Avoiding Conflicts of Interest
by Andrew S. Fortin, Esq.

2002 will be noted as a year of spectacular corporate bankruptcies, led in part by companies like WorldCom, Adelphia and Enron. These companies failed, in part, because key officers and board members placed their personal interests above those of the shareholder. While your club may not be a billion-dollar operation, there are lessons to be learned from the stories that have played out so publicly this year.

Running a successful business or club requires sound, ethical oversight. A club’s board of directors sets the vision for the club’s future and the near-term strategies it will follow. Since club directors are generally community leaders and successful professionals, they must balance their role as directors with the sometimes conflicting demands of their business, affinity for other club members, and the general public while keeping in mind who they represent when they make decisions on behalf of the club.

Duty of Loyalty
A board member has a fiduciary responsibility to protect the assets of the organization. When a board member fails to protect those interests, that failure is considered a breach in the duty of care that can trigger liability. Therefore, a board member must always act in good faith and in the best interest of the organization.

Like any corporate officer, a club director has a duty of loyalty to the club. This duty is described as board members owning the nonprofit organization the loyalty of placing its interests above all others.

Identifying Conflicts of Interest
The best way to handle board conflicts is to understand their nature and implement a policy that helps identify and prevent them. It is helpful to note that most conflict-of-interest lawsuits arise from two basic situations. The first is when the board member makes decisions out of self-interest or in the interests of only part of the institution instead of the common good of the whole organization. The second situation arises when the club makes a transaction with a business or organization that has a financial connection with the board member or a board member’s family.

In other words, when a director is acting and making decisions in his or her capacity as a board member, the club’s interests must be the primary concern. Despite this relatively straightforward concept, many of the record-setting corporate failures that have occurred over the last few years have resulted from basic conflicts of interest.

Developing an Ethics Policy
Directors and officers should have a clear understanding of the club’s mission and should conscientiously work toward that purpose on behalf of the club. A director is placed in a position of trust by the club members, and that position of trust imposes a duty on the director to put the members and their interests above the director’s. Regardless of the possibility of misconduct by others, officers and directors should avoid self-dealing or using their position for personal advantage in matters concerning club business.

The best way to avoid conflicts of interest is to train board members to avoid them. One way of achieving this goal is to adopt a firm policy that all directors are required to sign and observe during their terms in office. A discussion of conflict-of-interest issues should also be a part of any new board member’s orientation. A sample conflict of interest policy, first published by NCA in 2000, may be found in the box to the left.

Andrew S. Fortin is NCA’s vice president of legal and government relations.