

Senior Center of Elk Grove



Your Everything Center

a 501(c)3 Nonprofit Organization

CONFLICT OF INTEREST POLICY FORWARD

With the rise and complexity of nonprofit organizations in California, the current Attorney General's guidelines for Conflict of Interest are as follows:

DIRECTORS' DUTY OF LOYALTY

Each director also owes a duty of loyalty to its nonprofit corporation. For public benefit corporations, this means the director must make decisions he or she believes is in the best interest of the corporation, as well as act in such best interest. For instance, the director is obligated to act with undivided loyalty, be fair in his or her dealings with the nonprofit and must not seek to benefit personally from the activities or resources of the nonprofit.

Duty of Loyalty issues typically arise when there is a conflict of interest between the charity's best interests and the personal interests of the director. And like the duty of care, directors who breach their duty of loyalty may be held personally liable to the corporation.

DIRECTORS' DUTY OF CARE

Directors also act as fiduciaries. For instance, each director owes a duty of care to their nonprofit corporation and the corporation's charitable beneficiaries. For public benefit corporations, directors are required to perform with the level of care that an ordinarily prudent person in a like position would use under similar circumstances. This includes making reasonable inquiries as needed.

To ensure the duty of care is met, a director should review the corporation's articles of incorporation and bylaws to better understand the corporation's mission, and the expected roles and responsibilities of directors and officers. Directors are also obliged to be informed about the nonprofit organization's program and operations.

Directors should also regularly attend board meetings and actively engage in meetings of the board and any board committees on which they serve. Before making any decision, directors should request and obtain all necessary background information and reports to promote informed decisions. Directors should use their own judgment in voting, and not simply follow the lead of other board members or adopt the recommendations of management or staff. A director should not be afraid to

ask questions at board meetings or request that matters be decided at a later date to allow for more in-depth deliberation.

In making decisions related to compensation or the charity's finances, directors should request reasonable access to management and advisors such as auditors and compensation consultants. In exercising due care, directors should proactively demand and review financial reports and statements.

If directors do not abide by the duty of care owed to their public benefit corporation, they may be held personally liable to the corporation.

SELF-DEALING TRANSACTIONS

A self-dealing transaction involves:

- A contract, agreement, or other action affecting the assets or income of a public benefit corporation;
- To which the corporation is a party; and
- In which one or more of its directors has a material financial interest.

For example, a self-dealing transaction may occur when a charity pays a fee, commission, or rent, or enters into a contract with, that results in giving a material economic benefit to a director, or his or her company or partnership. Since the director's first duty of loyalty is to the corporation, it may be difficult for a director to carry out that duty if he or she is also looking to make a profit from transacting business with the corporation.

Self-dealing transactions between a director and a public benefit corporation are inherently suspect. Yet, there are situations when it may be advantageous for the corporation to enter into such a transaction, such as when the corporation is treated fairly, and the director is not unduly compensated. This might occur when a corporation has the opportunity to rent office space from a director at a lower rate than would be available on the open market.

The board must follow the procedures set forth in Corporations Code section 5233 to validate a self-dealing transaction and before consummating it. These procedures require a determination by the board of directors that the corporation entered into the transaction for its own benefit, the transaction is fair and reasonable at the time it entered into the transaction, and that the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. In reaching these conclusions, the board must act in good faith and there must be full disclosure of all material facts. Further, the board must approve the transaction by a majority of directors then in office without counting the director subject to conflict of interest.

When a self-dealing transaction is not fair to the corporation and results in unreasonable charges or excessive profit to the interested director, the corporation suffers damage. The Attorney General and certain other persons may sue the directors to recover the actual damage suffered by the corporation, plus interest, and in some cases punitive damages. Any damages recovered are returned to the corporation. The Attorney General typically also seeks the permanent removal of the interested directors and other directors responsible for the damage.

