

## Conflict of Interest

### Introduction

A conflict of interest exists when a board member or employee has a personal interest that may influence him or her when making a decision for the organization. While the law focuses primarily on financial interests and provides some guidelines, nonprofit organizations contend with a variety of potential and perceived conflicts of interest, only some of which may be detrimental to the organization. The key for nonprofit boards is *not* to try to avoid all possible conflict-of-interest situations, which would be impossible; rather, boards need to identify and follow a process for handling them effectively.

Both board members and employees must abide by conflict-of-interest policies. Generally, conflict-of-interest policies should clarify what a conflict of interest is, what board members and employees must do to disclose possible conflicts of interest, and what board members and employees should do to avoid acting inappropriately if and when a conflict of interest does arise. How an organization ensures open and honest deliberation affects all aspects of its operations and is critical to making good decisions, avoiding legal problems and public scandals, and remaining focused on the organization's mission.

### Key Elements

- Every organization needs a conflict-of-interest policy. Remember, conflicts of interest are not uncommon and not inherently illegal. Rather, they create situations that need careful attention and a process for handling them appropriately.
- Conflicts are not only financial in nature. Issue conflicts (for example, if a board member takes a position or supports another organization that is counter to the organization's mission and principles) may have to be addressed as well.
- Conflict-of-interest policies should be applicable to the board and key staff, at a minimum; they may also include other employees and key constituents with influence over the organization (e.g., major donors).
- A conflict-of-interest policy should clearly define a consistent process for dealing with conflicts. This process should include, at a minimum, disclosure and recusal. It also often includes the expectation for the board member in question to leave the room for the discussion and voting and, in extreme situations, to resign.
- Ultimately, the policy should clarify the consequences for violating the policy, which may include dismissal.

- Some organizations, instead of using the term conflict of interest, use a term *duality of interest*. A duality of interest recognizes that, under certain circumstances, even if a board member has multiple interests, those interests do not necessarily create a conflicting situation.

## Practical Tips

- ✓ Conflicts of interest are sometimes quite obvious and other times more obscure. To provide better guidance, consider including examples of what constitutes a conflict of interest for the organization. These examples may be lengthy, organization-specific, and/or distinguish between real, perceived, or potential conflicts.
- ✓ On the administrative side, determine who will maintain proper documentation of signed conflict-of-interest disclosure statements, as well as who has responsibility for determining whether or not an actual conflict of interest occurs. Often, these responsibilities are shared between the chief executive and a board committee.
- ✓ Busy and engaged people, like board members, are involved in various activities in the community, and these affiliations are likely to collide at times. At least annually, consider requiring board and staff members to disclose — in writing — any relationships that might constitute a conflict of interest. By openly and preemptively disclosing these potentially conflicting connections, the organization is better able to carry out proper due diligence.

## Sample Conflict-of-Interest Policies

The extensive collection of samples provides a range of policies and forms, giving everything from general guidance on issues related to standards of operation, to detailed examples of conflicts of interest, processes for disclosure, and even foundation-specific guidelines.

1. This brief policy provides general guidelines and definitions related to conflicts of interest.
2. This solid example of a conflict-of-interest statement begins by explaining why a conflict-of-interest policy is important, and then defines key components of the policy and the process for handling conflicts.
3. This comprehensive conflict-of-interest policy follows a traditional legal format and is recommended by the IRS. Part V, section 5 of IRS Form 1023 defines who and what constitute a conflict of interest, asks questions to determine if the organization has procedures on handling conflicts, and makes recommendations on creating a conflict-of-interest policy if one does not exist.

4. This sample is a disclosure form, asking individuals to list their affiliations with other entities that might potentially affect their independent decision making.
5. This more comprehensive disclosure statement is designed to also identify potential conflicts of interest based on a more expansive definition of affiliated persons.
6. This policy acknowledges a duality of interest separate from a conflict of interest and includes a disclosure form.
7. This conflict-of-interest policy begins with a set of “whereas” clauses to provide the context for its policy, then presents the actual policy as a resolution, and concludes with an appendix with organization-specific examples of what does and does not constitute a material conflict of interest.
8. This detailed policy recognizes the potential of structural conflicts, defines the situations with clarity, outlines the entire board process, and includes an annual disclosure form.
9. This sample policy is specifically for foundation boards, which need to have a clear policy and process in place for handling conflicts that arise when board members and staff are affiliated with potential grantees. It also has two elements that may be useful for all nonprofits — guidelines for recording conflict-of-interest proceedings and issues of compensation.
10. This sample policy comes from a community foundation and includes a disclosure form for trustees to record their involvement in other community businesses and nonprofits.

## **Sample #1**

*This brief policy provides general guidelines and definitions related to conflicts of interest.*

### **CONFLICT-OF-INTEREST POLICY**

Employees and board members have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which XYZ wishes its business to operate. The purpose of these guidelines is to provide general direction so that board members and employees can seek further clarification on issues related to the subject of acceptable standards of operation.

An actual or potential conflict of interest occurs when a board member or an employee is in a position to influence a decision that may result in personal gain or gain for a

relative as a result of XYZ's business dealings. For the purpose of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the board member or employee is similar to that of persons who are related by blood or marriage.

