



## **CHAPTER 3 • LEGAL & FINANCIAL MATTERS**

### **3.1 – INTRODUCTION**

Each Association needs to have up-to-date bylaws, accompanied by supporting regulations and/or policies where desired, and a practical, working code of ethics and conflict of interest policy. Each Association should also have in place procedures covering these key financial aspects:

- Budgeting/Financial planning
- Day to day money management and internal controls
- Financial reports/records
- Taxes and tax reporting

Central to all of these areas is establishing who has the authority to spend/collect money and what procedures you will use to ensure accountability and mitigate risk of loss to the organization. It is imperative that access to all funds and deposit of all revenues be centralized to insure compliance with Internal Revenue Service Accountable Plan rules and business best practice, as well as local and state requirements if appropriate. All expenditures must be approved and supported by appropriate receipts, invoices or other documentation held by the central organization. Expenditures not supported by appropriate documentation provided to the central organization should be reported to the Internal Revenue Service as taxable income.

### **3.2 – BYLAWS, REGULATIONS, AND POLICIES**

Each Association must declare a primary location in one state, and file for corporate status in that state. If your territory encompasses more than one state, you generally will only need a business license in the other state(s). However, non-profit law may vary – you should get legal advice on how laws may differ.

There are three important documents in the formation of a legal Association. The first document – articles of incorporation or charter, depending on what your state calls them – is a legal requirement in which you state your purpose(s) and basic organizational set-up of your non-profit corporation. Some states have a particular format and key articles you must include, and some can even specify the language you must adopt.

Once these have been accepted by your state (generally through the secretary of state's office) and you have sent the state confirmation along with your articles to USA Track & Field, generally all you will have to provide is the annual or biennial document from your state indicating that you have continued to pay the necessary fees required of a non-profit corporation and updated your bylaws on file with them and your officers and/or board membership. You will likely not look at these again except when making major changes to your bylaws. However, if the very general framework your articles provide for changes in the future, you will have to amend them and re-submit them to your state. Again, given that each state has specific requirements, legal counsel should be consulted. From the point where your incorporation has been achieved, the most important document you will

need to deal with on a periodic basis is the second one – your bylaws. Each time you update your bylaws, you must inform your appropriate state agency or office, as well as USATF. USATF performs an audit of Association bylaws annually as part of its accreditation process, and looks for critical components like voting, elections, membership, annual and other meetings, meeting notices, and others to be in step with the provisions of the national Bylaws and Operating Regulations as required by Regulation 7.

The bylaws of an organization state and interpret the general corporate structure and governance policies of a nonprofit organization. In preparing bylaws, make sure that you refer back to and are consistent with the general provisions laid out in your articles of incorporation. The bylaws of an organization are always subordinate to the articles of incorporation; if there is a conflict, the articles will prevail. Bylaws need to be specific enough to provide a clear overall structure, but not so specific that changing needs of the organization would require frequent bylaw changes.

For some time now, USATF has had a model set of bylaws which an Association can review, put in your own Association-specific particulars (like method of election of officers, for which there are different acceptable options for you to adopt), and approve at a membership meeting (or a board meeting, if your previous bylaws allow for the board to make changes to the bylaws). A typical content for a complete and acceptable set of bylaws would look like this:

*Sample Bylaws for a Non-Profit Organization*

Article	Title	Typical content/paragraphs included
I	Purposes	Mission statement, programs
II	Location	Office
III	Members	Constituencies, levels of members (if any)
IV	Board of Directors	Power of Board, Number of Directors, Election and Term of Directors, Qualifications, Vacancies, Removal of Directors, Resignation, Quorum, Meetings of the Board, Informal Action by Directors, Meetings by Conference Telephone, Voting, Compensation, Absence
V	Committees	Executive Committee, Finance/Audit Committee, Standing Committees, Administrative Committees, Sport Committees, Special or Ad-hoc Committees, Task Forces, Term of Office, Vacancies, Rules
VI	Officers	Positions, Term of Office, Removal, Powers and Duties
VII	Agents/Employees	Positions, Compensation
VIII	Miscellaneous	Fiscal Year, Corporate Seal, Contracts and Other Documents, Gifts, Banking, Deposits, Books and Records, Loans to/from Officers and Directors, Indemnification, Insurance
IX	Amendment	Requirements for Bylaws and Articles of Incorporation changes

In addition to these first two documents, which are critical and mandatory in nearly every jurisdiction in the country, you are likely to find that a third document is necessary. Your bylaws should be difficult to change (a two-thirds affirmative vote is the standard amending requirement), and only important provisions of your governance need to be in them. Other “majority vote” type issues and parameters should be in a secondary document. At the national level, these are called Operating Regulations. At the local level, you can create your own regulations, modeled after the national set-up, but chances are you don’t need just to repeat all of that. An alternative is a collection of motions of your board by category, which can also be referred to as Policies.

