

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 a board member, officer, staff person or other committee member or volunteer.

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. Additionally, this policy's Appendix B is intended to address and prevent conflicts of interest that may arise with regard to our Board Chair.

ARTICLE II: Personal Benefit / Authority / Influence

It is the policy of the Foundation that no member shall derive any personal profit or gain, directly or indirectly, by reason of his or her service to the Foundation. There may be no self-dealing or any conduct of private business or personal services between any member and the Foundation except those conducted in an open and objective manner to ensure equal competitive opportunity and equal access to information.

Board members or volunteer committee members must not use their positions to obtain employment in the Foundation for themselves, family members or close associates. Should a board or volunteer committee member desire employment, he or she must first resign.

Board and volunteer committee members may not attempt to exercise individual authority over the policies and operations of the Foundation except through their roles as voting members of the board or volunteer committees. Staff members may not attempt to exercise individual authority over the policies and operations of the Foundation except through their specific job responsibilities and established supervisory structure.

ARTICLE III: Procedures

A Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the possible conflict, and be given the opportunity to disclose all material facts to the board and/or committee.

- B **Determining Whether a Conflict of Interest Exists**
After disclosure, the Chair of the Board or Committee, along with staff, shall have an open discussion as to the material nature of the possible conflict. If deemed appropriate, the interested person may be asked to leave the room during discussion and voting.
- C The chairperson of the board or committee may, if appropriate, ask staff and/or other volunteers to investigate alternatives to the proposed transaction or arrangement so that the conflict may be avoided.
- D **Violations of the Conflicts of Interest Policy**
If the 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.

After hearing the member's response and after making further investigation as warranted by the circumstances, the board or committee shall determine the best course of action to avoid any real or perceived conflict. Such action may include revoking or changing any previous decision or action taken prior to learning of the conflict.

ARTICLE IV: Records of Proceedings

The minutes of the board and committees shall contain:

- A. The names of members and staff present at the meeting.
- B. The names of members who have a possible conflict of interest, and the associated group, organization, business or transaction for which the conflict may exist.
- C. Documentation as to what action was taken in regards to the conflict.

ARTICLE V: Compensation

A voting member of the 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.

ARTICLE VI: Annual Statements

Each board member, committee member, and Foundation staff person, shall annually submit documentation that they have;

- a. 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.

Additionally, for the board, Foundation staff shall prepare annual summaries for all board and staff, regardless of individual reporting by board members, listing all known potential conflicts. This summary shall be included at least once annually in board meeting packets.

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: Policy for the Board Chair

The Chair of the Board for the Community Foundation of St. Clair County will be held to a higher standard Conflict of Interest than is described within the Foundation's current Conflict of Interest Policy.

Trustees of the Foundation shall not be eligible to serve as Board Chair under the following circumstances;

- a) Is an Interested Person as defined herein and the financial transactions between the Foundation and the Interested Person are substantial.
- b) Has a significant business relationship as defined herein.

Examples of these conflicts would include but are not limited to;

- a. Investment firms holding, managing or providing consultation services on more than \$1 million of Foundation assets
- b. A senior paid staff level person at another organization which currently is or recently has received significant funding from the Foundation, or which may in the foreseeable future receive significant funding from the Foundation.
- c. Senior staff at another for profit or nonprofit business which through partnerships, collaboration or shared interested could be perceived to influence the allocation of significant Foundation resources, which in turn could provide benefit to their respective business or organization.

Candidates for Board Chair must avoid any actual or perceived conflict of interest including that which might impair or impugn the independence, integrity or impartiality of the board. There must be no apprehension of bias, based on what a reasonable person might perceive. Generally, we will expect that the Board Chair will not simultaneously serve as the chair of another local organization.

ARTICLE IX: 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. Perceived Conflict

The appearance of bias in situations where an interested person (as defined above), a member of his/her family, business, or close personal relation has financial interests, personal relationships, or professional associations with an outside individual or organization, such that his or her activities within the Foundation could appear to be biased against the Foundation by that interest or relationship.

3. 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.
- d. A position of employment, or of service on a Board or Committee of an organization that seeks and receives grant awards from the Foundation or provides significant donations to the Foundation whereby his or her personal interests could be positively or adversely affected by the Foundation's accepting, holding or disposing of a particular gift.

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 IV, 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.

4. 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.

5. 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.

6. 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, the Blue Water Land Fund, Inc. or The James C. Acheson Charitable Foundation.

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).

10-20-2020