

## Membership and Privacy

### Comments on Privacy

- a. The National Club Association believes that a club's right to privacy will ultimately hinge on its ability to prove:
    1. That it is not accessible to the public, except in rare instances.
    2. That it has permanent, selective mechanisms in place for choosing new members, including sponsorship, and that these mechanisms are genuine and evenly applied and do not violate the basic rights of an individual.
    3. That it is strictly member controlled, including policies governing member sponsored and hosted activities.
    4. A club is considered private if it has a purely social purpose and history, and has rules against obviously conducting business in the club; it has a selective membership procedure, requiring the evaluation of character, relationships and acquaintances, congeniality and compatibility; it has only one facility maintained for the exclusive use of its members and guests; it is managed and controlled by its members; it has restricted its total membership to a limited number; and it is operated as a not-for-profit corporation.
  - b. It was held that the Constitution would protect against unjustified government interference with intimate or private relationships. The right of protection for intimate relationships, as it applies to clubs, infers to *right of private association*.
  - c. The Supreme Court of New York stated that "... any club may apply such selective criteria as it chooses in the use of its facilities, in evaluating applicants for membership, and in the conduct of its activities, so long as such selective criteria do not constitute discriminatory practices under the law."
6. The following thoughts have been drafted to frame the issue of privacy and to facilitate its discussion at the upcoming Board retreat. I look forward to your comments on these and related issues.

### **Privacy:**

A *private Club* is distinguished by its selection process and its concept of intimacy. The size of the membership base is related to the available facility; financial requirements to support that facility and services; and the amount of intimacy that each member desires with other members, staff and the management team.

The "ultimate" private club would allow none into the facility who were not themselves members or immediate family of members. Most clubs, however, feel that the applicable standard would approximate that of one's home where relatives and good friends are welcome. Some clubs go further and legitimize less intimate relationships, thereby allowing the "circle of inclusion" to include more remote and far less "connected" relationships to exist.

Each private club must define its "level of intimacy" and thereby establish its policy on privacy and inclusion.

### **Levels of Intimacy:**

Privacy and related issues can best be discussed when referring to "levels of intimacy." These might include the following categories in order of intimacy to the members:

1. Members and their immediate families.
2. Relatives of members.
3. Good friends of members - those they have entertained in their own home and have known well for a number of years.
4. Business and charitable relationships.
5. Friends, relatives, friends of good friends or business/charitable relations that are professional, not social, contacts.

Each club defines who it ideally would include in its definition of "home," "community" or "neighborhood." The criteria for doing so might be --- "would I recommend this person for membership, and --- given this club's selection process --- would they be admitted as regular members."

### **Legal Costs of Intimacy and Privacy:**

The legal definitions of "intimacy" and "privacy" are changing. In some states, "intimacy" doesn't exist when a club has more than a hundred members. A club in other states is not "private" if a business relationship exists with those who are not themselves members of the club. A "business relationship" would exist if the non-member paid the club directly for goods and services or if that individual --- with whom that individual has a relationship --- reimbursed the member for goods and services even when the billing is debited to the member and paid for by the member with a personal check.

Many clubs are evaluating their "legal exposure as a business by analyzing the business relationship that exists with non-members. The decisions which have been made reflect their "concept of intimacy" and the interest they have in maintaining the integrity of their selection process. The risk parameters might be characterized as follows:

**Level One:** Sale of goods and services to members and the families only. No reimbursement permitted.

**Level Two:** Sale of goods and services to members and to "blood relatives" who reimburse the sponsoring member for any goods and services consumed.

**Level Three:** Sale of goods and services to members, to blood relatives and to intimate friends who are thereafter permitted to reimburse the sponsoring member.

**Level Four:** Sale of goods and services to members, blood relatives, intimate friends, friends of relatives or friends, members of reciprocal clubs, and charitable / business relations, all of whom reimburse the sponsoring member or club for any goods and services consumed.

The Warfield vs. Peninsula Country Club case *would suggest* that none but level one would be acceptable for truly private clubs. Clubs "indulging" in levels two, three and four would be classified as businesses.

If a club is classified as a business, it cannot automatically exclude "protected classes" of individuals from membership. Such "protected classes" would include women, minorities, those with handicaps and the like.

The Supreme Court, in its ruling on Warfield, mentioned that clubs could maintain selection processes based on social criteria. Truly private clubs could use any criteria for accepting or rejecting members.