If the “disinterested” directors fail to review a self-dealing transaction in good faith as provided in Corporations Code section 5233, and instead simply rubber stamp the transaction or approve the transaction to protect the interested director, the self-dealing transaction is not deemed validated and all directors may be held liable for any damages incurred by the charity.

For added protection, the board may consider submitting notice of the proposed self-dealing transaction to the Attorney General. This protects the board against claims of improper transactions and potential damages. The Attorney General seeks to evaluate these transactions in 60 days.

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Keep in mind – The Senior Center of Elk Grove derives its funds, in part, by fundraising, grants and sponsorships. Part of a director’s duty is to participate in fundraising, grant and sponsorship activities. A director is obligated to act with undivided loyalty. **As a director, any conflict of interest you may have in participating in fundraising while affiliated with an organization that is competing with the Senior Center for the same funding should discuss the conflict with the Board President.** Open and honest deliberation affects all aspects of SCEG’s operations and is critical to making good decisions, avoiding legal problems and remaining focused on the organization’s purpose.

Please review the information on the Conflict of Interest Policy, found on page 11 of the current Bylaws, prior to completing the Conflict of Interest Statement.

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*Conflict of Interest Policy for Directors and Officers
with Board Delegated Powers*

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Conflict of Interest Policy for Directors and Officers with Board Delegated Powers

Article I - Purpose

1. The purpose of this Board conflict of interest policy is to protect the interests of SCEG when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of SCEG.
2. This policy is intended to supplement, but not replace, any applicable state or federal laws governing conflicts of interest applicable to nonprofits and charitable organizations.
3. This policy is also intended to identify "independent" directors.

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 or indirect financial interest, as defined below, is an interested person.
2. Financial interest: A person has a financial interest if that person has, directly or indirectly, through business, investment, or family:
 - a. An ownership or investment interest in any entity with which SCEG has a transaction or arrangement.
 - b. A compensation arrangement with SCEG or with any entity or individual with which SCEG has a transaction or arrangement.
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which SCEG 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. A person who has financial interest may have a conflict of interest only if the Board decides that a conflict of interest exists, in accordance with this policy.

3. Independent Director: A director shall be considered "independent" for the purposes of this policy if he or she is "independent" as defined in the instruction for the IRS 990 form or, until such definition is available, the director:
 - a. Is not and has not been for a period of at least three years, an employee of SCEG or any entity in which SCEG has a financial interest.
 - b. Does not directly or indirectly have a significant business relationship.
 - c. Is not employed as an executive of another corporation where any of SCEG's executive officers or employees serve on that corporation's compensation committee.
 - d. Does not have an immediate family member who is an executive officer or employee of SCEG or who holds a position that has significant financial relationship with SCEG.

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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 Board.
2. **Recusal of Self:** Any director may recuse himself or herself at any time from involvement in any decision or discussion in which the director believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.
3. **Determining Whether a Conflict of Interest Exists:** After disclosure of the interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.
4. **Procedures for Addressing the Conflict of Interest**
 - a. An interested person may make a presentation at the Board 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 President of the Board 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 shall determine whether SCEG 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 Board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in SCEG's best interest, for its own benefit, and whether it shall make its decision as to whether to enter into the transaction or arrangement.
5. **Violations of the Conflicts of Interest Policy**
 - a. If the Board 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 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 Board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

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Article IV - Recording of Proceedings

The minutes of the Board of 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 Board's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for the discussion and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the connection with the proceedings.

Article V - Compensation

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

Article VI - Annual Statements

1. Each director, principal officer and member of a committee with Board delegated powers 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 SCEG 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.
2. Each voting member of the Board shall annually sign a statement which declares whether such person is an independent director.
3. If at any time during the year, the information is in the annual statement changes

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materially, the director shall disclose such changes and revise the annual disclosure form.

4. The Board shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for the effective oversight.

Article VII - Periodic Review

To ensure that SCEG 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 (if reasonably available), and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to SCEG's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement or 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, SCEG may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

Adopted: November 1, 2010