



## **NEGOTIATING A GRACEFUL DEPARTURE: CREATING A SUCCESSFUL EXIT STRATEGY FOR ASSOCIATION EXECUTIVES**

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Sometimes, sadly, it happens. It's the nature of the business. You no longer see eye to eye. You have different goals and plans for the future. While you have had a good run, the time has come to say goodbye. The Association's Board of Directors decided that its CEO should step down.

Can the termination of an Executive Director/CEO actually be done "gracefully", so that both parties are pleased with the outcome? While parting ways is never easy, there are some basic points that the executive and the association should consider when negotiating the employment agreement and, particularly, how the employment relationship should end. By understanding and respecting the other side's priorities and concerns, you can limit bad feelings, reduce the risk of litigation, and maximize a positive outcome for everyone.

Typically, an association executive has two main concerns when her employment ends. First, she wants to best position her financial security, especially until she is able to find a new job. Second, she needs to leave her position with her good reputation intact. For the association, its main concerns usually are avoiding unnecessary litigation, making sure that the association executive does not compete with, or damage the association, and minimizing unwarranted financial cost.

Both the executive and association can get much of what they need by drafting a well written employment agreement at the beginning of the executive's employment, and by carefully creating a departure plan for the executive at the end of her employment.

It is always wise to hope for the best and plan for worst. An employment agreement should clearly set forth how an executive can be terminated, the process for such termination and what benefits she will receive upon termination. Recommended provisions include:

1. Severance Pay. Typically severance pay is given when: (i) an executive is terminated not for "cause"; or (ii) the employment agreement is not renewed. In both situations, reasonable notice should be provided to the executive prior to termination or non-renewal. Once the employment has officially ended, it is reasonable to grant an executive severance based on the length of employment, the size of the organization, and other factors. One month of severance per year of employment with a cap at between six and 12 months is a typical and fair arrangement, depending on the size and financial where with all of the association. Payments for all benefits in effect at the time of expiration may also be included in severance payments. Severance can be paid all at once (perhaps discounted to present value) or can be spread out over a period of months.

2. Release. The contract should state that the payment of any severance is contingent upon the parties executing a customary waiver and general release that also contains non-disparagement and cooperation provisions. The release should release the association from any claims or causes of action the executive might have as a result of her employment or her termination.

3. Confidentiality and Non-Compete Provisions. Confidentiality and non-compete provisions should be included in the employment agreement. It is usually much more difficult to negotiate these provisions during, or at the end of, employment. Non-compete terms can vary greatly from state to state. Therefore, we recommend consulting with an attorney prior to agreeing to a specific term and scope. If a court determines that a term is too long or burdensome, it may determine that the entire provision is unenforceable.

Having a solid employment agreement, though, is not enough. Care and thought must be given to the actual termination or non-renewal process, and how termination or non-renewal is going to be communicated to the profession and the public.

It is crucial that the association carefully draft the press release and other communications regarding the executive's exit and the association's new direction. If possible, public communication should not blame or insinuate blame to the executive. This is important to the executive and to the association as well. If an executive believes that her reputation has been damaged due to a poorly drafted press release, there is a real risk she will sue the association for defamation. Moreover, associations that are more gracious during a transition tend to do better in recruiting new leadership.

Additionally, an executive may request a letter of recommendation from the association. If the association does not have a policy against such a request and agrees to draft a letter, it should reiterate statements contained in other public statements. False, inaccurate or inconsistent statements also can increase the likelihood of litigation.

Ending an employment relationship is never easy. Sometimes there is one precipitating event that leads an association to terminate or not renew its executive's employment. Frequently it is many smaller issues that, over time, cannot be resolved. Whatever the situation, the association should never act hastily. Review the executive's employment agreement and the employment handbook, and determine the proper process for termination. Then put together a realistic transition plan. Make sure the association is giving the executive a fair and respectful exit strategy. Ultimately, a "graceful" exit will benefit both the association and the executive in the long run. The desires of all parties are not mutually exclusive and, handled properly, can serve the interests of everyone.