disputes among members or between members and the association. [

**Arbitration or Mediation:** Consider including provisions for arbitration or mediation to resolve disagreements.

# Key Components of Bylaws/Operating Agreements

07

## Liability

- **Limitation of Liability:** Define the extent of the association's liability and any indemnification provisions for members.

08

## Amendment

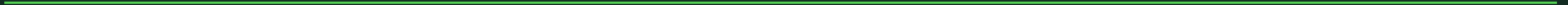
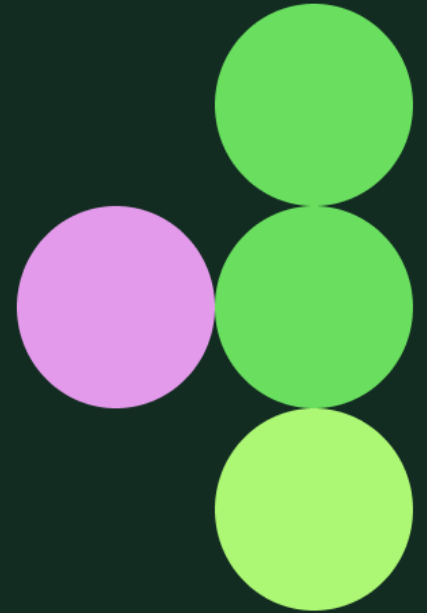
**Termination:** Outline the process for terminating the association, including how assets will be distributed

09

## Buy Out Provisions

- Specify the terms upon which members/shareholders who want to leave are compensated.
- Dissolution or Member/Shareholder Dispute - Who owns the IP? Name? Website? Socials?

**Registered Agent**



01

### **Legal Document Reception**

Registered agents ensure timely receipt of critical legal documents, safeguarding the REIA's ability to respond to legal matters effectively and within required timelines.

02

### **State Compliance Assurance**

By maintaining a physical presence in the state, registered agents help REIAs comply with state regulations, reducing the risk of administrative penalties and legal complications.

03

### **Privacy Protection Mechanism**

Utilizing a registered agent allows REIAs to protect member privacy by keeping personal addresses confidential, enhancing the organization's professional image and member trust.

# HOW TO CHOOSE A **REGISTERED AGENT FOR YOUR LLC**



**BUSINESSPARTNERMAGAZINE.COM**

## Choosing a Registered Agent

01

### Physical Location Requirement

The registered agent must have a physical address in the state of formation for legal document delivery.

02

### Business Hours Availability

The agent should be accessible during regular business hours to ensure timely receipt of important documents.

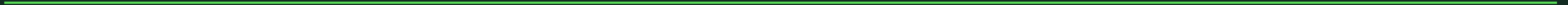
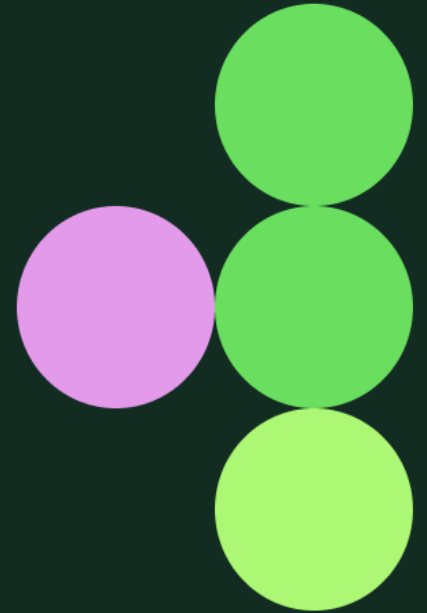
03

### Experience and Reputation

Selecting an agent with a proven track record in handling legal matters enhances compliance and operational reliability.



# Officer and Director Liability



# Understanding Liability Risks

01

## Fiduciary Duty Importance

Upholding fiduciary duties is crucial for REIA officers, as breaches can lead to significant personal liability, emphasizing the need for ethical decision-making and transparency in operations.

02

## Negligence and Oversight

Inadequate oversight can result in negligence claims against REIA leaders, highlighting the necessity for diligent governance practices to protect both the organization and its members from legal repercussions.

