



NRCA Antitrust Policy

To minimize the possibility of antitrust issues, the National Roofing Contractors Association requires its officers, directors, employees, volunteers and members of all of its councils, committees, working groups, task forces and participants in its roundtables, panels and other meetings and discussions (collectively, “NRCA participants”) to abide by the terms of this antitrust policy and all exhibits referenced therein (“NRCA Antitrust Policy”).

Industry organizations and associations are subject to strict scrutiny by federal and state governments. This scrutiny should not prevent participation in, and support for, an industry association. However, members should be aware of, and comply with, certain relevant legal principles. Compliance with these laws does not prevent NRCA participants (as defined in the NRCA Antitrust Policy) from lawfully engaging in a variety of group activities, so long as the purpose or intended result of the activities is not to promote anticompetitive activities or to participate in anything that could be construed as a restraint of trade or commerce.

The most significant law affecting trade associations like NRCA is the Sherman Antitrust Act. This act makes unlawful every contract, combination or conspiracy in restraint of trade or commerce. Other acts including the Federal Trade Commission Act, Robinson-Patman Act and Clayton Antitrust Act are also applicable because they forbid anticompetitive activities. Furthermore, almost every state has enacted antitrust laws similar to the Sherman Antitrust Act.

There is no group or organization too small or too geographically localized to escape the possibility of a civil or criminal antitrust suit. It is thus imperative that every NRCA participant avoid indulging in any activity, which may be considered anticompetitive. There are four main areas of antitrust concern: price fixing, membership, standardization and self-regulation.

Historically, the area of greatest concern is price fixing. A violation of the Sherman Antitrust Act may be inferred if all or most of the participants in an industry organization or association are doing the same thing with respect to prices or other aspects of trade. It is not required that there be an agreement, written or unwritten, to fix prices. Instead, price fixing is a very broad term, which includes any concerted effort, which has an effect on prices, competition, or the terms or conditions of trade. Furthermore, such concerted actions cannot be justified by showing that they are otherwise reasonable.

Accordingly, NRCA participants should refrain from any discussion, which may provide the basis for an inference that NRCA participants agreed to take any action relating to prices, services, allocation of markets, production or any other matter having a market effect. These communications should be avoided at formal and informal meetings.

General Guidelines for NRCA Participants

1. NRCA participants are not authorized to speak or act on behalf of NRCA unless specifically granted such authorization by NRCA in writing.
2. NRCA is the only party authorized to adopt positions or issue statements public or otherwise on behalf of NRCA. Questions or complaints must be handled in accordance with NRCA's policies.
3. NRCA participants are not authorized to use NRCA letterhead or NRCA's name or logo without the prior written consent of the NRCA's board of directors, or its designee(s).
4. Agendas for all NRCA meetings, including, without limitation, council, committee, working group, task force, roundtable, panel and other meetings (collectively, "committees"), shall be prepared in advance, with prior review by the appropriate NRCA staff member, and followed at the meeting. Topics that are not included on the agenda shall not be discussed.
5. Only meetings scheduled by NRCA shall be considered NRCA meetings. NRCA participants shall not participate in private group meetings or informal group gatherings outside of NRCA scheduled meetings to discuss issues not on the agenda. No NRCA meeting may be held unless a member of the NRCA professional staff participates in person or by conference call.
6. A secretary shall be appointed to take minutes of all meetings. Minutes shall be submitted to the NRCA office and reviewed by an appropriate NRCA staff member prior to distribution. After approval, such minutes shall become the "official minutes" retained by NRCA. NRCA participants should not keep their own minutes.
7. Committees can act only within the scope of their authority. Recommendations shall be made to NRCA for other actions to be taken. All committee correspondence must be sent out through the NRCA office.
8. All NRCA participants shall adhere to this NRCA Antitrust Policy. All NRCA participants shall receive a copy of the NRCA Antitrust Policy, sign and acknowledge adherence to the policy, and the need to comply with its terms shall be communicated regularly.

