

Clubs and Associations

Understanding your legal responsibilities

There are many situations where a group of individuals come together to further a common aim or interest such as a sporting or other social activity, educational or community improvement. Most of these organisations do not have a written Constitution or Rules, or if they do, they are very brief. They have not been formed as a trust, limited company, partnership or other legally recognised entity. These groups are known in legal terms as an unincorporated association.

However, without proper protection the officers and members have personal responsibility for any debts incurred and claims which may be brought against the association. So, officers of tennis clubs, fishing associations, theatre groups, sports clubs and numerous other organisations need to be careful.

Structure

An unincorporated association is not a legal entity in its own right. It has no legal personality distinct from that of its members. There is usually a Constitution and Rules and the members appoint a committee to represent them. If the association owns property, it will be necessary to appoint Trustees. This may also be the case if the association has a bank account and other assets

When it is used

An unincorporated association is often appropriate where the organisation does not need a more formal corporate structure, where personal liability is of little concern and the organisation has a wider membership. It is easy to set up and operate, and is flexible which makes it an attractive structure to many organisations.

Legal Liability

When dealing with third parties, members of an unincorporated association are treated as individuals and their membership gives them no protection against potential personal liability to third parties. This means that every member has full personal liability for any type of claim against the association, including if the association should become bankrupt.

Exactly which of the members are liable to a third party can vary from situation to situation. It is normally the committee who will be pursued first of all by anyone making a claim. The committee can then bring into the claim all other members. The types of claim will include such matters as debts owed to creditors or compensation owed to injured third parties (to the extent of course that these are not covered by insurance or available funds of the organisation).

The Risks

Unfortunately, with ever increasing legislation, members are at risk of claims for situations including health and safety, employment, discrimination, and child protection.

Protection

- It is essential to ensure that the association has an up to date and effective Constitution and Rules. Members and, in particular, those who are members of its management committee need to be familiar with, and conduct themselves in accordance with the Rules.
- If the association owns property, because an unincorporated association is not a legal entity in its own right, property will need to be held in the names of trustees on trust for the members of the unincorporated association. Trustees will need to understand the duties and obligations of trustees and operate in accordance with the terms of the Trust Deed. It is important that the Trust Deed is up to date and reflects the names of the current trustees.
- Adequate insurance cover
- Training for trustees
- Regular review of procedures and an up to date risk assessment
- Efficient systems for ownership and management of any property or bank accounts
- Review whether an unincorporated association is the best structure or if it would be better to use another legal structure such as a limited company which gives protection to its members and also other benefits

Advantages

- No requirement to register an unincorporated association
- No set up costs
- Flexibility and ease of operation
- Running of the association is private to its membership

Disadvantages

- Personal liability of members
- In the case of property ownership, the title needs to be transferred on change of trustees

Why Linder Myers

We have a team of lawyers who have significant experience in acting for unincorporated associations both small and national. We have written their Constitution and Rules and also assisted some to change their legal structures.

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we offer a range of ways that you can appoint us including a postal service, email service, telephone service, Skype and face to face meetings.

Contact Linder Myers – place your trust in a specialist lawyer.



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