

Conflict of Interests

Board Roles, Responsibilities, and Expectations

A key principle of tax-exempt status is the ban on private inurement of tax-exempt benefits to an individual person. Private inurement can occur when a nonprofit conducts business on **less than an arms' length** basis with a firm or person related to an officer, board member or employee. Such self-dealing may result in both bad publicity for the nonprofit and costly consequences for those subject to intermediate sanctions. These are compelling reasons for all nonprofits to adopt definitive conflict-of-interest policies to help management identify potential conflicts and eliminate preferential insider dealings and private inurement.

Board members have a fiduciary responsibility to their nonprofit. They must administer the nonprofit's affairs honestly and prudently, exercising their best care, skill and judgment for the nonprofit's sole benefit. The nonprofit's interest must have priority.

Establishing a Conflict-of-Interest Policy

Adopting a conflict-of-interest policy is a good business practice for all nonprofits. A definitive policy requires all board members, officers and key staffers who could influence a decision to disclose any self-interest they have in a transaction affecting the nonprofit. The policy should cover transactions including:

- An ownership interest in a vendor from whom the nonprofit buys goods and services,
- An interest in property the nonprofit is buying or leasing,
- The possibility that an insider could personally gain at the nonprofit's expense, and
- Doing business with an insider's family member or business partner.

Consider Other Potential Conflicts

Directors and key employees must avoid not only conflicts of interest, but also **the appearance** of conflicts of interest. This includes doing business with third parties in which directors' and key staffers' spouses, dependents or other relatives are involved. For example, a contract between a nonprofit and a construction firm owned by a board member's brother could potentially be viewed as a less than arms' length transaction. Other situations that could be viewed as a conflict include receiving compensation for services for individual transactions involving the nonprofit, using nonprofit resources—including personnel, equipment and supplies—for other than nonprofit-sponsored activities, programs and purposes and receiving anything that could be deemed a kickback from any third party dealing with the nonprofit—including personal gifts or favorable-term loans.

Enforce Your Policy

How can you enforce your conflict-of-interest policy? First, the board of directors must adopt resolutions requiring all directors, officers, and key staffers' to fully disclose any situation in which a potential conflict exists or could arise. Second, require all officers, board members and key staffers to sign an acknowledgment of the policy, stating that they have read it, understand it and agree to abide by it.