

# Kwik Goal The Club Summit

## Covid 19: Lessons and Best Practices Moving Forward

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### PREPARED BY

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# Club Structure: Introduction

- **Perspective as Lawyer, Board Member, Advisor, and Parent**
- Player/parent
- Club
- Youth, college, pro
- Legal and operational tips

# 2020 Covid-Specific Matters

1. **USL CBA Return to Play**
2. **Youth League Return to Play Guidelines**
3. **Adult State Soccer Association Return to Play Guidelines**
4. **League Investigation: Club vs. Club alleged ethics violation**
5. **Club Social Media Investigation**
6. **Coaching Contracts/Employment Agreements**
7. **Relationship with Landlords**

# 2020 Covid-Specific Matters

- 8. Relationship with tenants and sub-tenants
- 9. Cease and Desist matters/coach recruitment and defection issues
- 10. Cease and Desist matters/administrators taking confidential information
- 11. Amended and Restated By-laws
- 12. League Passcard Release/Recruitment Rules
- 13. Transaction (Buyer) non-profit
- 14. Transaction (Buyer) for-profit?

# 2020 Covid-Specific Matters

**15. Refund policies: Consumer Complaints to AG**

**16. Employment matters within Covid (furlough, HIPAA)**

**17. DA Collapse: Help with entry into other leagues**

**18. PPP Loans**

# Coaching Agreements

- **Three versions**
  - Coaching
  - Coaching with management/director level
  - DOC

# Coaching Agreements

- **Coaching**

- 2 - 3 pages
- Exhibits
- Usually at will
- Confidential information
- Non-solicitation

# Coaching Agreements

- **Coaching with management/director level**
  - 3 - 4 pages
  - Exhibits
  - Stated term
  - At will/termination provisions?
  - Confidential Information
  - Non-solicitation
  - Director level: could be full-on employment agreements



# Coaching Agreements

- **DOC**
  - 6 - 8 pages
  - Exhibits
  - Employment Agreement/contract
  - Bespoke provisions

# Coaching Agreements

- **Coach perspective**
  - Research
  - Market salary in negotiation
  - Employee benefits
  - Licenses course reimbursement
  - Elevate from at-will

# DOC Employment Agreement

- **Best Practices**

- Reasonable term
- Duties and responsibilities
- Time commitment expectations
- Salary: Reasonable compensation
- Source: Compensation Committee

# DOC Employment Agreement

- **Drafting Tips**

- Bonus: Board discretion
- Bonus: Formula
  - Reasonable
  - Consistent with non-profit rules
  - Following final P&L audit
  - Definition of net profits
  - Unrestricted donations included?
  - Restricted donations included?
  - Capital campaign donations included?
- Bonus: Board ability to adjust formula
  - Extraordinary transactions

# DOC Employment Agreement

- **Drafting Tips**

- Board report provision
- Termination without cause
  - Severance
- Termination for cause
  - Conviction/plea:
    - a) Felony
    - b) Misdemeanor, moral turpitude, deceit, dishonesty, fraud
  - Gross negligence, willful misconduct, insubordination
  - Conflict of interest, breach of fiduciary responsibility
  - Material breach of contract obligations
  - Conduct that harms club reputation
  - Inappropriate social media postings (NLRB exceptions)
  - Uncured work performance

# DOC Employment Agreement

- **Drafting Tips**
  - Death
  - Disability
  - DOC voluntary termination

# DOC Employment Agreement

- **Drafting Tips**
- Non-competition clause
  - Reasonableness
  - Balance of rights
  - State law
  - New state law
- Non-solicitation clause
  - Alternate approach
  - Reasonableness
  - Coaches, employees
  - “Recruitment” of players
  - Corporate sponsors

# DOC Employment Agreement

- **Drafting Tips**

- Confidentiality clause
  - Customer lists, trade secrets, etc.
- Work product and intellectual property
  - Property of club
  - Assigned to club
- Enforcement: Injunction
  - Injunctive right



# Social Media Policy

- **Coaches**

- Case study: Investigation
- Need for Policy
- Prompt and proper response

# Social Media Policy

- **Coaches policy**

- Extend to communications
- Preserve player safety
- Preserve Club reputation
- No private channels/direct messaging
- Texting only regarding practice/game logistics
- Text and email:
  - Soccer related
  - Parent copied
- FB friends?
- Personal/political statements:
  - personal account/contact info
- Photos/videos:
  - Parent consent