You should not discuss non-public, competitively sensitive information with competitors, including:

- Current or future pricing and discounts (be careful of discussions involving past pricing especially if it reveals discounts)
- Bid terms and amounts, including decisions whether to bid or not bid
- Profit margins or general discussions of what a "fair" profit margin should be
- Standardizing or stabilizing prices or pricing procedures
- Capacity or output levels
- Limits on sales or sales of certain products to certain geographic regions

- Customers
- Key sales or contract terms
- Wages and salaries or limitations on hiring a competitor's employees, including anticipated wage rates
- Strategic plans
- Business expansion or contraction plans
- Planned geographic growth
- Credit terms, cash discounts, rebates or incentives
- Controlling production or sales or allocating markets or customers (This applies to services as well as products.)
- Complaining to a competitor that his or her prices constitute unfair trade practices
- Refusing to deal with a company or individual because of business practices related to pricing or distribution

In addition, do not:

- Discuss or agree to refuse to do business with any competitor, customer or company in the industry or the supply chain.
- Discuss or agree to any limitations on your company's activities or independent decision-making.
- Exchange non-public, competitively sensitive information with competitors.

Counsel, including data exchanges, joint ventures or lobbying efforts, should first vet any type of joint effort with trade association members. Avoid the appearance of illegal collusion or that inappropriate communications or information exchanges are occurring. Any meeting with a competitor could later be interpreted as an illegal information exchange or of cartel activity, as more fully defined below. Avoid side meetings and conversations with your competitors during NRCA meetings and functions.

Stopping the Conversation

Cartel agreements are agreements between competitors to rig bids, fix prices, alter output or allocate markets or customers. This type of activity is illegal, meaning there is zero justification. If these topics come up during a NRCA meeting:

- **Stop the meeting and suggest pausing the conversation until it can be vetted by NRCA general counsel.**
- **If, after there is a vocal objection, the conversation continues, state you are leaving the meeting and ask the minutes reflect your concern and departure.**
- **Promptly leave and immediately contact NRCA general counsel.**

It is possible discussions will be less obvious or overt than the violations discussed above. It may not be feasible to immediately stop or leave the discussion. If that happens:

- **Avoid participating in the discussion.**
- **Suggest the discussion stop until vetted by NRCA general counsel.**
- **Withdraw from the meeting and leave as soon as possible.**
- **Immediately contact NRCA general counsel.**

If an inappropriate discussion occurs during a side conversation in which you are involved, insist that it end immediately. If it continues, announce your intent to leave because you feel it violates the law. Leave, and immediately contact NRCA general counsel.

Permissible Conduct and Information Exchanges

Trade associations and standard-setting organizations routinely promote competitively benign activities, such as:

- Gathering publicly available information about the industry, organizing it and disseminating it to industry participants.
- Setting industry standards that increase product operability, safety or compatibility.
- Using a website that informs the public about a complicated industry issue.
- Lobbying efforts on a state or federal level.
- The exchange and collection of aggregated, historical industry data.
- Disseminating nonstrategic technical or scientific information that results in consumer benefit.

Not all information exchanges with competitors are forbidden. There are safe harbors for certain information exchanges with benign or procompetitive purposes. However, guidance on these safe harbors changes. Therefore, be conservative in your approach to the sharing of information.

Benign or procompetitive information exchanges that reduce fraud or confer consumer benefits are particularly encouraged. However, all information exchanges with meeting attendees or trade association members should be cleared in advance with NRCA and/or NRCA general counsel.

If you receive any documents containing non-public, competitor or industry information at a NRCA meeting or event, make a notation on the document listing the source, date and context in which you received it, to make it clear to a reader that the document is not evidence of prohibited information exchange. Contact NRCA general counsel if you think the document could be viewed as evidence of anticompetitive activity.