# Protections Available for Officers and Directors

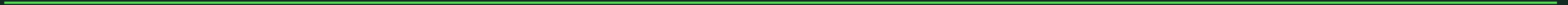
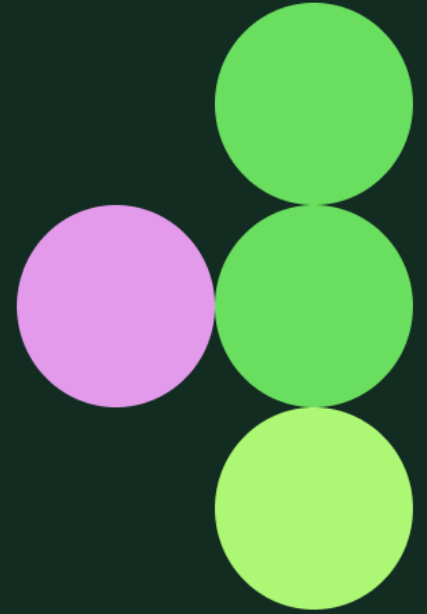
## Indemnification Scope Clarity

Clearly defined indemnification provisions in bylaws ensure that officers and directors understand the extent of their protection against legal liabilities incurred during their official duties.

## D&O Insurance Coverage Importance

Adequate Directors and Officers insurance is crucial, as it not only protects personal assets but also enhances organizational appeal to potential leaders by mitigating perceived risks.

## **Staying in Compliance**



# Types of Reports Required

## Annual Reporting Obligations

REIAs must submit annual or biennial reports detailing organizational information, leadership changes, and registered agent updates to comply with state regulations and maintain transparency.



## Financial Disclosure Requirements

Regular financial reports, including income statements and balance sheets, are essential for demonstrating fiscal responsibility and transparency, fostering trust among members and stakeholders in the organization.

	1Q23	1Q24	1Q25	1Q26	1Q27	1Q28	1Q29
Net revenue	47090,1	61962,4	81531,8	107281,6	141163,9	185747,2	244411,1
EBIT	1611,9	2121	2790,9	3672,3	4832,2	6358,3	8366,4
Depreciation	1148,3	1510,9	1988,1	2616	3442,2	4529,4	6110,3
CAPEX	1197	1575,1	2072,5	2727	3588,3	4721,6	6212,8
Working capital	16034,8	21099,1	27762,7	36530,9	48068,3	63249,5	83225,4
Working capital variation	-3583,8	5064,2	6663,6	8768,2	11537,4	15181,2	19975,9

## Special Reporting Conditions

Certain changes, such as name alterations or policy updates, may necessitate special reports to ensure compliance with state laws and maintain accurate organizational records.



# Maintain Corporate Formalities

- ❑ Who is your registered agent?
  - Individual or corporation
- ❑ Who files required state reports?
- ❑ Are your Bylaws current?
- ❑ What do they say?
  - Do they need updated?
- ❑ Do you do what they say?

# Common Formalities to Follow



## Regular Meeting Schedule

Establishing a consistent schedule for meetings ensures ongoing communication among members, facilitates strategic planning, and reinforces the organization's commitment to transparency and collective decision-making.



## Detailed Record Keeping

Maintaining accurate minutes and documentation of meetings and corporate actions is essential for legal compliance, providing a clear historical record that supports organizational integrity and accountability.



## Financial Separation Practices

Implementing strict financial separation between personal and organizational funds is crucial for protecting members' limited liability, ensuring clear financial reporting, and maintaining the organization's legal status.

# Maintain Corporate Formalities

Maintain corporate record book or file

- Articles of Incorporation
- Current Bylaws or Operating Agreement
- Record of EIN (federal tax ID)
- IRS (and state, if applicable) tax exemption determination letter
- State annual report filings
- Name/address of registered agent



# Required Tax Filings

For Profit –

Nonprofit -  
Form 990-N (e-Postcard)  
Form 990-EZ  
Revised Form 990

Form 1065

Failure to file for three years will result in  
automatic revocation of tax-exempt status

Form 1120 or 1120S

Form 990-N (e-Postcard) -Annual electronic filing requirement for small  
tax-exempt organizations with gross receipts under \$50,000  
Find at [www.irs.gov](http://www.irs.gov) - Enter e-Postcard in Search box