No presumption of a conflict is created by the mere existence of a relationship with outside firms. However, if a board member or an employee has any influence on any material business transactions, it is imperative that he or she discloses to an officer of the organization as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where a board member, an employee, or a relative has a significant ownership in a firm with which XYZ does business, but also when a board member, an employee, or a relative receives any kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving XYZ.

## **Sample #2**

*This solid example of a conflict-of-interest statement begins by explaining why a conflict-of-interest policy is important, and then defines key components of the policy and the process for handling conflicts.*

## **CONFLICT-OF-INTEREST STATEMENT**

### **Reason for Statement**

XYZ, as a nonprofit, tax-exempt organization, depends on charitable contributions from the public. Maintenance of its tax-exempt status is important both for its continued financial stability and for the receipt of contributions and public support. Therefore, the operations of XYZ first must fulfill all legal requirements. They also depend on the public trust and thus are subject to scrutiny by and accountability to both governmental authorities and members of the public.

Consequently, there exists between XYZ and its board, officers, and management employees a fiduciary duty that carries with it a broad and unbending duty of loyalty and fidelity. The board, officers, and management employees have the responsibility of administering the affairs of XYZ honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of XYZ. Those persons shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions with XYZ or knowledge gained there from for their personal benefit. The interests of the organization must have the first priority in all decisions and actions.

## **Persons Concerned**

This statement is directed not only to board members and officers, but to all employees who can influence the actions of XYZ. For example, this includes all who make purchasing decisions, all other persons who might be described as “management personnel,” and all who have proprietary information concerning XYZ.

## **Key Areas in Which Conflict May Arise**

Conflicts of interest may arise in the relations of directors, officers, and management employees with any of the following third parties:

- Persons and firms supplying goods and services to XYZ
- Persons and firms from whom XYZ leases property and equipment
- Persons and firms with whom XYZ is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities, or other property
- Competing or affinity organizations
- Donors and others supporting XYZ
- Recipients of grants from XYZ
- Agencies, organizations, and associations that affect the operations of XYZ
- Family members, friends, and other employees

## **Nature of Conflicting Interest**

A material conflicting interest may be defined as an interest, direct or indirect, with any persons and firms mentioned in Section [ABC]. Such an interest might arise, for example, through

1. Owning stock or holding debt or other proprietary interests in any third party dealing with XYZ
2. Holding office, serving on the board, participating in management, or being otherwise employed (or formerly employed) by any third party dealing with XYZ
3. Receiving remuneration for services with respect to individual transactions involving XYZ
4. Using XYZ's time, personnel, equipment, supplies, or good will other than for approved XYZ activities, programs, and purposes
5. Receiving personal gifts or loans from third parties dealing with XYZ. Receipt of any gift is disapproved except gifts of nominal value that could not be refused without discourtesy. No personal gift of money should ever be accepted.

## **Interpretation of This Statement of Policy**

The areas of conflicting interest listed in Section [ABC], and the relations in those areas that may give rise to conflict, as listed in Section [DEF], are not exhaustive.

Conceivably, conflicts might arise in other areas or through other relations. It is assumed that the trustees, officers, and management employees will recognize such areas and relation by analogy.

The fact that one of the interests described in Section [DEF] exists does not mean necessarily that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material that upon full disclosure of all relevant facts and circumstances that it is necessarily adverse to the interests of XYZ.

However, it is the policy of the board that the existence of any of the interests described in Section [DEF] shall be disclosed on a timely basis and always before any transaction is consummated. It shall be the continuing responsibility of board, officers, and management employees to scrutinize their transactions and outside business interests and relationships for potential conflicts and to immediately make such disclosures.

### **Disclosure Policy and Procedure**

Disclosure should be made according to XYZ standards. Transactions with related parties may be undertaken only if all of the following are observed:

1. A material transaction is fully disclosed in the audited financial statements of the organization;
2. The related party is excluded from the discussion and approval of such transaction;
3. A competitive bid or comparable valuation exists; and
4. The organization's board has acted upon and demonstrated that the transaction is in the best interest of the organization.

Staff disclosures should be made to the chief executive (or if he or she is the one with the conflict, then to the designated committee), who shall determine whether a conflict exists and is material, and if the matters are material, bring them to the attention of the designated committee.

Disclosure involving directors should be made to the designated committee.

The board shall determine whether a conflict exists and is material, and in the presence of an existing material conflict, whether the contemplated transaction may be authorized as just, fair, and reasonable to XYZ. The decision of the board on these matters will rest in their sole discretion, and their concern must be the welfare of XYZ and the advancement of its purpose.

### **Sample #3**

*This comprehensive conflict-of-interest policy follows a traditional legal format and is recommended by the IRS. Part V, section 5 of IRS Form 1023 defines who and what constitute a conflict of interest, asks questions to determine if the organization has procedures on handling conflicts, and makes recommendations on creating a conflict-of-interest policy if one does not exist.*

## SAMPLE IRS CONFLICT-OF-INTEREST POLICY

**Note:** Items marked *Hospital insert — for hospitals that complete Schedule C* are intended to be adopted by hospitals.

