

# DISCOVERY WORLD

## CONFLICT OF INTEREST POLICIES

The legal definition of conflict of interest, usually set out in state laws governing nonprofit corporations, is very specific and covers relatively few situations. Most conflicts fall into a gray area where ethics and public perception are more relevant than statutes or precedents. Conflict of interest arises whenever the personal or professional interests of a board member are potentially at odds with the best interests of the nonprofit. Such conflicts are common: A board member performs professional services for an organization, or proposes that a relative or friend be considered for a staff position. Such transactions are perfectly acceptable if they benefit the organization and if the board made the decisions in an objective and informed manner. Even if they do not meet these standards, such transactions are usually not illegal. They are, however, vulnerable to legal challenges and public misunderstanding. Loss of public confidence and a damaged reputation are the most likely results of a poorly managed conflict of interest. Because public confidence is important to most nonprofits, boards should take steps to avoid even the appearance of impropriety. These steps may include:

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- Adopting a conflict of interest policy that prohibits or limits business transactions with board members and requires board members to disclose potential conflicts.
- Disclosing conflicts when they occur so that board members who are voting on a decision are aware that another member's interests are being affected.
- Requiring board members to withdraw from decisions that present a potential conflict.
- Establishing procedures, such as competitive bids, that ensure that the organization is receiving fair value in the transaction.

### SAMPLE 1: EL MORRO AREA ARTS COUNCIL (EMAAC) CONFLICT OF INTEREST POLICY

Conflict of interest arises whenever the personal or professional interest of a Board Member is potentially at odds with the best interests of EMAAC.

Although the legal standards for avoiding conflict of interest for nonprofit organizations are fairly limited, EMAAC will avoid where possible even the appearance of impropriety. Individuals and businesses qualified to provide goods and services in the EMAAC area are limited, and therefore situations may arise where Board Members are commercially engaged by EMAAC, or hired by EMAAC for artistic projects workshops, summer camps, performances, etc.

Because these situations all involve potential conflict of interest, the following procedures apply.

If an issue is to be decided by the Board that involves potential conflict of interest for a Board

Member, it is the responsibility of the Board Member to:

1. Identify the potential conflict of interest.
2. Not participate in discussion of the program or motion being considered.
3. Not vote on the issue.

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It is the responsibility of the Board to:

1. Only decide to hire or contract with the Board member if they are the best qualified individuals available, and willing to provide the goods or services needed at the best price.
2. Record in the minutes of the Board Meeting the potential conflict of interest, and the use of the procedures and criteria of this policy.

Although it is not a conflict of interest to reimburse Board Members for expenses incurred (such as the purchase of supplies), Board Members are prohibited by law from being paid for serving on the Board.

Generally, Board Members will not receive pass through dollars for individual projects.

ANOTHER SAMPLE for Officers, Directors, Committee Members, Staff Members, and certain Consultants

No member of the Board of Directors, or any of its Committees, shall derive any personal profit or gain, directly or indirectly, by reason of his or her participation with the XYZ Nonprofit.

Each individual shall disclose to the organization any personal interest which he or she may have in any matter pending before the organization and shall refrain from participation in any decision on such matter.

Any member of the Board, any Committee, or Staff who is an officer, board member, a committee member, or staff member of a client organization or vendor of the XYZ Nonprofit shall identify his or her affiliation with such agency or agencies; further, in connection with any committee or board action specifically directed to that agency, s/he shall not participate in the decision affecting that agency and the decision must be made and/or ratified by the full board.

Any member of the Board, any Committee, Staff, and certain Consultants shall refrain from obtaining any list of clients for personal or private solicitation purposes at any time during the term of their affiliation.

At this time, I am a board member, committee member, or an employee of the following organizations:

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:

- 1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party doing business with the XYZ Nonprofit which has resulted or could result in personal benefit to me.

- 2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with the XYZ Nonprofit.

Any exceptions to 1 or 2 above are stated below with a full description of the transactions and of the interest, whether direct or indirect, which I have

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(or have had during the past year) in the persons or organizations having transactions with the XYZ Nonprofit.

## Purpose

The purpose of this Board conflict of interest policy is to protect MNA's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or director of MNA or might result in a possible excess benefit transaction.

2. This policy is intended to supplement but not replace any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.

3. This policy is also intended to identify "independent" directors.

## Article II

### Definitions

#### 1. Interested person

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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.

#### 2.

#### Financial interest

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

A. Ownership or investment interest in any entity with which MNA has a transaction or arrangement,

b. A compensation arrangement with MNA or with any entity or individual with which MNA has a transaction or arrangement, or

c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which MNA 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 a financial

1 This policy is based on the IRS model Conflict of Interest policy, which is a n attachment to Form 1023. It adds information needed to allow MNA to assess director independence in order to answer questions on Form 990.

2 interest may have a conflict of interest only if the Board or Executive Committee decides that a conflict of interest exists , in accordance with this policy

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#### 3. Independent Director

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A director shall be considered "independent" for the purposes of this policy if he or she is "independent" as defined in the instructions for the IRS 990 form or, until such definition is available, the director

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a. is not, and has not been for a period of at least three years, an employee of MNA or any entity in which MNA has a financial interest;

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b. does not directly or indirectly have a significant business relationship with MNA, which might affect independence in decision making;

c. is not employed as an executive of another corporation where any of MNA's executive officers or employees serve on that corporation's compensation committee; and

d. does not have an immediate family member who is an executive officer or employee of MNA or who holds a position that has a significant financial relationship with MNA.

## Article III

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### Procedures

#### 1. Duty to Disclose

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In connection with any actual or possible conflict of interest, and interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board or Executive Committee.

#### 2. Recusal of Self

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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

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After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board or Executive Committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or Executive Committee 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 or Executive 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.

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#### b.

The Chairperson of the Board or Executive 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 Executive Committee shall determine whether MNA 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

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circumstances not producing a conflict of interest, the Board or Executive Committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in MNA'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.

5.

## Violations of the Conflicts of Interest Policy

a. If the Board or Executive 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 Board or Executive Committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## Compensation

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a.

A voting member of the Board who receives compensation, directly or indirectly, from MNA 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 MNA 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 MNA, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

## Article VI

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## 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 MNA 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

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3.

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If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.

4.

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

## Article VII

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### Periodic Reviews

To ensure MNA 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.

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b. Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to MNA'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

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### Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, MNA 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.