Schedule on personal tax return

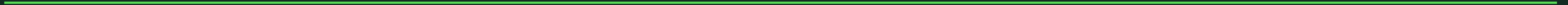
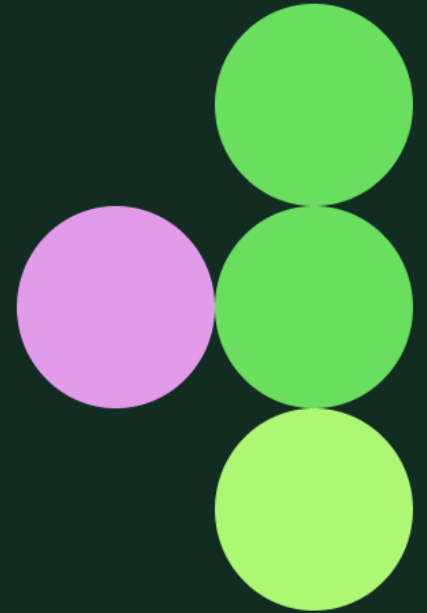
Depending upon entity type

Who Can File the 990-EZ?  
Receipts over \$50,000 and less than \$200,000  
Much shorter and less complicated than Form 990  
File on the 15th day of the 5th month after end of tax year

Form 990  
Requires much more non-accounting information, becoming an  
“activities” form just as much as an accounting form

Biggest areas of change include disclosure of  
governance policies and details about  
compensation for key personnel

# Contracts with Vendors



- Parties Involved & Scope of Relationship:

- **Identification:** Clearly state the names and contact information of both the association and the sponsor/vendor.

- **Purpose:** Define the purpose of the /vendorship.

- **Sponsorship Level:** Specify the type of vendorship (e.g., gold, silver, bronze) and its associated benefits.

- Sponsor's Benefits:

- **Promotional Rights:**

Outline how the vendor's name, logo, and brand will be featured (e.g., signage, website, social media, newsletters, slideshows, etc.).

- **Event Participation:**

Specify any opportunities for the vendor to participate in events (e.g., booths, giveaways, hospitality, special events, holiday parties, zoom pop ups, subgroups).

- **Media Coverage:**

Detail any media coverage or promotional opportunities the sponsor will receive.

- **Speaking Opportunities**

Before main meetings, at subgroups, zooms, special events, vendor fairs, etc.

# How to use your NCREIA Vendor Benefits

## IN PRINT

Weekly promotion on a rotational basis in our Week at a Glance emails (6000+ distribution) and social media channels

Post on our Facebook networking group

**Pro Tip:** to maximize this benefit, "like" our facebook page; join our facebook group, and follow us on instagram.

<https://www.facebook.com/NCREIA>  
<https://www.facebook.com/groups/43732636927>  
[https://www.instagram.com/\\_ncreia/](https://www.instagram.com/_ncreia/)

Listed as a vendor on the NCREIA website

Featured in our slideshow shown at all general and subgroup meetings

Place an ad in our print newsletter (fee applies)

## IN PERSON

Have a vendor table at all monthly main meetings (reservation required 7 days before meeting)

60 second introduction at one main meeting per year. Door prize and reservation required

Provide "tip of the day" at one main meeting per year. (Topic approval and reservation required)

Facebook Live interview at main meeting

30 second introduction at any subgroup meeting throughout the year. (Registration required, meal fee at in person subgroups may apply).

Make a video and we will feature it on slideshows and social media on a rotating basis

Be the featured speaker at our "Lunch with a Vendor" series on zoom (Reservation required)

## IN-CREDIBLE

Annual partnership membership

Opportunity to sponsor or co-sponsor NCREIA events, activities and holiday parties (Fee applies)

Place literature and information on our "deal table" at main meetings

Free booth at our vendor fair in years which it occurs

- Financial Obligations:

- **Fee:**

- Specify the amount of the fee, payment schedule, and any conditions tied to payments.

- Flat fee or Affiliate?

- If affiliate, specify how accounting and payments are tracked

- **In-Kind Contributions:**

If the sponsorship includes in-kind contributions (products, services, etc.), detail the value and quantity of those contributions.

