

CONFLICT OF INTEREST POLICY

It is important for boards to have conflict of interest policies, so that when conflicts of interest arise, there is a clear expectation that conflicts will be brought to the attention of the full board for discussion. In most boards without conflict of interest policies, confusion and a sense of mistrust develop when conflicts arise: it is likely that a few board members know about the specific conflict of interest, some people know nothing at all about the issue, and other board members see the conflict as unfair but don't want to speak out to the full board for fear of making the party in question "look bad."

Overall, board members should make sure that the nonprofit does not violate the "private inurement" doctrine. This is a principle of nonprofit tax law that prohibits any part of the nonprofit's income from being used for the personal benefit of individuals connected to the organization. In practice, it means avoiding the payment of excessive compensation, or engaging in unreasonable (less than arms-length) business transactions (rent, loans, etc.) between the organization and board members, staff, officers, and other "insiders."

This does not mean that a board member can never have business dealings with the nonprofit. It does mean that any such transaction will be subject to a high degree of scrutiny if tested in the courts. There must be full disclosure of the board member's interest, and the terms of the "deal" must be fair to the nonprofit. While board members may generally have a say on matters in which they have an interest, those matters must be approved by a disinterested majority of the board. In many cases, the better practice may be simply for the board member to disclose the conflict and refrain from discussing or voting on the matter.

Nonprofits should adopt a formal Statement of Conduct for board members. Here are some issues such a Statement should address:

SAMPLE: STANDARDS OF CONDUCT FOR BOARD MEMBERS

Financial Interests:

Here, the nonprofit should include a statement of circumstances under which board members must disclose business and family relationships which create a potential conflict of interest; the extent to which a board member may participate in board decisions in which the member has a personal financial or other interest; and policy for retaining board members to provide services to the organization, such as accounting or legal services.

ex: Board and staff members must disclose all business, personal and family relationships at a full board meeting when the nonprofit is considering contracting with those parties, whether on a volunteer or fee basis. Financial contracts over \$500 must be put out for bid from at least three

parties. A board member must remove him or herself from the final discussion prior to board and staff members making a final decision.

Board Member Compensation:

The board should develop a policy covering reimbursement of board members' direct expenses incurred participating in board activities (ex: travel, meals), indirect expenses (ex: lost wages) and provisions for any direct compensation or honoraria for board members' services.

ex: Board members receive no compensation for their services. With prior approval of the executive director and treasurer, Board members may request and receive budgeted reimbursements for materials used on behalf of the organization.

Gifts and Gratuities:

Develop a policy statement concerning whether board members may accept gifts or gratuities from persons or organizations doing business with the nonprofit and any limitations on such policy (ex: gifts of token value).

ex: Board, volunteers and staff members may accept personal gifts of token value (less than \$50). Gratuities directed at board and staff members become the property of the nonprofit.

Political Activities:

Develop a policy statement requiring board members to disassociate the organization from any personal political activities and prohibiting using the organization's name, property or facilities in connection with any political activity.

ex: Board, volunteers and staff may not use the nonprofit's name, property or facilities in connection with any political activity. The nonprofit may engage in insubstantial lobbying activities (within its tax exemption status) in an attempt to influence legislation, but may not intervene directly or indirectly in any political campaign on behalf of or in opposition to any candidate for public office. Board, volunteers and staff members can, of course, engage in political activity within their individual capacity, but must scrupulously distinguish between their personal conduct and activity on behalf of the nonprofit.

Hiring or Contracting with Relatives (Nepotism):

Develop a statement of circumstances under which the organization will or will not hire persons related to board members.

ex: The nonprofit will only hire persons related to board or staff members if three competitive bids are reviewed or interviews are conducted by a disinterested party, and the quality and cost of work substantially exceed the other unrelated parties. These hirings or contracts will be re-bid every other year.

Public Comment:

Develop a statement setting a standard for public comment about the organization.

ex: Each board member has an obligation to help donors, contributors, members, the media and the general public to see the nonprofit in the best possible light. Public comment, whether to a group or an individual, must be supportive of the nonprofit's initiatives, activities and personnel. Disagreements are to be aired in confidence, in the board room.

Violations:

Develop a statement of consequences for violating any of the board member standards of conduct (dismissal from the board, termination of a contract, etc.) and procedures for resolving disputed cases.

ex: Any board member violating a standard of conduct may be asked to step down from the board. Violations are to be brought to the attention of the executive committee. If meriting serious action, the executive committee shall discuss these violations in person with the board member. The executive committee may ask a board member to resign in the best interests of the organization. If the board member wishes to further explore the issue, they and the executive committee may jointly appoint a 3-person fact finding committee to review the issues and make a recommendation. The board member and executive committee should jointly agree on the statement concerning their resignation to be made to other board members, staff, donors, etc.