### **3.3 – CODE OF ETHICS AND CONFLICT OF INTEREST**

USATF has national Code of Ethics and Conflict of Interest policies. Many members are also suppliers of services on a private level – timing companies, t-shirt sales, equipment retailing or manufacturing, consulting services, and more. It is strongly recommended that each officer, board member, and any committee chairs not included in that group sign a disclosure statement on an annual basis creating transparency for any potential conflicts of interest. Such a disclosure statement would acknowledge your agreement with the Code of Ethics adopted by your board, and discloses any potential conflicts of interest you might personally or professionally have with any program, service, or agreement your Association is already in or might enter into in the future.

### **3.4 – BUDGETING / FINANCIAL PLANNING**

Each year, a budget should be established that will govern the spending of the Association throughout the year. Ultimately, the Association’s Board of Directors should approve the budget. Typically, a budget committee is established to put together a proposed budget that is then presented for approval to the Board. This smaller working group should include the President, the Treasurer, any staff members, and other interested Board members. It usually makes sense for the Budget Committee to request budget proposals from its various committee chairs. Once this data is gathered, the Committee can proceed to prepare the budget.

Visit <https://www.usatf.org/Mgmt/Assoc/Forms/Essentials-for-Officers/Association-Budgeting-Financial-Planning.aspx> for assistance.

### **3.5 – DAY TO DAY MONEY MANAGEMENT**

With a budget in place, the limits for approved spending for the year are established. Each committee chair and/or event chair has his or her spending authority established accordingly and may not exceed the budgeted amount without further approval from the Board. How money is actually spent and accounted for is something that each Association needs to establish clear procedures for. If not already established, the Treasurer should develop such procedures. A simple, centralized process will provide the best control and accountability for the organization. The Treasurer is the focal point, as he or she is ultimately responsible for preparing financial records for the Association and accounting for the revenue and expenses. Sample procedures are similar to the following four points.

#### *Authority to Spend Money*

Event Directors, Officers, and Committee Chairs may incur expenses for items and in amounts included in the approved budget. The Treasurer should approve all other expenses in advance. After each event, the event director and/or committee responsible for an event should submit a detailed list of revenue and expenses for the event. The Treasurer may approve individual expense amounts to a maximum of \$500. The Board or the Executive Committee of the Board, if between meetings, must approve any greater amount.

#### *Expense Reimbursement Procedure*

Receipts for approved expenses should be submitted to the Treasurer for reimbursement. Receipts should be submitted within 30 days, and the Treasurer should make payment within 30 days of receipt.

#### *Vendor Accounts*

Only the Treasurer shall have authority to establish accounts with vendors. If you are purchasing an item (i.e., t-shirts) that you want direct billed to the Association, submit any paper work to the Treasurer and/or contact the Treasurer to set up the account/order.

### *Bank Accounts*

The Association should maintain two bank accounts, a checking account and a savings account. The Board may approve other accounts. Per USATF Regulation 7(B), “the Chief Financial Officer (i.e. the Treasurer) of each Association should maintain custody and control of the bank accounts and other financial assets of the Association, its committees and subcommittees.”

### **3.6 – INTERNAL FINANCIAL CONTROLS**

Only the Treasurer and the President should have authority to sign checks for the Association. Only one signature should be required, although Associations dealing with large expenditures may want to require dual signatures for amounts over a certain threshold. In order to maintain financial checks and balance, all bank statements should be addressed to a different person than the person controlling the checkbook. For example, assuming the Treasurer controls the checkbook, the bank statement could be sent to the President or the Budget & Finance Chair.

### **3.7 – FINANCIAL REPORTS / RECORDS**

Keeping track of Association finances on a regular basis is essential to maintaining fiscal accountability and control. At a minimum, the Treasurer should prepare both an Income Statement and a Balance Sheet no less frequently than quarterly.

#### *Income Statement*

The Income Statement is simply a record of all of the money that came in (revenue) to the Association for a certain period (e.g., month, quarter, etc.) and all of the money that was paid out (expenses). Year-to-date information should also be included. See <https://www.usatf.org/Mgmt/Assoc/Forms/Essentials-for-Officers/Income-Statement-Sample.aspx> for a sample Income Statement. Notice that a budget column is also included so that the actual performance against the budget can be compared. The annual budgeted amounts have been prorated by quarters. In some cases, it will appear that expenses and/or income are far off budget but typically this is due to timing of the expense (or revenue) versus what was anticipated at the time of establishing the budget.