# Social Media Policy

- **Players**

- Case study
- Proper response
- Drafting of policy

# Social Media Policy

- **Player safety guidelines**
- **Players policy**
- No 1v1 email/text with coach
- No social media site conversations with coach
- Tell parent/guardian about message on non-soccer issues
- No posting of sexual, racist, obscene material
- No sharing (text or otherwise) of inappropriate material within club
- No content online: unsportsmanlike, derogatory, demeaning, or threatening to another individual or organization

# Social Media Policy

- **Additional considerations**
  - Staff
  - Parents
  - Volunteers

# Investigation on Behalf of League

- **Why relevant**
  - Who sits on league BOD?
  - Tension between roles
  - Fiduciary duty
  - Attempt at fairness and order

# Investigation on Behalf of League

- **Case study**

- Recruitment rules
- Prohibition: Contacting players during season
- Player-initiated contact: Permission from current team
- Prohibition: Clubs acquiring entire teams
- 12-month non-compete rule: moving coach can't coach same age group
- No good deed goes unpunished
- By-laws update

# C&D Letters: Coach Movement the Right/Wrong Way

- **Balance of concerns/interests**
  - Coach improved job
  - The kids
  - The club
  - League recruitment rules
  - Non-solicitation provisions
  - Movement without chaos and unintended consequences
  - New offer motivation
  - Players don't want to switch (pressure: kids lose)



# C&D Letters: Coach Movement the Right/Wrong Way

- **Movement the wrong way**

- Assuming no non-compete
- Contacting players while still at current club
- Using current club confidential information
- Non-Compete/Non-Solicit?
- Restriction on coach movement a myth?
  - Player movement

# C&D Letters: Coach Movement the Right/Wrong Way

- **Movement the right way**

- It all comes down to timing
- Simple: wait until you join new club
- Word will travel
- If you're good/liked: kids will follow
- Don't: (a) contact parents/kids while still employed (b) take old club property (c) solicit (if prohibited)

# Mergers

- **Transactions between non-profits and for-profits**
  - **Seller: Non-profit**
- What are “you” selling?
- Process through Attorney General

# Mergers

- **Transactions between non-profits and for-profits**
  - Target: Non-profit
- AG process
- Fair Market Value
- Proceeds to non-profit purpose
- Liability of seller
- What if founders dissolve?

# Mergers

- **Transactions between Non-Profits and For-Profits**
  - Target: For-profit (former non-profit)
- Need for due diligence
- Liability to seller but
- Is indemnification o.k. and enough?
- Turning the lights out is not o.k.
- Case study

# Mergers

- **Important Legal Term**

- “Fit”
- Trumps essential myriad legal concerns
- DOC personalities

# Mergers

- **Pride**
  - Understand each club's heritage and brand strength
  - Risk: overestimate own/underestimate other
  - Issues: During negotiation and post transaction

# Mergers

- **Logistical Issues**

- Core philosophy
- Surviving entity (power)
- Size of Board



# Mergers

- **Logistical Issues**

- Leverage of board
- Allocation of field use
- Division of labor: who coaches where?

# Mergers

- **Governance Issues**
- Members of Board
- Size of Board

# Mergers

- **Corporate Governance: Board**

- Size is a “fit” issue
- Who will remain?
- Which side will have the majority?
- Size perspectives
- Deadlock concern
- Case study

# Mergers

- **Legal: Confidentiality**

- Confidentiality Agreement an initial must
- No use or disclosure of confidential information
- No disclosure of existence of discussions

# Mergers

- **Letter of Intent**
  - Road map of deal (non-binding)
  - Exception: confidentiality
  - Exception: publicity

# Mergers

- **Merger Agreement:  
Representations and  
Warranties**

- As things are/condition of organization
- What you are getting/taking on
- E.g., debt, other obligations, litigation, cash position

# Mergers

- **Merger Agreement: Covenants**

- Going forward promise
- Conduct of business pending closing
- Access to books and records
- Employee benefits post-closing

# Mergers

- **Merger Agreement:  
Indemnification**

- Losses arising out of R,W,C material breach
- E.g, taxes Seller supposed to pay
- E.g, operation of business prior to/post closing
- E.g, employee claims prior/post



