



The following document based on best practices and applicable California law has been prepared as a “Best Practices Guidance” piece for our Affiliate Member Clubs and Leagues who find themselves in a financial dispute with their member teams and/or families.

**Cal South will not investigate, mediate or make legal determinations as it relates to financial disputes between an independent California corporation and their voting members, or between two or more independent California corporations.**

### **Best Practices Guidance: Ownership of Funds When a Team Moves to Another Club**

Occasionally a team will move from one club (i.e., Cal South Affiliate Member) to another, or some but not all of the players and coaches on a team will move from that team to a team in another club. When these moves take place, it is not uncommon for the team or players and coaches that moved to request that player fees and funds raised for the team be transferred to the new team. In the past, Cal South has been asked to assist clubs in determining whether these requests may be honored. In response, Cal South has prepared this Guidance. It is based on best practices and applicable California law.

Clubs are reminded that neither Cal South nor their District Commissioners are able to resolve the questions of the type discussed in this guidance. Each club is an independent corporation with its own board of directors. The sole body legally competent to determine a club’s course of action in any situation discussed in this Guidance is the club’s board of directors, either as a whole or through a duly delegated committee of the board (as may be permitted by the club’s bylaws).

While this Guidance has been prepared with the assistance of legal counsel, this Guidance does not constitute legal advice and may not be regarded as such. Ultimately, each club’s board of directors must decide on its specific course of action should a situation such as those described in this Guidance occur. As each situation is unique, clubs that have concerns about the legality of a given course of action should seek legal advice.

In general, all funds received by a club are owned by the club. However, in some cases funds are restricted and must be used for specified purposes, as explained below. Regardless, no team has any legal right to, or ownership interest in, money that may have been raised on its behalf,

and no individual who gave to, or raised money, for a team has any claim on those funds whatsoever.

When funds are raised on behalf of a team, those funds are the property of the club to which the team is affiliated. As a 501(c)(3) California nonprofit corporation, the board of directors of any given club must act as a steward of those funds, including funds raised for the benefit of a given team. Even if a team has its own checking account, the legal owner of the funds in that account is the club. As a matter of law, the board of the club has ultimately authority over how its (and its teams') funds are used.

Notwithstanding, depending on how funds were raised, their use may be restricted. Specifically, when a fundraising request indicates that contributions will be used to support a specifically identified team, or that they will be used to support a specific project (e.g., sending an identified team to a competition), California law imposes a "charitable trust" on those funds. This means that the holder or owner of those funds (e.g., the club) may only use those funds for the specific team or project for which they were raised. Thus, if funds were raised to benefit a specific team or project, the club's board must do everything within its reasonable power to make sure that those funds are expended exclusively for that team or purpose. For the remainder of this Guidance, we will speak of such funds as being raised and held "for the benefit" of the specific team. A separate consideration, addressed at the conclusion of this Guidance, is treatment of player participation fees.

#### **When Some Players Leave for a New Team**

As stated above, individuals have no legal interest or right in funds raised by or for the benefit of a 501(c)(3) organization (e.g., the club). Thus, if some, but not all of the players and coaches on a team leave for another team, their new team is not entitled to any funds that may have been raised for the benefit of their old team. Those funds raised for the benefit of the team remain with the "old" team, even if it has fewer players and coaches.

#### **When an Entire Team Leaves for Another Club**

Teams are sanctioned affiliates of a given club. This means that each team is owned by the club to which it is affiliated. Thus, when players sign up with a team, they are signing up to play with a unit of the club. Thus, when a team purports to move from one club to another, in fact all of its players and coaches are moving to a team with another club. The team remains a team of the original club, even if it no longer has any players and coaches. While this is similar to the situation described above, where some of the players and coaches leave for another team, except that in this case all of the players and coaches leave, the decision as to what the club must do with funds raised for the benefit of the team is more difficult.

The original club remains the owner of the funds raised for the benefit of the team. However, if the funds were raised for the benefit of a team that is now bare of players, the board of the club must ascertain the specific purpose for which the funds were raised. The legal doctrine of charitable trust requires that the board honor the intent of the people who donated those funds

raised for the benefit of the team. To do this, it must look to the specific language used when people were requested to make their donations.

Once it has ascertained the purpose for which the funds were raised, it must ask: What team activity would there be for which those funds can be used? If it is impossible or impractical for the club to use those funds for the purpose for which they were raised, the club's board must put them to a use that is as near as possible to the purpose for which they were raised. (This is known as the rule of "cy-pres.") If the club's board can find a use within the club that would honor the donors' intent, it may put them to that use. However, if transferring the funds to the club hosting the new team would best serve the donors' intent, then the club would be required to transfer any funds it holds for the benefit of the "old" team to the "new" club.

If the club's board determines (a) funds were raised for the benefit of the "old" team and (b) that it should transfer funds to the new club, it then must make a calculation to determine how much, if any, of those funds have been expended, after which it can determine how much, if any, of those funds remain. It should follow the steps below to make this calculation.