#### *Balance Sheet*

The Balance Sheet is a statement of the assets and liabilities of the Association. You should list all assets, which include cash and any tangible assets (computers, furniture, etc.) owned by the Association. Because Associations are required to maintain financial statements on a cash basis, there should be no liabilities since this includes amounts that are owed, but have not been paid (i.e. if you have a loan that is being repaid). See <https://www.usatf.org/Mgmt/Assoc/Forms/Essentials-for-Officers/Balance-Sheet-Sample.aspx> for a sample Balance Sheet. In addition to the Income Statement and Balance Sheet, it is a good idea to keep track of your events individually so you know which ones make money and which ones do not. This can be very helpful in planning for the future. For each event, the Treasurer (or the Event Director) simply lists out the total revenue and expenses for the year. These numbers are consolidated under the “Events” line on the Income Statement. A simple spreadsheet can be developed, using Excel or Microsoft Works, for example, to track the Associations finances. Microsoft Money and Quicken are specialized accounting software that are fairly easy to use.

### **3.8 – TAXES AND TAX REPORTING**

#### *IRS Form 990 - Information Return for 501(c)(3) Organizations*

The IRS Form 990 is the informational tax return filed by 501(c)(3) organizations. Every Association must file some version of the Form 990 as outlined in the table below. The deadline for filing with the IRS is May 15th (unless an extension is requested). In order to complete the form

correctly, information about all the Association's finances is necessary which means centralized bank accounts and thorough bookkeeping is essential.

<b>Form 990 Filing Requirements</b>		
Form required...	If gross receipts are...	If assets are...
990-N E-Postcard	\$50,000 or less	Not applicable
990 E-Z	\$50,001-\$199,999, AND	Less than \$500,000
990	\$200,000 or more, OR	\$500,000 or more

Prior to the USATF Annual Meeting each year, Associations must submit a copy of their most recent 990 or 990-EZ to the National Office. If your Association is not required to file a 990-EZ or 990 with the IRS (i.e., you filed a 990-N e-postcard), you must still complete and submit page one of Form 990-EZ to the National Office.

This is a requirement for your Association's yearly accreditation (Required Category; Financial Report and Association Documents). For more information on 501(c)(3) status, please see Chapter 1.

### *Un-related Business Income Tax Form*

Your exempt activities include everything you do that is related to your exempt purpose, which is to promote athletics (track & field) and conduct athletic competitions. If your Association gets involved in revenue-generating activities that are not solely related to your exempt purpose, you may owe Unrelated Business Income Tax (UBIT) on any income generated from the activity.

The three UBIT tests are:

- It is a trade or business;
- It is regularly carried on; and
- It is not substantially related to furthering the exempt purpose of the organization.

Even if the above three tests are not met, the Internal Revenue Code exempts certain kinds of activities from UBIT:

- **Volunteer labor:** Any trade or business is excluded in which substantially all the work is performed for the organization without compensation. Some fund-raising activities, such as volunteer-operated bake sales, may meet this exception;
- **Convenience of members:** Any trade or business is excluded that is carried on by an organization described in IRS Section 501(c)(3) or by a governmental college or university primarily for the convenience of its members, students, patients, officers, or employees. A typical example of this is a school cafeteria;
- **Selling donated merchandise:** Any trade or business is excluded that consists of selling merchandise, substantially all of which the organization received as gifts or contributions. Many thrift shop operations of exempt organizations would meet this exception; and
- **Bingo:** Certain bingo games are not unrelated trade or business.

### **Relevance to common Association activities:**

- Membership and sanction fees – should be non-taxable;
- Association meets / events – should be non-taxable;
- Sale of merchandise – best if sold by volunteers unless donated;
- Sponsorships - tricky differences between providing acknowledgments and providing advertising;
- Newsletters and magazines – the IRS has complex membership fee allocation rules that can treat a money loser as an UBIT generator, so beware;
- Servicing other national governing bodies for fees – probably taxable;
- Interest, dividends, and royalties – generally okay if not debt financed; and

- Amount of tax – a specific deduction is allowed to eliminate the first \$1,000 of Unrelated Business Income. Amounts in excess are taxed at a rate of 15% for the first \$50,000, and higher rates thereafter up to 35%. You can consult a local tax advisor for specifics on these rules for assistance. You report this activity on IRS Form 990T.

### *Payroll Tax Returns*

If your Association has employees, you need to file quarterly payroll tax returns. This is Form 991, which covers federal tax withheld, social security, and Medicare taxes. At the end of each year, you need to prepare and file W-2's for each employee and with the IRS, along with the related summary form W-3.

### *Independent Contractors - Form 1099*

If you hire an independent contractor to perform services during the year and pay them more than \$600, you must prepare a 1099 listing those payments. The 1099s are sent to the independent contractor and filed with the IRS, along with the related summary form 1096.

### *State Filings*

Each Association should also check with their state to determine if a return must be filed with them. The relevant state agency is generally the Secretary of State or the Department of Revenue. Some states have no filing requirement, and some states require that a copy of the federal form 990 be filed with them as well.

In addition to the tax returns, if the Association solicits donations (as almost all do), you should check with the Secretary of State to determine if there are any special permits or filings that must be complied with. Many states regulate organizations that solicit funds from the general public.