Inasmuch as an industry organization's antitrust violations can subject all participants to criminal and civil liability, NRCA participants should be aware of the legal risks regarding participation policies and industry self-regulation. Because participating in an organization can be of substantial benefit, participants must ensure that they do not in any way prevent or prejudice competitors from participating or illegally discriminate against non-participants. Participation policies should avoid:

1. Restrictions on dealing with non-participants
2. Excluding from participation any qualified participant
3. Limitations on access to information created by the organization

There is a substantial risk that standardization programs may be used to discriminate against certain competitors or restrict competition. Thus, the following guidelines should be followed:

1. NRCA participants or committees may agree to a product, safety or other standard. In some cases, NRCA may participate in standard setting activities of government regulatory bodies and private voluntary standard-setting organizations by providing comments and suggestions.
2. When standardization activities are under consideration, the discussion must be confined to technical, engineering, safety and regulatory factors. Competitive and marketplace issues are not proper factors to be considered. NRCA general counsel should be consulted before participation in standard-setting activities and should be present for at least initial discussions regarding NRCA's role in such activities.

An organization may be held strictly liable for the illegal conduct of its participants and agents acting under its name even if the organization has not authorized the activity. Thus, NRCA must ensure NRCA participants and agents are not using NRCA's legitimate activities for anticompetitive purposes.

The penalties for violating antitrust laws are severe, and the Sherman Antitrust Act is a criminal conspiracy statute. Active participants and individuals, who silently acquiesce in illegal activity, can be held criminally liable. Each individual and each corporation that is found guilty of a violation of the Sherman Antitrust Act may face substantial fines and imprisonment.

Meeting Do's & Don'ts

Active participation in NRCA meetings, including, without limitation, council, committee, working group, task force, roundtable, panel and other meetings (collectively, “committees”) adds to the vitality and energy to the organization and its mission.

Although the positive contributions of industry associations are well-recognized and encouraged by government, such activities are subject to scrutiny under antitrust laws. The single most significant law affecting societies and other associations is the Sherman Antitrust Act. This act makes unlawful every contract, combination or conspiracy in restraint of trade.

The most significant area of antitrust concern for groups such as the NRCA has been price fixing. Price fixing includes any concerted effort or action that influences prices, competitors or terms or conditions of trade. Accordingly, NRCA participants should refrain from any discussion that may suggest that they agreed to take any action relating to prices, production, services, allocation of markets or any other issue having a market impact. These discussions should be avoided at formal and informal meetings. In addition, NRCA participants should be sensitive to other issues that may raise particular antitrust concern: participant restrictions, codes of ethics or other forms of self-regulation, product standardization or professional certification. The following are guidelines NRCA participants should follow at all NRCA committee meetings and informal gatherings:

- **DON'T** discuss your own or a competitors' pricing, or anything that might affect prices, such as costs, profit margins or discounts.
- **DON'T** stay at a meeting where any price talk occurs.
- **DON'T** make public announcements or statements about pricing at any NRCA committee meeting.
- **DON'T** talk about what individuals or companies plan to do in particular geographic or product markets or with particular customers.
- **DON'T** speak or act on behalf of NRCA unless specifically authorized to do so by NRCA.
- **DO** alert NRCA staff or the NRCA general counsel to any issues in proposed statements to be made by NRCA on behalf of a committee.
- **DO** consult with your own legal counsel or NRCA before raising any issue or making any statement that you think may involve sensitive information.
- **DO** be alert to anticompetitive activities, and don't participate if you think something is illegal or improper.

These guidelines involve not only avoidance of antitrust violations but also avoidance of behavior, which could be construed as anticompetitive. These guidelines provide an overview of prohibited actions. If you have questions, seek guidance from your own legal counsel or from NRCA's professional staff or legal counsel.

After the Meeting

If, after the meeting you become concerned about a topic that was discussed, immediately contact NRCA general counsel. Do not discuss the topic further with other participants.

General Counsel contact information:

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I acknowledge I have received and understand NRCA's Antitrust Policy and shall abide by its terms and conditions.

By

Date: _____

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