### Article I: Purpose

The purpose of the conflict-of-interest policy is to protect this tax-exempt organization's (organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

### Article II: Definitions

#### 1. Interested Person

Any director, principal officer, or member of a committee with governing board–delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

#### *[Hospital Insert — for hospitals that complete Schedule C*

If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]

#### 2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family

- a. An ownership or investment interest in any entity with which the organization has a transaction or arrangement,
- b. A compensation arrangement with the organization or with any entity or individual with which the organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a

person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article III: Procedures**

### **1. Duty To Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board–delegated powers considering the proposed transaction or arrangement.

### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he or she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

### **3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chair of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

### **4. Violations of the Conflicts-of-Interest Policy**

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **Article IV: Records of Proceedings**

The minutes of the governing board and all committees with board-delegated powers shall contain

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings

## **Article V: Compensation**

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

### ***[Hospital Insert — for hospitals that complete Schedule C***

- d. Physicians who receive compensation from the organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

## Article VI: Annual Statements

Each director, principal officer, and member of a committee with governing board–delegated powers shall annually sign a statement that affirms such person

- a. Has received a copy of the conflict-of-interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## Article VII: Periodic Reviews

To ensure the organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm’s-length bargaining
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the organization’s written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction

## Article VIII: Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

### Sample #4

*This sample is a disclosure form, asking individuals to list their affiliations with other entities that might potentially affect their independent decision making.*

## CONFLICT-OF-INTEREST DISCLOSURE STATEMENT

Please initial in the space at the end of Item A or complete Item B, whichever is appropriate; complete the balance of the form; sign and date the statement; and return it to the board chair.

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A. I am not aware of any relationship or interest or situation involving my family or myself that might result in, or give the appearance of being, a conflict of interest between such family member or me on one hand and XYZ on the other.

Initials: \_\_\_\_\_

B. The following are relationships, interests, or situations involving me or a member of my family that I consider might result in or appear to be an actual, apparent, or potential conflict of interest between such family members or myself on one hand and XYZ on the other.

Initials: \_\_\_\_\_

Corporate (either nonprofit or for-profit) directorships, positions, and employment:

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Memberships in the following organizations:

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Contracts, business activities, and investments with or in the following organizations:

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Other relationships and activities:

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My primary business or occupation at this time:

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I have read and understand XYZ's Conflict-of-Interest Policy and agree to be bound by it. I will promptly inform the board chair of XYZ of any material change that develops in the information contained in the foregoing statement.

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Type/Print Name

Signature

Date

## Sample #5

*This more comprehensive disclosure statement is designed to also identify potential conflicts of interest based on a more expansive definition of affiliated persons.*



## CONFLICT-OF-INTEREST DISCLOSURE QUESTIONNAIRE

For purposes herein, "affiliated persons" include the following:

- Any immediate family member,
- Any corporation or organization of which you are an officer or a partner or are, directly or indirectly, the beneficial owner of 10 percent or more of any class or equity securities, or
- Any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.

1. Name (please print)

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2. Capacity:     national board             executive committee     officer  
                   committee member     national staff  
                   other, specify: \_\_\_\_\_

3. Have you or any of your affiliated persons provided services or property to XYZ in the past year?     Yes     No

If yes, please describe the nature of the services or property:

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4. Have you or any of your affiliated persons purchased services or property from XYZ in the past year?     Yes     No

If yes, please describe the purchased services or property:

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5. Please indicate whether you or any of your affiliated persons had, have, or will have any direct or indirect interest in any business transaction(s) in the past year to which XYZ was or is a party.     Yes     No

If yes, describe the transaction(s):

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6. Were you or any of your affiliated persons indebted to pay money to XYZ at any time in the past year (other than travel advances or the like)?  Yes  No

If yes, please describe the indebtedness:

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- 
7. In the past year, did you or any of your affiliated persons receive, or were entitled to receive, directly or indirectly, any benefits from, or as a result of your relationship with XYZ that in the aggregate could be valued in excess of \$1,000 that were not or will not be compensation directly related to your duties to XYZ?  Yes  No

If yes, please describe the benefit:

- 
- 
8. Are you or any of your affiliated persons a party to or have an interest in any pending legal proceedings involving XYZ?  Yes  No

If yes, please describe the proceeding(s):

- 
- 
9. Are you aware of any other events, transactions, arrangements, or other situations that you believe should be examined by XYZ's board or the executive committee in accordance with the terms and intent of XYZ's conflict-of-interest policy?  Yes  No

If yes, please describe the situation(s):

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I HEREBY CONFIRM that I have read and understand XYZ's Conflict-of-Interest Policy and that my responses to the above questions are complete and correct to the best of my knowledge and belief.

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Signature

Date

## Sample #6

*This policy acknowledges a duality of interest separate from a conflict of interest and includes a disclosure form.*

### CONFLICT-OF-INTEREST POLICY

The purpose of this conflict-of-interest policy is to prevent the institutional or personal interests of XYZ board members, officers, and staff from interfering with the performance of their duties to XYZ, and to ensure that there is no personal, professional, or political gain at the expense of XYZ. This policy is not designed to eliminate relationships and activities that may create a duality of interest, but to require the disclosure of any conflicts of interest and the recusal of any interested party in a decision relating thereto.

A conflict of interest may exist when the interests or potential interests of any director, officer, or staff member, or that person's close relative, or any individual, group, or organization to which the person associated with XYZ has allegiance, may be seen as competing with the interests of XYZ, or may impair such person's independence or loyalty to XYZ. A conflict of interest is defined as an interest that might affect, or might reasonably appear to affect, the judgment or conduct of any director, officer, or staff member in a manner that is adverse to the interests of XYZ.