- Rights and Exclusivity:

- **Exclusivity Clauses:**

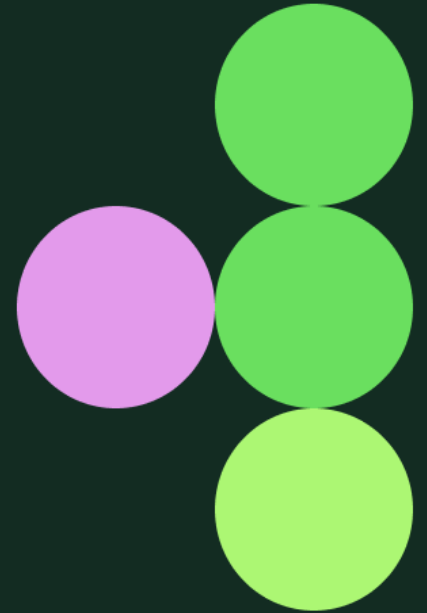
Specify whether the sponsor has exclusive rights within a particular category (e.g., the only beverage sponsor) and the duration of such exclusivity.

- **Intellectual Property:**

Address the ownership and usage rights of logos, trademarks, and other intellectual property.

- Term & Termination:
  - **Duration:** Specify the start and end dates of the sponsorship agreement.
  - Renewal:** Outline the process for renewing the agreement.
  - Termination:** Define the conditions under which the agreement can be terminated. Right to terminate for any reason/right to accept/not accept any vendor
- Confidentiality:
  - **Confidential Information:** Include a confidentiality clause to protect sensitive information shared between the parties.
- Insurance:
  - **Insurance Requirements:** Specify any insurance requirements for either party, such as liability insurance.
- Signatures & Signatories:
  - **Signatures:** Include spaces for both parties to sign the agreement. Use proper names of parties.
  - Authorized Representatives:** Ensure that the signatories are authorized to represent their respective organizations. Understand what you are signing.

## **Policies to Remove Vendors or Members**



# Legal Considerations in Removal Processes



## Compliance with Bylaws

Ensure that removal procedures strictly adhere to the association's bylaws, as non-compliance can lead to legal challenges, including wrongful termination claims and breach of contract disputes.



## Documentation and Evidence

Maintain comprehensive documentation of all actions and communications related to the removal process, as this evidence is crucial for defending against potential legal claims and ensuring transparency.

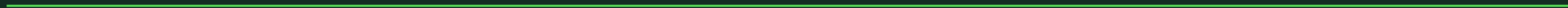
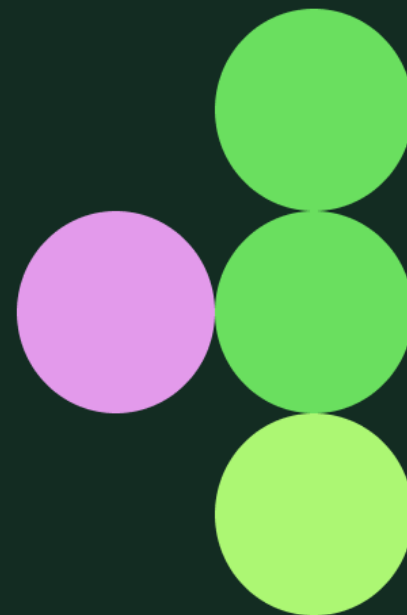


## Legal Counsel Engagement

Consult with legal professionals when drafting removal policies to ensure compliance with applicable laws and to mitigate risks associated with potential liabilities during the removal process.



# Disclosures



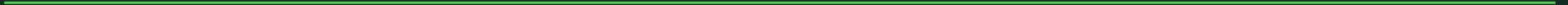
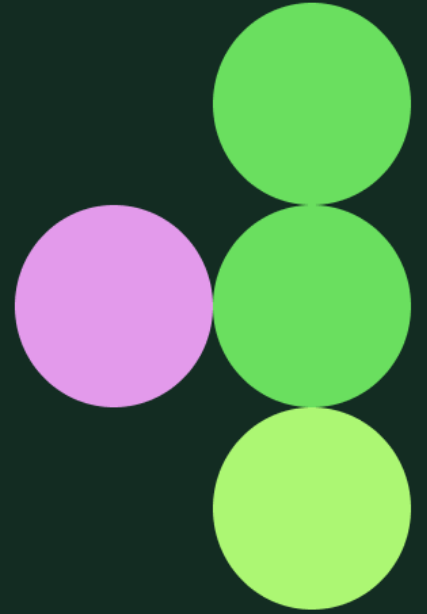
[www.NCREIA.com](http://www.NCREIA.com) (North Carolina Real Estate Investors Association) does not give legal, tax, economic, or investment advice. NCREIA disclaims all liability for the action or inaction taken or not taken as a result of communications from or to its members, officers, directors, employees and contractors. Each person should consult their own counsel, accountant and other advisors as to legal, tax, economic, investment, and related matters concerning Real Estate and other investments.

