

Retaining key personnel with deferred compensation

By Douglas C. Miller

In today's environment, when key personnel are raided by other clubs, restaurants and resorts, officers and directors must consider the adequacy of benefit packages. Compensation and perquisites must not only be competitive, but can also serve as "golden handcuffs" to key employees for a desired period of time. Faced with the proposition of losing general managers and others to competitors, some clubs have decided to dangle a carrot to provide some assurance of retention.

Many clubs provide standard benefits; a major sweetener that helps induce management to stay at the club is a non-qualified, funded deferred compensation plan.

Unlike more typical qualified plans such as 401(k), profit sharing, and pension plans, non-qualified plans are less restrictive and can be limited to key personnel without participation by all employees. These plans can provide supplemental retirement, disability and death benefits as well.

Typically, the club agrees to pay the key employee upon termination of service or upon retirement either a fixed sum, an amount based upon the employee's years of service and compensation, or a slated percentage of the employee's "high five," "high three," or career average salary. Alternatively, the club can agree to set aside fixed amounts on a periodic basis as deferred compensation and allow the employee to designate how the funds are invested.

Deferred compensation plans can be unfunded — the club contractually agrees to provide the benefit at the conclusion of the agreed time. Funded plans may give the employee

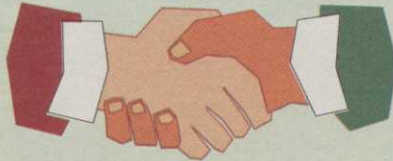
more emotional security, but such plans require that transferred property for the employee's benefit be subject to a "substantial risk of forfeiture" or the amounts transferred will be currently taxed.

For example, some agreements provide that the employee's right to receive deferred compensation payments will be conditioned upon the employee's agreement to work for a specified amount of years or until retirement, to render consulting services after retirement, or to refrain from working in a competitive club. Forfeiture can occur if the employee voluntarily terminates before the end of the plan's term or if he or she is terminated as the result of an act of dishonesty that causes financial loss or damage to the club.

NCA offers a deferred compensation plan through Legg Mason Wood Walker. For more information, contact them at 1-

888-499-5344.

401(k) and other qualified plans are unlikely to completely meet the needs of highly compensated club personnel. Therefore, non-qualified plans are likely to play a greater role in key employee retirement planning in coming years.



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NCA takes stand on 'right of association'

WASHINGTON — The National Club Association (NCA), along with the California State Club Association (CSCA), has filed an amicus brief with the U.S. Supreme Court on a significant right-of-association case.

The case, *Boy Scouts of America and Monmouth Council, Boy Scouts of America vs. Dale*, is on appeal from the New Jersey Supreme Court. The case presents a number of key issues concerning the First Amendment's right of association that could bear directly on a private club's membership policies, selection of leaders, and activities. In its amicus brief, NCA and CSCA urged the court to make clear that public accommodation laws should not be constitutionally applied to private voluntary social clubs and associations that are predominantly non-commercial in nature.

NCA Executive Vice President Susanne R. Wegrzyn noted that the amicus brief was filed because there are thousands of clubs in the United States, many of which are NCA members. "If the U.S. Supreme Court affirms the New Jersey Supreme Court decision stretching the New Jersey public accommodation law to include the Boy Scouts, there are few private clubs that would not be affected," she said.

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