#### Examples

A conflict of interest may exist if a director, officer, staff member, or close relative

- Has a business or financial interest in any third party dealing with XYZ. This does not include ownership interest of less than 5 percent of outstanding securities of public corporations.
- Holds office, serves on a board, participates in management, or is employed by any third party dealing with XYZ, other than direct funders to XYZ.
- Derives remuneration or other financial gain from a transaction involving XYZ (other than salary reported on a W-2 or W-9 or salary and benefits expressly authorized by the board).

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- Receives gifts from any third party on the basis of his or her position with XYZ (other than occasional gifts valued at no more than \$[50], or if valued at more than \$[50], the gift is made available in a team space or common area for others to share — e.g., fruit baskets, boxes of candy). All other gifts should be returned to the donor with the explanation that XYZ policy does not permit the acceptance of gifts. No personal gift of money should ever be accepted.
- Engages in any outside employment or other activity that will materially encroach on such person's obligations to XYZ; compete with XYZ's activities; involve any use of XYZ's equipment, supplies, or facilities; or imply XYZ's sponsorship or support of the outside employment or activity

## **Use of Information**

Directors, officers, and staff shall not use information received from participation in XYZ affairs, whether expressly denominated as confidential or not, for personal gain or to the detriment of XYZ.

## **Disclosure and Recusal**

Whenever any director has a conflict of interest or a perceived conflict of interest with XYZ, he or she shall notify the board chair of such conflict in writing.

Whenever any staff member (paid or volunteer) has a conflict of interest or a perceived conflict of interest with XYZ, he or she shall notify the chief executive of such conflict in writing.

When any conflict of interest is relevant to a matter that comes under consideration or requires action by the board, or a board committee, the interested person shall call it to the attention of the board chair and shall not be present during board or committee discussion or decision on the matter. However, that person shall provide the board or applicable committee with any and all relevant information on the particular matter.

The minutes of the meeting of the board or its committee shall reflect that the conflict of interest was disclosed, that the interested person was not present during discussion or decision on the matter, and did not vote.

## **Dissemination**

A copy of this conflict-of-interest policy shall be furnished to each director, officer, and staff member who is presently serving this organization or who may become associated with it.

## **Certification**

The policy and its application shall be reviewed annually for the information and guidance of directors, officers, and staff members, each of whom has a continuing responsibility to scrutinize their transactions and outside business interests and

relationships for potential conflicts of interest, and make such disclosures as described in this policy.

As administered by the chief executive, each director will be asked to complete a certification of agreement with the policy and disclosure of any known conflicts of interest upon his or her election or re-election to the board and annually thereafter. As administered by the employee in charge of human resources, each senior staff member will be asked to complete such a certification upon his or her employment and on an annual basis thereafter. All certifications shall be reviewed by the board as appropriate.

## CONFLICT CERTIFICATION FOR XYZ Board and Senior Staff

I have read and agree to abide by XYZ's Conflict-of-Interest Policy. To the best of my knowledge, I have no conflicts as described in this Policy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print)

— OR —

I have read and agree to abide by XYZ's Conflict-of-Interest Policy. To the best of my knowledge, I have no conflicts as described in this Policy, except those noted below or on the attached paper.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print)

### Sample #7

*This conflict-of-interest policy begins with a set of "whereas" clauses to provide the context for its policy, then presents the actual policy as a resolution, and concludes with an appendix with organization-specific examples of what does and does not constitute a material conflict of interest.*

## XYZ ALLIANCE TO CREATE HOUSING CONFLICT-OF-INTEREST POLICY

By Resolution of XYZ Board, adopted this \_\_ day of [month], [year].

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**Whereas**, XYZ was incorporated under the laws of the state of [ABC] to provide decent affordable housing for the low- and moderate-income people of the [DEF] region, including families, the elderly, and disabled, among other charitable and educational purposes, and;

**Whereas**, XYZ will be seeking continuing recognition of its qualification as a nonprofit corporation under Sections 501(c)(3) of the Internal Revenue Code, to expand its fundraising capabilities and otherwise accomplish its purposes, and;

**Whereas**, XYZ must therefore ensure that its resources are not improperly diverted to the private benefit of its directors, related persons, or entities, and;

**Whereas**, XYZ is permitted, however, to pay reasonable compensation, and its directors, related persons, or entities may be the recipients of XYZ benefits where it is only incidental to fulfillment of XYZ's charitable and educational purposes, and;

**Whereas**, XYZ will also be recruiting individuals to serve as XYZ directors 1) who are residents of XYZ's projects and 2) because of their skills, contacts, and general life experiences relevant to accomplishing XYZ's purposes, and;

**Whereas**, the nature of XYZ activities and the background of its directors are almost certain to result in occasions where its directors have outside interests that could be affected as the result of XYZ action, presenting a conflict to the director as a decision maker on behalf of XYZ, and;

**Whereas**, the board may act and XYZ may proceed with transactions despite such conflicts, even where it results in a contract for services to be provided by a director or related person, or to purchase property from a director, or selection of a director as recipient of XYZ's services, so long as the transaction is conducted at "arm's length," in good faith, under reasonable terms, upon reasonable inquiry not otherwise prohibited by law, and is by the board, and;