Clubs that *might* be defined as businesses face an uncertain future. If a rejected application files suit against a club for discrimination, they might cite Unruh to establish that clubs are a "place of accommodation" and cannot therefore, deny access to anyone if space is available. Doing so would negate any selection process, social or otherwise.

Each club that *might* be defined as a business must assess the risk of such a future and its policy relative to that risk. Absent a selection process for social compatibility, clubs as we know them cease to exist.

### **The Price of Intimacy:**

Many clubs currently allow members to sponsor activities through Level Four or provide reciprocal privileges with other clubs to increase the size of the user base. This is not done as an expression of that club's concept of intimacy, but for purely financial considerations. Function business is lucrative because the contribution margin for goods and services which are sold is high, thereby subsidizing goods, services and facilities provided to the membership at large. Many feel that the member inconvenience experienced because of functions or the loss of intimacy realized with reciprocal privileges is offset by financial gains which benefit the entire membership.

If greater intimacy or privacy is sought, dues must be raised to offset the shortfall from reduced non-member activities. Absent a dues increase, various member services would have to be curtailed or the cost of each increased to offset the projected losses.

### **Practices Which Might Suggest That it is a Business:**

The following are outside the scope of "Level One" activities and therefore expose the Club to assertions that it is a business.

1. Staff are allowed to buy resale items.
2. Guests are allowed to reimburse members for the purchase of resale items.
3. Small charity fund raisers are sponsored by the Club.
4. Members are allowed to sponsor Level Two through Level Four functions and to be reimbursed for their expense.
5. Reciprocal privileges.
6. Reciprocal privileges are extended to various clubs when selected tournaments or inter-club competitions are held.
7. The Club permits members to sponsor two week guest membership for "out-of-towners" and to be reimbursed by those people for doing so.
8. The Club permits members of a reciprocal club to sponsor functions at the club.
9. The Club permits Bel-Air Bay Club members to register their children in the summer youth camp.
10. The Club allows members to sponsor friends of their children for summer camp and to be reimbursed by their parents for related expenses.
11. Staff are allowed to use the exercise room in off-hours when no members are present.

Each of these issues relates to a "concept of intimacy" and of "privacy" and each has financial ramifications.

### **The Dollar Cost To Greater Privacy and To Further Remove From Being Considered a Business:**

If a club were to change its definition of "acceptable" non-member activity, there are specific costs involved. The following is a "rough guess" -- based on a financial analysis of existing activity levels -- of monthly dues increases required to compensate for anticipated losses. "Levels" are in descending order of intimacy or privacy and, correspondingly, legal exposure.

**Level One Activity Only:** \_\_\_\_\_ Dues increase of \$18 - \$22 per month.  
(Members Only)

**Level Two Activity Only:** \_\_\_\_\_ Dues increase of \$15 - \$20 per month.  
(Members and Blood Relatives)

**Level Three Activity Only:** \_\_\_\_\_ Dues increase of \$10 - \$15 per month.  
(Members, Blood Relatives, Close Friends)

**Level Four Activity:** \_\_\_\_\_ No dues increase required.

### **Alternatives:**

The Club can address their privacy, legal and financial concerns in a number of ways. However, these three issues will be part of any decision and should be considered at one and the same time. Although a club's concept of intimacy / privacy might seem to be an abstraction it is not since it ultimately drives the legal / financial decision. If the club feels deeply about intimacy --- say levels one through three --- there is a financial implication and a degree of legal exposure (risk) involved. Resolving who you want as part of the extended family and extended community will help clarify the related risks / costs that will be shouldered by the membership.

The Club has several alternatives:

1. Change no policies and hope that clubs which are "businesses" can retain their non-discriminatory selection processes.
2. Become a "truly private" club and cut out any reimbursable activity below level one while accepting the financial costs involved.
3. Eliminate activity below Level Two, accept the costs involved and hope that any definition as a "business" excludes clubs who favor relatives of members.
4. Eliminate activity below Level Three, accept the costs involved and hope that any definition as a "business" excludes clubs who favor relatives and intimate friends.
5. Expand the member base to a level which provides the necessary dues and activity to sustain the facility but not beyond that which allows our "concept of intimacy" to be retained. Eliminate Level Two, Three or Four activities.
6. Reduce the number of goods and services so that current dues levels could be maintained as a "Level One" Club.

### **Conclusion:**

Each private club, with a selection process, must establish its "concept of intimacy" and the legal / financial / social costs involved in each. Warfield has provided incentive for the Board to examine its own policies in this regard and to determine how the membership should approach the future.