Results from Real Estate Investing are not typical, as each Investor's success depends upon education, unique skills, effort, time, and individual commitment.

North Carolina Real Estate Investor's Association is not engaged in rendering legal, accounting, or other professional opinions.

Investing involves risks. Any decision to invest in real estate is a personal decision that should be made after thorough research, including a personal risk and financial assessment.

**Insurance**



# Types of Insurance Needed for REIAs

01

## General Liability

Implementing diverse insurance types ensures that REIAs can effectively manage various risks, safeguarding both organizational assets and member interests against unforeseen events.

02

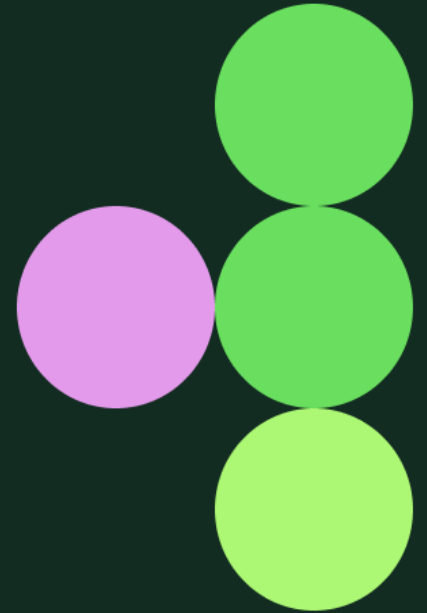
## Officers and Directors Liability

Protects officers and directors in the event of a lawsuit, pays costs to defend.

Others?

Commercial Property, Workers Compensation, Commercial Auto, Business Owner's Policy, Cyber Insurance, Data Breach, Volunteer Liability

# Refund Policies



# Establishing Fair Refund Policies

## Comprehensive Policy Framework

A well-defined refund policy should encompass all transaction types, ensuring members understand their rights and obligations, which fosters trust and minimizes disputes within the association. Write your refund policy clearly and comprehensively and make sure it is visible. (Website, special events, products, etc.)

01

02

## Regular Policy Evaluation

Continuous assessment and adaptation of refund policies based on member feedback and legal changes are crucial for maintaining relevance and effectiveness, ultimately enhancing member satisfaction and compliance.

# Legal Considerations for Refunds



## Consumer Rights Protection

Ensuring refund policies comply with consumer protection laws is essential, as it safeguards members' rights and enhances the association's credibility within the real estate investment community.



## Clear Policy Communication

Effectively communicating refund policies to members through various channels minimizes misunderstandings, fosters transparency, and builds trust, ultimately leading to higher member satisfaction and retention.

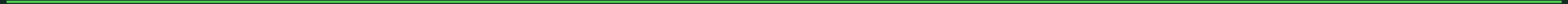
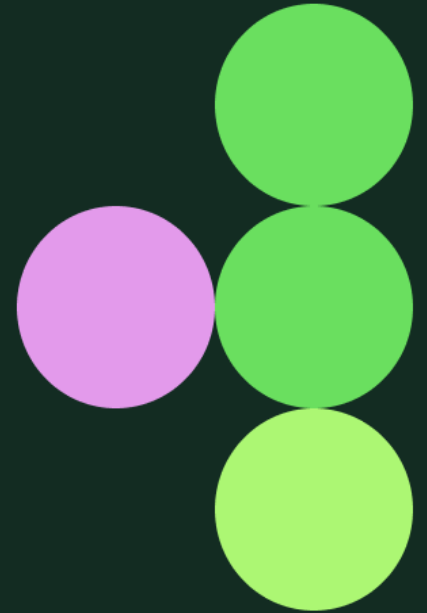


## Documentation for Disputes

Maintaining comprehensive records of refund requests and decisions is crucial for resolving disputes, providing legal protection, and demonstrating adherence to established policies and procedures.