**Whereas**, directors owe a general duty of care to XYZ that includes the obligation of making reasonable inquiry to ensure they are sufficiently informed to act on behalf of XYZ, and;

**Whereas**, directors are entitled to rely on information, opinions, reports, or statements by fellow directors, but only where it is reasonable to believe the latter is reliable and competent concerning the matter presented, so conflicts of interest must be considered, and;

**Whereas**, the duty of loyalty that directors owe to XYZ requires in part that the best interests of XYZ take priority over the directors' personal interests or those of related persons or entities, with respect to XYZ's corporate activities, and;

**Whereas**, the failure of directors to honor their duties of care and loyalty to XYZ can diminish the ability of XYZ to accomplish its purposes, and could potentially expose directors and XYZ to the risks of legal action, and;

**Whereas**, directors must therefore understand the importance of recognizing when a conflict of interest exists and what their obligations are in this regard.

**Thus it is resolved as follows:**

- (1) Directors shall be given and acknowledge receipt of a copy of this document on appointment to the board, and again each year thereafter prior to the annual meeting.
- (2) A conflict of interest shall be recognized as present whenever a director has a material interest in a proposed contract or transaction to which XYZ may be a party.
- (3) A conflict of interest shall be recognized as material, whenever the nature of the director's interest is of such significance that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction.
- (4) Material conflicts may exist as the result of direct financial interests, such as where a director owns land being considered by XYZ for purchase. Directors may also have material conflicts that are indirect, as the result of employment by or some other relationships to the transaction held by one or more members of the director's family or household (See Appendix: *Specific Applications of XYZ Conflict-of-Interest Policy*, with examples provided).
- (5) When in doubt, the prudent course of action for the directors is to treat a case on which they have doubt as one in which their conflict is material.
- (6) It is the duty of the directors to disclose all material conflicts of interest that they have to the board, in writing
  - (a) Prior to any action by the board, and;
  - (b) Prior to consummation of any transaction to which XYZ is a party, whether or not the board takes action.

- (7) The director's disclosure shall at all times include
  - (a) The existence of the director's interest in the transaction, and;
  - (b) The nature of the director's interest in the transaction (whether arising from financial or familial relationships, professional or business affiliations, etc.)
- (8) The director's disclosure shall also include all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction, unless the director has a duty under law or professional canon, or a duty of confidentiality to another person, with respect to such information about the transaction in question, such that they may not make the disclosure otherwise required by this subsection.
- (9) Subject to these restrictions, directors shall be counted for purposes of a quorum and may be permitted to participate in discussions at board meetings about a proposed transaction, but shall not vote, and shall leave the room if the vote is being taken in person, before decisions are made on matters concerning which they have a material conflict.
- (10) XYZ secretary shall record in the corporate minutes book the names of directors making disclosures, the content of all disclosures, whether directors making disclosures participated in discussion on the matter involving the conflict, and whether directors making disclosures voted on the matter concerning which the disclosure was made.

## **APPENDIX: SPECIFIC APPLICATIONS OF XYZ CONFLICT-OF-INTEREST POLICY**

### **Examples of conflicts that are material because of the director's direct financial interests:**

In these examples the director should not vote and should leave the room prior to the vote, because the director's interest is so significant that it would reasonably be expected to influence his or her judgment on that vote.

- The director is an engineer who has an ownership share of an architecture firm that has submitted a proposal for a project to be undertaken by the nonprofit.
- The director owns one of a number of parcels of land that the nonprofit has identified for acquisition.

- The board has to decide whether to substantially raise the rent at the nonprofit's housing units, or whether to cut costs by some means, and the director is a resident in one of those units.

**Examples of conflicts that are material even though the director's interests, financial, or personal, are indirect:**

Here too, the director's interest is significant enough that it would be reasonable to expect it to influence his or her judgment on that vote. As with the first examples, the director should disclose the conflict and withdraw from the vote.

- The director has been listed as the engineering subcontractor in a proposal by an architecture firm that has submitted a proposal for a project to be undertaken by the nonprofit.
- The director's sibling owns one of a number of parcels of land that the nonprofit has identified for acquisition.
- The director has applied for selection by the nonprofit to become a resident in one of its housing units, and the board is deciding on the criteria for selection, where the choice of criteria or weighing of criteria will make a difference in which applicants are selected.
- The director is also a member of a neighborhood civic or religious organization that is protesting the nonprofit's plan to involve local gang members in a mural painting project at the nonprofit's housing units.

**Examples of conflicts that are arguably material because the director's interests or those of related persons or entities are relatively significant:**

Although the director's interests are more attenuated than in the preceding examples, they are still significant enough to make a reasonable person pause to consider the implications for themselves or the related person involved. The prudent director should in these circumstances, disclose the conflict and abstain from voting.

- The Director is an engineer that has done a substantial amount of work in the past with an architecture firm that has submitted a proposal for a project to be undertaken by the nonprofit. No engineer has yet been identified in the firm's proposal, but the director is one of the few engineers the firm has previously contracted with for services on such projects, and the director wants to be considered for future work with the firm even if no work is required or available on the project in question.