1. Add the total amount of funds raised for the benefit of that team (or project). Call this amount "A";
2. Add the total expenditures made on behalf of that team (or the specific project, if there is one) during the relevant period (i.e., the season year). This includes all funds directly expended by the club to support or pay for expenses related to the team directly as well as those expended by the team out of its checking account. Call this amount "B";
3. Then subtract the second of these numbers from the first (i.e., A-B).

If the difference between A and B is positive (that is, more money was raised for the benefit of the team or project than the total amount that was spent by the club for the team or project), that is the amount that may have to be forwarded to the new club for the new team's benefit.

This payment should be made as a restricted grant to the new club. The restriction would be that the granted funds must be used solely for the benefit of the "new" team. However, before the old club may make this grant, it must ascertain that the new club is in good standing with the Secretary of State and has active 501(c)(3) status with the IRS. (It may be illegal for a club that is 501(c)(3) organization to give funds to a non-501(c)(3) organization.) Proof of these statuses should be requested from the new club. They also may be confirmed at <http://kepler.sos.ca.gov/> and <http://www.irs.gov/app/pub-78/>, respectively. Once provided and verified, the old club may then grant the remaining funds to the new club. The grant should be accompanied by a simple grant letter agreed to in writing by an officer signing on behalf the new club whereby that club promises to honor the restriction.

### **Membership (Player) Dues and Fees Paid by Players to Participate on a Team**

Whether or not player participation fees may be transferred to the new club is a matter of contract law. In most cases, player agreements indicate what rights, if any, players have to a refund of their participation fees if they stop playing for a team or club. In most cases, a player who voluntarily departs his or her team to play for a team in another club (whether an already existing team or a new team composed of all of the players) abandons his or her right to any pro rata return of their player participation fee. Again, however, the language of the player contract must be read to determine if there is any language to the contrary.

Occasionally a player will move out of a Club's boundaries due to a family move such as when a parent is transferred for work. This Guidance does not cover such situations. It is suggested that the board of clubs use common sense judgment in such situations. (Of course, if the player contract provides for a partial refund in such situations, a club should adhere to that contract language.) If the parent of a player should ask for a refund, the Club should consider such factors as the costs incurred and that will be incurred with regard to that player, how far the season has progressed, the distance of the move, etc. Ultimately, this is a decision that the board should make based upon the specific facts and circumstances of the request.

### **Examples**

The following examples are meant to illustrate this Guidance. They are not real examples and not intended to replace the prudent judgment of the board of directors of a Club when faced with a situation such as those described above or below.

Here are the basic *made up* facts used in the examples, below. The Mustangs are a GU14 team of a Club A in District 1 of Cal South. The Mustangs have 14 players and a well regarded coach. Just before the season starts, the coach has concluded that the Mustangs would be more competitive if they played for a neighboring club, Club B, also in District 1. She convinces the parents of 10 of the girls to follow her to a new team to be formed by Club B. The 10 players and head coach leave to form the new team, called the Colts. The Mustangs still have an assistant coach and 4 girls. Prior to the time the head coach and players left for the Colts, the parents and girls held a fundraiser to support the Mustang's activities for the season. That fundraiser was promoted under the banner of "support girl's soccer" and netted \$14,000.

Example 1: When they depart, the players, led by the coach, ask Club A to transfer \$10,000 of the \$14,000 raised to Club B to support the activities of the Colts. Because some girls have remained, Club A must not forward any of the funds to the Club B.

Example 2: A week after the 10 players have left for the Colts, the girls remaining with the Mustangs and their parents get frustrated and also join the Colts. Now the entire former Mustangs team asks Club A to transfer the entire \$14,000 to the Club B. However, Club A also has a GU12 team. After considering the purposes for which the Mustangs raised those funds, even though the players on the GU12 team and its competitiveness were not the same as the

Mustangs, the Club A board of directors might reasonably determine that the intentions of the donors could be satisfactorily met by using those funds to support the GU12 team.

Example 3: Assume the same facts as in Example 2, except that Club A has no other girls' teams. In this situation, the board of directors of Club A might reasonably conclude that, because it has no other girls' team, it cannot honor the intentions of the donors of those funds and thus decides to grant those funds to Club B exclusively to support the Colts. Before issuing the grant, however, the board of Club A visited <http://www.irs.gov/app/pub-78/> to determine that Club B is tax-exempt under section 501(c)(3) of the Internal Revenue Code and <http://kepler.sos.ca.gov/> to insure that Club B has active status with the Secretary of State's office. Once it did so, it sent a short grant letter to Club B. That letter was signed by the President of Club B's board whereby he affirmed that Club B would only use the funds to support the activities of the Colts.

Example 4: In addition to requesting the funds they and their daughters had raised to support the Mustangs be transferred to Club B to support the Colts, the parents of all of the girls formerly on the Mustangs asked that Club A refund their player participation fees. The season has just started. Club A's player contract states that such fees are non-refundable 30 days prior to the start of the season. Because of this language, Club A need not return those fees, though it may refund a portion, if desired. Club A will have incurred some costs prior to the dismantling of the Mustangs and may incur additional costs because of the hole in its schedule and to build a new team. Especially if the difference between the fees paid and these costs is substantial, the board of Club A may refund a portion of those fees though it has no obligation to do so (remember, the players left voluntarily).