BoardSource Conflict of Interest Policy

The Board of Directors of BoardSource has adopted the following policy designed to avoid any possible conflict between the personal interests of Board members or staff and the interests of the organization.

The purpose of this policy is to ensure that decisions about BoardSource operations and the use or disposition of BoardSource assets are made solely in terms of the benefits to BoardSource and are not influenced by any private profit or other personal benefit to the individuals affiliated with the organization who take part in the decision. In addition to actual conflicts of interest, board members and staff are also obliged to avoid actions that could be perceived or interpreted in conflict with BoardSource's interest.

Conflicts of interest may occur when BoardSource enters into transactions with not-for-profit organizations as well as those that are undertaken with profit-making entities. The best way to deal with this problem is to make known one's connection with organizations doing business with BoardSource and to refrain from participation in decisions affecting transactions between BoardSource and the other organization. Such relationships do not necessarily restrict transactions so long as the relationship is clearly divulged and non-involved individuals affiliated with BoardSource make any necessary decisions.

1. Directors. Any member of the Board of Directors who may be involved in a BoardSource business transaction in which there is a possible conflict of interest shall promptly notify the Chairman of the Board. The Trustee shall refrain from voting on any such transaction, participating in deliberations concerning it, or using personal influence in any way in the matter. The Trustee's presence may not be counted in determining the quorum for any vote with respect to a BoardSource business transaction in which he or she has a possible conflict of interest. Furthermore, the Trustee, or the Chairman in the Director's absence, shall disclose a potential conflict of interest to the other members of the Board before any vote on a BoardSource business transaction and such disclosure shall be recorded in the Board minutes of the meeting at which it is made. Any BoardSource business transaction which involves a potential conflict of interest with a member of the Board of

Directors shall have terms which are at least as fair and reasonable to BoardSource as those which would otherwise be available to BoardSource if it were dealing with an unrelated party.

2. Staff. Any staff member who may be involved in a BoardSource business transaction in which there is a possible conflict of interest shall promptly report the possible conflict to the Executive Director. If the possible conflict involves the Executive Director, the possible conflict shall then be reported to the Chairman of the Board.

The Executive Director or, where applicable, Chairman, after receiving information about a possible conflict of interest, shall take such action as is necessary to assure that the transaction is completed in the best interest of BoardSource without the substantive involvement of the person who has the possible conflict of interest. (This does not mean that the purchase or other transaction must necessarily be diverted, but simply that persons other than the one with the possible conflict shall make the judgments involved and shall control the transaction.)

Each board member and senior staff member shall complete the attached questionnaire on an annual basis.

A written record of any report of possible conflict and of any adjustments made to avoid possible conflicts of interest shall be kept by the Executive Director or, where applicable, Chairman.

3. Definitions.
 - a. **"Involved in a BoardSource business transaction"** means initiating, making the principal recommendation for, or approving a purchase or contract; recommending or selecting a vendor or contractor; drafting or negotiating the terms of such a transaction; or authorizing or making payments from BoardSource accounts. That language is intended to include not only transactions for BoardSource's procurement of goods and services, but also for the disposition of BoardSource property, and the provision of services or space by BoardSource.
 - b. **A "possible conflict of interest"** is deemed to exist where the Director, or staff member, or a close relative, or a member of that person's household, is an officer, director, employee, proprietary, partner, or trustee of, or, when aggregated with close relatives and members of that person's household, holds 1% or more of the issued stock in the organization seeking to do business with BoardSource. A possible conflict is also considered to exist where such a person is (or expects to be) retained as a paid consultant or contractor by an organization which seeks to do business with BoardSource, and whenever a transaction will entail a payment of money or anything else of value to the official, member, to a close relative, or to a member of that person's household.

A "possible conflict of interest" exists when an individual affiliated with BoardSource has an interest in an organization which is in competition with a firm seeking to do business with BoardSource if the individual's position gives him or her access to proprietary or other privileged information which could benefit the firm in which he or she has an interest.

A "possible conflict of interest" exists when an individual affiliated with BoardSource is a trustee, director, officer or employee of a not-for-profit organization which is seeking to do business with or have a significant connection with BoardSource or is engaged in activities which could be said in a business context to be "in competition with" the programs of BoardSource.

4. This policy statement shall be made available to each trustee and each person appointed to a BoardSource position which regularly involves initiation, review, or approval of significant BoardSource contracts or other commitments. Such people will be asked to sign the attached acknowledgment concerning reporting of potential conflicts of interest.

I have read and understand BoardSource's policy on Potential Conflicts of Interest. I agree to report promptly any such interest which arises in my conduct of BoardSource business and, in other respects, to comply with the policy and its procedures.

Signature:

Date:

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