- The wife of the director's brother is employed by a firm that is bidding for selection by the nonprofit as a social service provider for the residents of the latter's housing projects. The director knows she is so employed and knows further that the firm is struggling and desperately needs the contract or it may have to make layoffs.
- The niece of the director's husband has applied for selection by the nonprofit to become a resident in one of its housing units, and the board is deciding on the criteria for selection, where the choice of criteria or weighing of criteria will make a difference in which applicants are selected.

### **Examples of conflicts that involve interest too attenuated to be material:**

Neither of these last transactions could possibly be expected to significantly affect the company's income to the point it would be reflected in dividends or its ability to retain or compensate its employees. Although the director technically has a potential conflicting interest in each of these examples, that interest is so attenuated that no reasonable person's judgment could be expected to be influenced as a result. The director should be permitted to vote in such cases, but should still make a disclosure to the board concerning the conflict.

- The director owns a few shares in a large manufacturing company that has a small parcel of unutilized land that the nonprofit is considering for acquisition.
- The director's brother works for a large engineering firm listed by an architecture firm that submitted a proposal on a project the nonprofit is undertaking, but the brother works in a division of the company that will not be involved in the nonprofit's project under any circumstances. Moreover, the nonprofit's project is small, the portion going to the engineering firm would be minimal, the firm consistently has plenty of work, and the director's brother's job is secure.

### **Sample #8**

*This detailed policy recognizes the potential of structural conflicts, defines the situations with clarity, outlines the entire board process, and includes an annual disclosure form.*

## **CONFLICT-OF-INTEREST POLICY AND PROCEDURES FOR THE BOARD**

## **Policy Statement**

Each member of the board of XYZ has a duty of loyalty to XYZ. In furtherance of this duty, it is the policy of XYZ that directors may not use their position as directors for personal, family, or professional gain. Directors may not obtain for themselves, their relatives, or their friends a financial or material interest of any kind from their connection with XYZ. Each director has a duty to give undivided allegiance to XYZ when making decisions affecting XYZ and in any transactions, dealings, or situations involving XYZ. In furtherance of these obligations, XYZ has adopted this Conflict-of-Interest Policy and Procedures applicable to its directors.

## **Categories of Conflicts of Interest**

### ***Conflict-of-Interest Transactions***

A conflict of interest with respect to a transaction effected or proposed to be effected by the organization means the interest a director has respecting such transaction, if

1. The director knows that he or she or a related person is a party to the transaction or has a beneficial financial or personal interest in or is so closely linked to the transaction and it is of such financial or personal significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction; or
2. The director knows that any of the following persons is either a party to the transaction or has a financial or personal interest in or is so closely linked to the transaction and it is of such financial or personal significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he or she were called upon to vote on the transaction:
  - a. An entity of which the director is a director, officer, partner, equity owner, agent, or employee;
  - b. A person that controls, is controlled by, or is under common control with, one or more of the entities described in subsection (a); or
  - c. An individual who is a partner, principal, employer, employee, personal friend, business associate, or a significant creditor or debtor of the director.

For purposes of this Policy, a "related person" of a director means 1) the spouse of the director, or a parent or sibling thereof, or a child, grandchild, sibling, or parent of the director, or the spouse of any thereof, or an individual having the same home as the director, or a trust or estate of which an individual specified in this paragraph is a substantial beneficiary, or 2) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

Examples of situations in which conflicts of interest may arise include, but are not limited to, the following:

- Transactions with persons and organizations supplying goods and commercial services to XYZ
- Transactions with persons and organizations from which XYZ leases property and equipment
- Transactions with persons and organizations with whom XYZ is dealing or planning to deal in connection with the gift, purchase, or sale of real estate, securities, or other property
- Transactions with persons representing competing or collaborating organizations
- Transactions with donors and others supporting XYZ
- Transactions with persons representing agencies, organizations, and associations that affect the operations of XYZ
- Transactions with organizations or individuals receiving grants from XYZ

### ***Conflict-of-Interest Relationships***

XYZ recognizes that conflicts of interest may arise not only in the context of a transaction but also in situations where a director's personal interests, or the interests of a related person, personal friend, business associate, an entity in which a member holds an equity interest, employer, employee, or a significant creditor or debtor of the director, could reasonably be expected to exert an influence on the director's judgment regarding general XYZ matters and/or impair his or her ability to act in XYZ's best interests.

It is important to note that a "conflict of interest" exists if a decision could be influenced (i.e., perceived conflict of interest) — it is not necessary that influence actually take place.

### ***Structural Conflicts of Interest***

Because of an actual, potential, or perceived "structural" conflict of interest, directors may not sit concurrently on the boards of either The Society for ABC or the Association DEF.

Participation as a member of ABC, DEF, or other related organization is not a conflict of interest as it is acknowledged that board members will participate in the broader related arena.