Section 16

# Intellectual Property





## What is Intellectual Property and Why is it Important?

- IP encompasses creations of the mind, including inventions, literary and artistic works, designs, and symbols, names, and images used in commerce.

Examples include patents, copyrights, trademarks for brand names and logos, trade secrets for confidential information, domain names, and social profiles.

IP rights provide exclusive rights to the creator or owner, allowing them to control the use of their creations.

IP can be a valuable asset that sets a company apart from its competitors.

Protecting IP helps companies maintain a competitive advantage and ensure long-term success. IP rights allow businesses to earn recognition and financial gain from their inventions, creations, or reputation.

# Importance of Protecting Intellectual Property

## **Brand Integrity Maintenance**

Protecting trademarks and branding elements ensures the REIA's unique identity, preventing brand dilution and preserving member trust and loyalty.

## **Control Over Educational Materials**

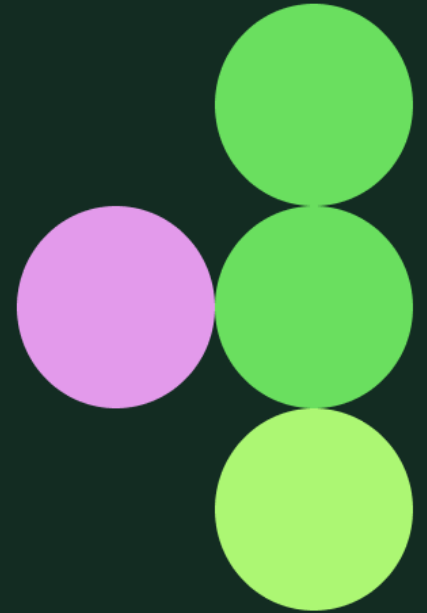
Copyright protection allows REIAs to manage the distribution and use of proprietary educational resources, ensuring members receive accurate and reliable information.

## **Comprehensive IP Audit**

Regularly assess all intellectual property assets to identify vulnerabilities and ensure adequate protection measures are in place.

Take steps to protect your IP from theft, infringement, and cyberattacks

# Password Protection and Data Security



# Importance of Cybersecurity

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## Proactive Cybersecurity Measures

Implementing proactive cybersecurity measures, such as regular system updates and employee training, is essential for REIAs to effectively combat evolving cyber threats and protect sensitive member information from potential breaches.



# Best Practices for Password Protection

01

## Password Complexity Requirements

Establishing a minimum complexity standard for passwords, including length and character variety, is crucial to prevent unauthorized access and enhance overall security posture. Establish a centralized depository for passwords and decide how you will allow/control access.

02

Regular training sessions on password management and security with your board members, subgroup leaders, and other relevant parties

