**VGCSA Antitrust & Conflict of Interest Policy**

**Prelude**

The Virginia Golf Course Superintendents Association (VGCSA) is a not-for-profit organization. The Association is not organized to and may not play any role in the competitive decisions of its members or their employees, nor in any way restrict competition among members or potential members. Rather it serves as a forum for a free and open discussion of diverse opinions without in any way attempting to encourage or sanction any particular business practice.

VGCSA provides a forum for exchange of ideas in a variety of settings including its Annual Meeting, regular meetings, educational programs, committee meetings, and Board meetings. The Board of Directors recognizes the possibility that VGCSA and its activities could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this policy statement clearly and unequivocally supports the policy of competition served by the antitrust laws and to communicate VGCSA’s uncompromising policy to comply strictly in all respects with those laws.

While recognizing the importance of the principle of competition served by the antitrust laws, VGCSA also recognizes the severity of the potential penalties that might be imposed on not only VGCSA, but its members as well, in the event that certain conduct is found to violate the antitrust laws. Should VGCSA or its members be involved in any violation of federal/state antitrust laws, such violation can involve both civil and criminal penalties that may include imprisonment as well as fines for individuals and or the Association plus attorney fees. In addition, damage claims awarded to private parties in a civil suit are tripled for antitrust violations. Given the severity of such penalties, the Board intends to take all necessary and proper measures to ensure that violations of the antitrust laws do not occur.

**Policy**

In order to ensure that the Association and its members comply with antitrust laws, the following principles will be observed:

* VGCSA or any committee, section, or activity of the Association shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, expressed or implied, among two or more members or other competitors with regard to prices or terms and conditions of contracts for services or products. Therefore, discussions and exchanges of information about such topics will not be permitted at VGCSA meetings or other activities.
* There will be no discussions discouraging or withholding patronage or services from, or encouraging exclusive dealing with any supplier or purchaser or group of suppliers or purchasers of products or services, any actual or potential competitor or group of actual potential competitors, or any private or governmental entity.
* There will be no discussions about allocating or dividing geographic or service markets or customers.
* There will be no discussions about restricting, limiting, prohibiting, or sanctioning advertising or solicitation that is not false, misleading, deceptive, or directly competitive with VGCSA products or services.
* There will be no discussions about discouraging entry into or competition in any segment of the marketplace.
* There will be no discussions about whether the practices of any member, actual or potential competitor, or other person are unethical or anti-competitive.
* Certain activities of VGCSA and its members are deemed protected from antitrust laws under the First Amendment right to petition government. The antitrust exemption for these activities, referred to as the Noerr-Pennington Doctrine, protects ethical and proper actions or discussions by members designed to influence: 1) legislation at the national, state, or local level; 2) regulatory or policy-making activities (as opposed to commercial activities) of a governmental body; or 3) decisions of judicial bodies. However, the exemption does not protect actions constituting a "sham" to cover anticompetitive conduct.
* Speakers at committees, educational meetings, or other business meetings of VGCSA shall be informed that they must comply with the VGCSA's antitrust policy in the preparation and the presentation of their remarks. Meetings will follow a written agenda approved in advance by VGCSA or its legal counsel.
* Meetings will follow a written agenda. Minutes will be prepared after the meeting to provide a concise summary of important matters discussed and actions taken or conclusions reached.
* If there is any question as to whether discussions or activities may have adverse antitrust implications, legal counsel will be consulted.

At informal discussions at the site of any VGCSA meeting all participants are expected to observe the same standards of personal conduct as are required of VGCSA in its compliance.

**Conflict of Interest**

Board members and employees should avoid any situation that involves or may involve a conflict between their personal interests and the interests of VGCSA. Board members and employees dealing with customers, suppliers, contractors, competitors or any person doing or seeking to do business with VGCSA are to act in the best interest of the organization. Each Board member or employee shall make prompt and full disclosure of any situation that may potentially involve a conflict of interest and may be required by the Board to abstain from discussion and voting on this issue. Failure to disclose conflicts of interest may result in immediate removal from the Board.