### **Procedures for Identifying and Addressing Conflicts of Interest**

The following procedures shall be followed when a conflict of interest arises with respect to any director:

1. The director must promptly make full disclosure of the conflict of interest to the qualified directors of the board. The director must disclose (a) the existence and nature of the director's conflict of interest and (b) all facts known to him or her

- regarding the subject matter of the transaction or situation that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction or how to deal with the situation.
2. For purposes of this policy, a “qualified director” means any director who does not have either (a) a conflict of interest with respect to the transaction or situation, or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflict of interest with respect to the transaction or situation, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director’s judgment when voting on the transaction or situation.
  3. The qualified directors will discuss the conflict of interest and, depending on the nature of the conflict of interest, vote on either (a) whether or not to continue the transaction at issue or (b) measures to address the situation at issue. Directors subject to a conflict of interest shall not be permitted to be present or to participate in the deliberations or vote of the qualified directors with respect to such conflict of interest. Recusal of the director shall require such director to physically remove himself or herself from a meeting, conference call, e-mail, listserv, or any other electric communications.
  4. The conflict of interest transaction or situation shall be approved only upon the affirmative vote of a majority, but no fewer than \_\_, of those qualified directors on the board or on a duly empowered committee of the board (who voted on the transaction after required disclosure to them); provided, that action by a committee is effective only if (a) all committee members are qualified directors, and (b) committee members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board. A majority, but no fewer than \_\_, of all the qualified directors on the board, or on the committee, constitutes a quorum for purposes of the vote described above.
  5. When a conflict exists, resolution of the matter may include (a) approving or disapproving any transaction or situation at issue; (b) requiring the director to remove himself or herself from positions in which the conflict of interest exists until there is no longer a conflict; or (c) requiring the director to discontinue, reduce, or modify his or her participation in the board, committees, or task forces where the conflict exists.
  6. In addition to the procedures described above, directors have an obligation to address any perceived conflict of interest of other directors if they are aware of such conflicts with respect to matters pertaining to XYZ.

## **Acknowledgment and Annual Disclosure**

Directors will receive this Conflict-of-Interest Policy and Procedures and shall be required to sign and date the policy disclosure form at the beginning of their term of service. Directors also shall be required to sign and update the policy disclosure form at



the beginning of each calendar year. Failure to update or sign the policy disclosure form, however, does not nullify a director’s obligations under this policy.

**ANNUAL STATEMENT CONCERNING  
POSSIBLE CONFLICT OF INTEREST**

The undersigned acknowledges receipt of a copy of XYZ’s Conflict-of-Interest Policy and Procedures for Directors.

By my signature affixed below, I acknowledge my agreement with the spirit and intent of these policies and, I agree to report to the chief executive of the organization any possible conflicts (other than those stated below) that may develop before completion of the next annual statement.

\_\_\_\_\_ I am not aware of any conflict of interest.

\_\_\_\_\_ I do or may have a conflict of interest in the following area(s):

\_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Sample #9**

*This sample policy is specifically for foundation boards, which need to have a clear policy and process in place for handling conflicts that arise when board members and staff are affiliated with potential grantees. It also has two elements that may be useful for all nonprofits — guidelines for recording conflict-of-interest proceedings and issues of compensation.*

**XYZ FOUNDATION  
CONFLICT-OF-INTEREST/DUALITY-OF-INTEREST POLICY**

**Article I: Purpose**

XYZ Foundation (the “foundation”) strives to maintain the highest ethical standards in all policies, procedures, and programs and to avoid any conflicts of interest.

**Article II: Definitions**

1. Interested Person

Any trustee, officer, member of a committee with board-delegated powers, or employee who has a direct or indirect financial interest (as defined in Section 2) or duality of interest (as defined in Section 3), is an interested person.

## 2. Financial Interest

If a member of the governing body or any committee thereof has a financial interest conflicting with the interest of the foundation in any manner (such as whether to enter into a contract with such individual or with an organization with which such individual is associated), then the individual must bring the conflict to the attention of the other members and refrain from deliberating or voting in any decision with respect to the matter.

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family

- a. An ownership or investment interest in any entity with which the foundation has a transaction or arrangement, or
- b. A compensation arrangement with the foundation or with any entity or individual with which the foundation has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate board or committee decides that a conflict of interest exists.

## 3. Duality of Interest

A duality of interest exists when a trustee, officer, committee member, or employee of the foundation is affiliated with an organization seeking to request a grant from the foundation. Such affiliation exists if the person is a director, trustee, officer, or employee of the organization, or has an unofficial role such as significant donor, volunteer, advocate, or advisor.

## Article III: Procedures

### 1. Duty To Disclose

In connection with any actual or possible conflict of interest or duality of interest, an interested person must disclose the existence of his or her financial interest or affiliation and all material facts to the trustees and members of

committees with board-delegated powers considering the proposed transaction or arrangement. The disclosure should be made either when the interest becomes a matter of board or committee action or as part of a periodic procedure to be established by the board.

2. **Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he or she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
3. **Procedures For Addressing the Interest**
  - a. An interested person may make a presentation at the board or committee meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest or duality of interest.
  - b. The chair of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
  - c. After exercising due diligence, the board or committee shall determine whether the foundation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
  - d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested trustees whether the transaction or arrangement is in the foundation's best interest and for its own benefit and whether the transaction is fair and reasonable to the foundation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.
4. **Violations of the Policy**
  - a. If the board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interests or duality of interest, it shall inform the member of the basis of such belief and afford the member an opportunity to explain the alleged failure to disclose.
  - b. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact failed to disclose an

actual or possible conflict of interest or duality of interest, it shall take appropriate disciplinary and corrective action.