# Structure: Governance Best Practices

- **Best Practices: Governing Documents**
- Non-Profit Corp.
- For-Profit Corp.
- For-Profit LLC

# Structure: Governance Best Practices

- **Non-Profit Corporation:  
Governing Documents**
- Articles of Organization
- By-laws

# Structure: Governance Best Practices

- **For-Profit Corporation:  
Governing Documents**
- Articles of Organization
- By-laws

# Structure: Governance Best Practices

- **Limited Liability Company:  
Governing Documents**
- LLC Operating Agreement

# Structure: Governance Best Practices

- **Governing Documents:**  
**By-laws as a model**

**Directors:**

- Authority/Powers
- Number and Election
- Term of Office
- Committees
- Meetings
- Quorum and Voting
- Meetings by Remote Communication
- Action Without a Meeting
- Waiver of Notice of Meetings
- Compensation
- Resignation
- Removal
- Vacancies

# Structure: Governance Best Practices

- **Governing Documents:**  
**By-laws as a Model**

**Officers:**

- Officers/Enumeration
- Election/Appointment
- Term of Office
- Vacancies
- Removal
- Resignation
- President
- Treasurer
- Secretary/Clerk

# Structure: Governance Best Practices

- **Governing Documents:  
By-laws as a Model**

## **Shareholders (For-Profit):**

- Annual Meeting
- Special Meetings
- Place of Meetings
- Requirement of Notice
- Waiver of Notice
- Quorum
- Voting and Proxies
- Action at Meeting
- Action without Meeting by Written Consent
- Meetings by Remote Communications

# Structure: Governance Best Practices

- **Governing Documents:**  
**By-laws as a Model**

## Books and Records:

- Minutes and Records
- Inspection by Directors (Shareholders)
- Piercing the Corporate Veil



# Structure: Governance Best Practices

- **Governing Documents:  
By-laws as a Model**

## Conflicts of Interest:

- Director/Officer Disclosure
- Recusal
- Board Approval in Best Interests

# Structure: Governance Best Practices

- **Governing Documents:  
By-laws as Model**

## Personal Liability:

- No Officer or Director Liability for liabilities and debts
- Exception: Breach of Duty of Loyalty
- Exception: Intentional Misconduct/Knowing Violation of Law
- Exception: Improper Benefit

# Structure: Governance Best Practices

- **Governing Documents**  
**By-laws as a Model**

## Indemnification:

- Indemnification of Officers and Directors in connection with lawsuits
- Exception: Acted in Bad Faith (best interests of corp.)

# Structure: Governance Best Practices

- **Governing Documents**  
**By-laws as a Model**

Amendment (BOD)

# Structure: Coaching, Board, Administration (Governance)

- **Board Structure: Best Practices**

- Odd number
- Disinterested directors
- Strong/independent: No rubber stamp
- Diverse:
  - a) financial
  - b) legal
  - c) marketing
  - d) operational
- Diverse:
  - a) gender
  - b) ethnic
  - c) reflective of membership

# Structure: Governance Best Practices

- **Compensation Committee**

- Set and approve DOC compensation
- No DOC input
- Independently source relevant data
- Comparable clubs
- Comparable activities scope and description
  - Part time/full time
  - Nature of club
- Approve compensation of other executive officers
- Set, review, approve incentive plans

# Structure: Governance Best Practices

- **Nominating and Governance Committee**

- Policy making: Board size, leadership and composition
- Oversee board guidelines
- Oversee conflicts of interest/governance issues
- Determine qualifications and characteristics
- Recommend candidates for nomination
- Review governance guidelines and mechanisms
- Review relationships of executives and directors
  - Director independent?

# Structure: Governance Best Practices

- **Audit Committee**

- Understanding: finance, accounting, and financial statements
- Oversight of internal controls and risk management systems
- Ensure integrity of financial statements
- Ensure compliance with financial and legal requirements
- Ensure independent relationship with auditors
- Oversee fraudulent activity concerns
- Report to Board: risk profile



# Structure: Governance Best Practices

- **Development Committee**
  - Ideal: connections to corporations and foundations
  - Raise funds and other resources
  - Develop strategies: sponsorships, donations
  - Recruit and solicit donors/partners
  - Plan events and programs