**Summary of Antitrust Laws**

**The Sherman Act**
The Sherman Act, enacted in 1890, is the basic federal antitrust law. Section 1 of the Act prohibits agreements in unreasonable restraint of trade. While every business agreement restrains trade to some extent, not every agreement violates the law. Over time, certain types of agreements or conduct have been found to always be unlawful (per se violations), and other agreements or conduct are evaluated based on all the facts and circumstances to determine if they violate the law (the “rule of reason” test). Section 2 of the Sherman Act prohibits unreasonable business behavior designed to achieve or maintain monopoly power.

**The Clayton Act**
Section 2 of the Clayton Act prohibits certain types of price and related discrimination; Section 3 of the Act prohibits exclusive dealing arrangements; and Section 7 covers mergers, acquisitions and other business arrangements that adversely affect competition or threaten to create a monopoly.

**The Federal Trade Commission Act**
The FTC Act grants the FTC the authority to enforce antitrust laws by issuing cease and desist orders or by seeking other relief from courts against unfair methods of competition and other anticompetitive practices.

**State antitrust laws**
In addition to the federal statutes, each state has its own antitrust law. Generally, most actions that violate the federal antitrust laws also violate the comparable state law.

**Government enforcement of the antitrust laws**
The antitrust laws can be enforced by the federal government, state government, competitors, suppliers or customers. The Department of Justice and the Federal Trade Commission have concurrent jurisdiction to enforce the federal antitrust laws. The Department of Justice generally challenges price fixing conspiracies by seeking criminal penalties. The Department of Justice may also seek civil remedies in antitrust matters. The FTC usually challenges the more complicated antitrust matters where extensive economic analysis is necessary.

**State government enforcement of state antitrust laws**
In addition to enforcing their own state laws, state governments may sue under the federal laws for damages or injuries suffered by the state in its role as purchaser or supplier of products, or on behalf of citizens for injuries they suffer from violations of the federal statutes.

**Private enforcement of the antitrust laws**
Private parties may sue for damages under Section 4 of the Clayton Act. Section 4 provides for the recovery of triple the amount of damages awarded by the jury, plus attorneys’ fees and costs. If the Department of Justice or FTC has previously proved that conduct violated the antitrust laws, private parties can rely on that finding and do not have to incur the expense or difficulty of again proving that the antitrust laws were violated. However, private plaintiffs cannot sue to enforce the FTC Act.

**Summary of Sanctions for Violating Antitrust Laws**
Violations of the antitrust laws can have serious consequences for an association, its officers, directors and employees, including damage suits, criminal fines of $350,000 against individuals and $10 million against the association, imprisonment for as long as three years and damage to the association’s reputation. In extreme cases, the government can seek to dissolve an association. Furthermore, an association’s exposure is not limited to government action. Private parties injured by violations of the antitrust laws may also bring an antitrust action seeking treble damages against the association and its representatives.

**Summary of Conduct Considered *Per Se* Illegal**
Certain activities or conduct are considered always or almost always to restrict competition and therefore is illegal under the antitrust laws. Examples include:

1. agreements among competitors to raise, lower, control or stabilize the prices of goods or services;
2. agreements with suppliers to raise, lower, control or stabilize the resale prices of goods or services;
3. boycotts involving monopoly power that deny necessary business relationships to competitors, suppliers or customers; and
4. agreements to allocate markets or customers, or concerted action to limit output of goods or services.

**Summary of Conduct Reviewed Under the “Rule of Reason”**
Conduct that is not *per se* illegal is evaluated under the *Rule of Reason.* Conduct that involves some restraint of trade may be permissible if the overall effect of the activity is to improve competition rather than restrict it. Activities evaluated under the *Rule of Reason* include:

1. membership decisions (inclusion, exclusion, termination of);
2. lobbying efforts;
3. industry-wide surveys, data collection, statistical gathering and similar activities; and,
4. standardization and certification programs.