## **Article IV: Records of Proceedings**

The minutes of the board and all committees with board-delegated powers shall contain

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest or duality of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest or duality of interest was present, and the board's or committee's decision as to whether a conflict of interest or duality of interest in fact existed
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith

## **Article V: Compensation Committee**

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the foundation for services is precluded from voting on matters pertaining to that member's compensation.

## **Article VI: Annual Statements**

Each trustee, officer, member of a committee with board-delegated powers, and employee shall annually sign a statement that affirms that such person

- a. Has received a copy of the conflict-of-interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands that the foundation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

As Approved by the Board  
[Date]

## **Sample #10**

*This sample policy comes from a community foundation and includes a disclosure form for trustees to record their involvement in other community businesses and nonprofits.*

**XYZ COMMUNITY FOUNDATION**

## CONFLICT-OF-INTEREST POLICY FOR TRUSTEES AND OFFICERS

A conflict of interest is present whenever a trustee or officer of XYZ Community Foundation has a financial interest in a proposed transaction or is a director or officer of the other entity to the proposed transaction. Such transactions may include services provided by the foundation to fundholders, grants given to charitable organizations on which the trustee or officer also serves as an officer or director, purchase of services and/or tangibles from a vendor, and/or access to specialized or privileged information that can be used for personal gain.

The state of [ABC] nonprofit corporation law provides that transactions between (i) a nonprofit organization such as XYZ Community Foundation and (ii) any other corporation, partnership, association, or other organization in which one or more of the nonprofit organization's directors or officers are directors or officers, or have a financial interest, while not prohibited outright, are nonetheless subject to question. Such transactions may be void or voidable unless a good-faith disclosure of any such interest is made to the nonprofit organization prior to the nonprofit organization's entry into the transaction. It is also possible that directors and officers who fail to comply with the requirements of this law may incur liability to the extent the nonprofit organization is damaged.

Therefore, in accordance with this law, XYZ Community Foundation requires its trustees and officers to disclose all interests that they or a family member has in other for-profit or nonprofit entities where it is foreseeable that the foundation may enter into a contract or award a grant or have other business or financial dealings with the entity. This shall include, but not be limited to, financial interests, officerships, directorships, and other similar substantial interests in any such entities.

Trustees and officers of XYZ Community Foundation are asked to maintain independence, objectivity *and confidentiality* and to do what a sense of fairness, ethics, and personal integrity dictate even though not necessarily obligated to do so by law, regulation, or custom. Trustees and officers serving on the executive committee shall refrain from voting on a proposed grant if they are in a conflict-of-interest situation and, if appropriate, shall withdraw from the meeting.

In order to avoid even the appearance of a conflict of interest that might embarrass the board or the foundation, trustees and officers must disclose any actual or possible conflicts, and the nature thereof, to the board chair and to the chief executive of the foundation annually, or as such situations may arise.

Adopted: [Date]



**XYZ COMMUNITY FOUNDATION  
CONFLICT-OF-INTEREST ACKNOWLEDGMENT  
FOR THE PERIOD \_\_\_\_\_**

I have read and understand XYZ Community Foundation’s policy on conflict of interest. As part of XYZ Community Foundation, I understand that this policy on conflict of interest applies to me.

I understand that I am expected to conduct business in accordance with the letter, spirit, and intent of all relevant conflict-of-interest laws and the conflict-of-interest policy and to refrain from any illegal, dishonest, or unethical conduct. I understand that if a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with the board and/or with the chair or his or her designee for advice and consultation. Furthermore, I understand that this document can be amended at any time.

In compliance with the foundation’s conflict-of-interest policy, the positions that I or an immediate family member hold within the community are as follows:

Business and professional activities in which I or an immediate family member hold as an owner, officer, board member, partner, employee, or other beneficiary position as of \_\_\_\_\_:

Name of Business/Organization

Position Held/By Whom

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Other not-for-profit organizations with which I or a family member is associated and which might reasonably expect to apply for a grant from XYZ:

Name of Organization

Position Held/By Whom

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Other activities that may produce a possible conflict of interest:

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In addition, I recognize the need to maintain confidentiality regarding information I might receive as a trustee or officer regarding donors, donations, and grantmaking activities of XYZ Community Foundation.

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Signature

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Printed Name

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Date

## Suggested Resources

- BoardSource. "Conflicts of Interest at Foundations: Avoiding the Bad and Managing the Good." Washington, DC: BoardSource, 2005.  
[www.boardsource.org/dl.asp?document\\_id=25](http://www.boardsource.org/dl.asp?document_id=25)
- Brauer, Lawrence M. and Charles F. Kaiser III. "Tax-Exempt Health Care Organizations Revised Conflicts of Interest Policy."  
[www.irs.gov/pub/irsutl/topiceoo.pdf](http://www.irs.gov/pub/irsutl/topiceoo.pdf)
- GuideStar. "On the Road to a Conflict-of-Interest-Free Sector: December 2005 Question of the Month Results."  
[www.guidestar.org/news/features/question\\_dec05.jsp](http://www.guidestar.org/news/features/question_dec05.jsp)
- Kurtz, Daniel L. and Sarah E. Paul. *Managing Conflicts of Interest: A Primer for Nonprofit Boards*. Washington, DC: BoardSource, 2006.
- Ober|Kaler, attorneys at law. *The Nonprofit Legal Landscape*. Washington, DC: BoardSource, 2005.