

# ***Community Foundation of St. Clair County Conflict of Interest Policy***

## **ARTICLE I: Purpose**

The purpose of the conflict of interest policy is to protect the Community Foundation of St. Clair County's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or trustee 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 trustee, principal officer, or member of a committee with Board-delegated powers or staff person, who has a direct or indirect financial interest, as defined below, is an interested person.

### **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 Community Foundation has a transaction or arrangement,
- b. A compensation arrangement with the Community Foundation or with any entity or individual with which the Community 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 Community Foundation 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.

### **3. Independent Voting Member**

A member of the governing board or a member of a committee with Board-delegated powers is considered independent only if all three of the following circumstances applied at all times through the year:

- a. The member was not compensated as an officer or employee of the Community Foundation or of a related organization;
- b. The member did not receive total compensation or other payments exceeding \$10,000 during the calendar (tax) year of the Community Foundation or related organizations as an independent contractor, other than reimbursement of expenses

- under an accountable plan or reasonable compensation for services as a member of the governing body;
- c. Neither the member, nor any family member of the member, was involved in a transaction with the Community Foundation that is required to be reported on IRS Form 990 Schedule L for the Community Foundation's tax year, or in a transaction with a related organization of a type and amount that would be reportable on IRS Form 990 Schedule L if required to be filed by the related organization.

Note: A member of the governing body or a committee with Board-delegated powers is not considered to lack independence merely because of the following circumstances:

- a. the member is a donor to the Community Foundation or a related organization, regardless of the amount of contribution; or
- b. the member receives financial benefits from the organization solely in the capacity of being a member of the charitable or other class served by the Community Foundation in the exercise of its exempt function, such as being a member of a section 501 (c) (6) organization, so long as the financial benefits comply with the organization's terms of membership.

#### **4. Business Relationship**

Business relationships between two persons include any of the following:

- a. One person is employed by the other in a sole-proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or greater-than-35% owner;
- b. One person is transacting business with the other (other than in the ordinary course of either party's business on the same terms as are generally offered to the public), directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services, or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the Community Foundation's calendar (tax) year (indirect transactions are transactions with an organization with which the one person is associated as a trustee, director, officer, key employee, or greater-than-35% owner); and
- c. The two persons are each a director, trustee, officer or greater than 10% owner in the same business or investments entity;

Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a non-profit organization, or beneficial interest in a trust. Ownership includes indirect ownership and there may be ownership through multiple tiers of entities.

Privileged relationship exception: A business relationship does not include a relationship between 1) attorney and client; 2) medical professional and patient; or 3) priest/clergy and communicant.

## **5. Related Organization**

An organization that stands in one or more of the following relationships to the filing organization (the Community Foundation for these purposes):

- Parent – an organization that controls the filing organization;
- Subsidiary – an organization controlled by the filing organization;
- Brother-Sister – an organization controlled by the same person or persons that control the filing organization;
- Supporting/Supported – an organization that is (or claims to be) at any time during the organization’s tax year a supporting organization of the Community Foundation within the meaning of section 509(a)(3), or for these purposes, the Community Renaissance Fund or The James C. Acheson Charitable Foundation.

## **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/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/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 chairperson 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 Community Foundation 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 Community Foundation’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 that 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 Community Foundation 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 Community Foundation 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 Community Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### **ARTICLE VI: Annual Statements**

Each trustee, principal officer, member of a committee with governing Board-delegated Powers, and staff member shall annually sign a statement which 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 Community Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **ARTICLE VII: Periodic Reviews**

To ensure the Community Foundation 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 Community Foundation'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 Community Foundation 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.

## Appendix A

### Summary of Excess Benefit Transaction Regulations (“Intermediate Sanctions”): Section 4958 of the Internal Revenue Code

The Internal Revenue Code and Treasury Regulations prohibit public charities from providing “excessive” (more than fair market value) economic benefits to “disqualified persons.”

The Regulations set forth procedures, or “rebuttable presumption” rules, that, if followed, provide a presumption of reasonableness for transactions between a public charity and a disqualified person.

Disqualified persons with respect to a public charity include:

- individuals who are in a position to exercise substantial influence over the affairs of the Community Foundation, including officers, directors, trustees, or individuals with similar responsibilities,
- a founder of the Community Foundation,
- substantial contributors (defined as any person who has contributed in the current fiscal year and the four preceding fiscal years more than \$5,000, if such amount is more than 2% of total contributions received during that five-year period by the Community Foundation, and
- other individuals based on a facts and circumstances test;
- any of the persons listed above who has been in a position to exercise substantial influence over the affairs of the organization during the past 5 years;
- family members of any person described above (spouse, siblings, spouses of siblings, ancestors, lineal descendants and spouses of lineal descendants);
- corporations, partnerships, and trusts or estates in which a person described above owns more than 35% of the voting power, profits interest, or beneficial interest.

All transactions that provide an economic benefit disqualified persons—such as compensation for services and purchases and sales of property—are subject to the intermediate sanctions rules, whether the transactions are done directly by the organization or indirectly through a controlled entity (taxable or tax-exempt) or an intermediary.

Under the Regulations implementing the intermediate sanctions rules, three conditions must be satisfied to take advantage of the rebuttable presumption. These include:

- approval by disinterested governing board (or committee) before the transaction is entered into;
- reliance on comparable data to determine that the economic benefit provided to a disqualified person does not exceed fair market value for the services or property provided by the disqualified person in return; and
- concurrent documentation that adequately documents the basis for making the determination that the transaction is reasonable (the Regulations specifically provide what information must be documented).