## MISCELLANEOUS

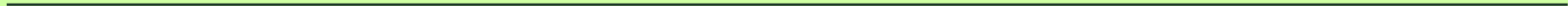
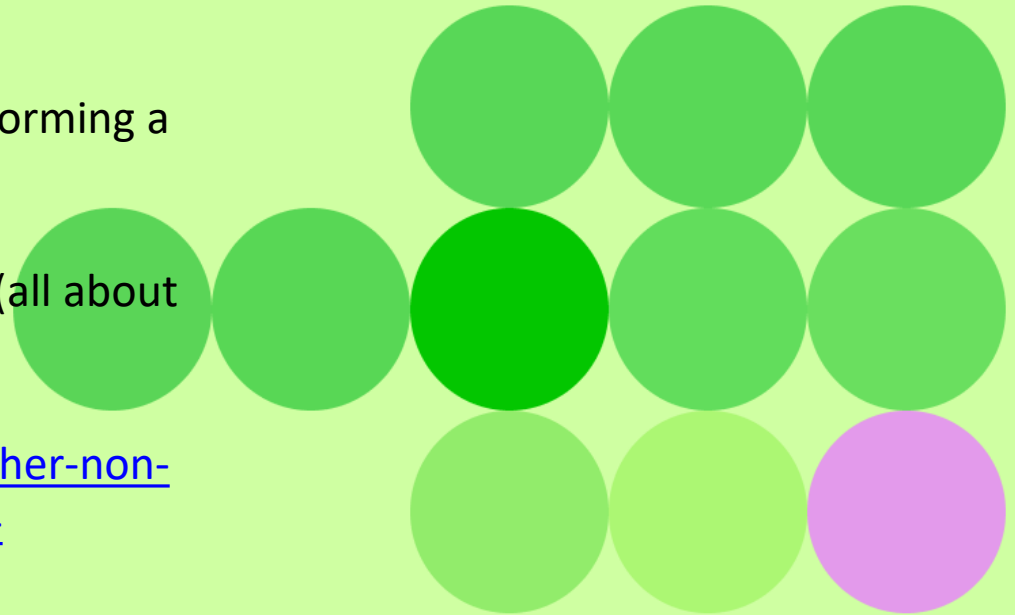
- **Use management software/Create a membership site.** Good membership software will help you keep all of your member data organized and help you see how your membership is doing. Plus, it will help you effectively manage your association by streamlining payments, calendars, and communication with your members. It can also serve as the “single source of truth” for information about the association.
- **Build a solid team.** How many people do you need to run your association like a well-oiled machine? Who do they report to?  
Once you can answer these questions, hire the people that you need and make sure they also understand how to maintain your organization’s legal compliance.
- **Create ongoing value.** Whether you’re running a professional, social, or trade association, you can keep your members coming back by offering them something they can’t get anywhere else. This offering could include things like helpful educational materials or exclusive networking opportunities, for example.
- **File Form 1099 for payments to individuals exceeding \$600/year**

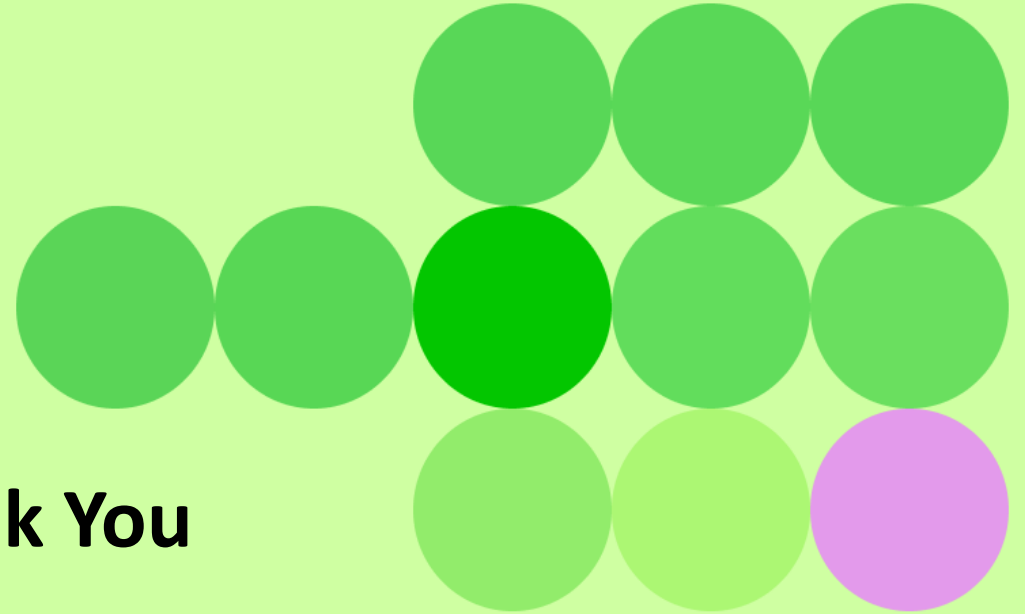
<https://www.irs.gov/pub/irs-pdf/p557.pdf> (forming a nonprofit)

<https://www.irs.gov/pub/irs-pdf/p1635.pdf> (all about EINs)

<https://www.irs.gov/charities-non-profits/other-non-profits/life-cycle-of-a-business-league-trade-association> (info about 501c6)

<https://www.irs.gov/forms-pubs/about-form-1023>  
(Form 1023, Application for Recognition of Exemption,  
and information)





# Thank You

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