

# **EFFECTIVE NONPROFIT GOVERNANCE**

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Enhancing Communities  
Lunch Series

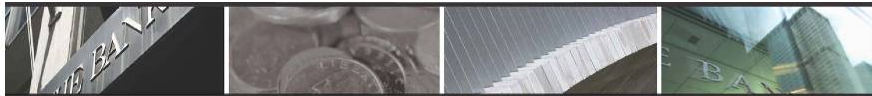




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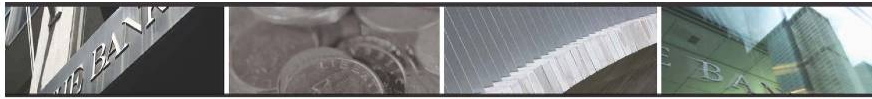
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## **Board of Directors – Corporate Governance**

- Primary governance responsibility is to uphold the public trust (a.k.a. fiduciary).
- The board must ensure that the non-profit is doing what it sets out to do (Mission) and that all funds are spend appropriately.
- Good boards ensure that organizations:
  - are accountable to the community
  - provide needed services
  - adhere to rigorous ethical and professional standards



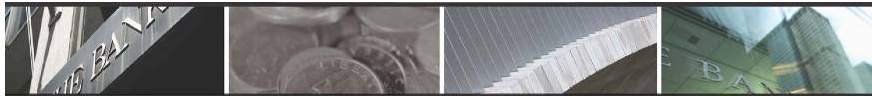


## Major Areas of Board Responsibility Duty of Care

A board member is expected to act as would an ordinary prudent person in similar circumstances. This requires diligent, attentive, informed participation and reasonable care when making decisions.

In action:

- The Board holds regularly scheduled meetings
- The Board is familiar with bylaws and policies
- Information provided in advance of meetings
- Board members are prepared and participate
- Financial reports distributed and reviewed
- Informed decisions
- Accurate minutes



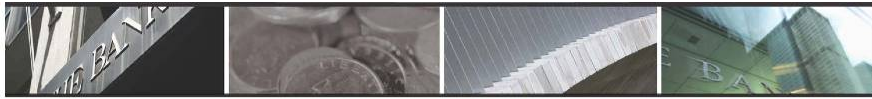
## Major Areas of Board Responsibility Duty of Loyalty

A board member is expected to act in good faith, giving individual allegiance to the organization, when making decisions, and should not operate for personal gain against the best interests of the organization.

In action:

- Immediate disclosure.
- Recuse from discussion and decision making.
- At least as favorable as another transaction.



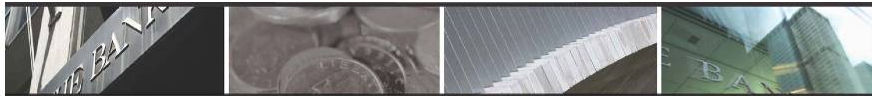


## Major Areas of Board Responsibility

A board member is expected to act in a manner that ensures that the organization operates in keeping with its mission and bylaws and in accordance with the laws and regulations governing its formation and status.

In action:

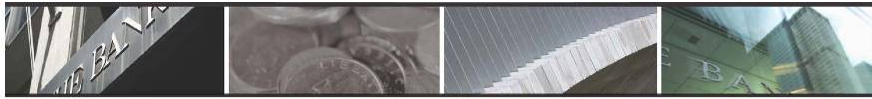
- Fully conversant and compliant with the organization's mission, bylaws, and policies.
- Ensure policies, goals, and activities (including management of funds and other resources) are executed in accordance with the Mission.



## Mission

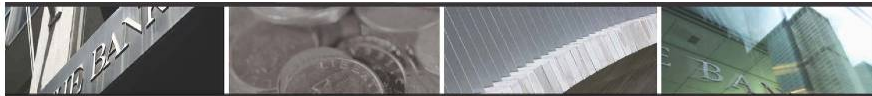
- Your organization's purpose for existing.
- Who you are, what you do, and why you do it.
- Clear description where headed into the future.
- Separates your organization from other organizations.
- When making decisions ensure outcome falls within mission.
- For-Profit answers to shareholders;  
Non-Profit answers to their mission.





## Bylaws

- The rules that govern the internal management of the organization; i.e. the board of directors.
- Written by the organization's founding directors and covers, at a minimum: how directors are elected, how meetings of directors are conducted, and what officers the organization will have and their duties.
- Review bylaws on an annual basis, and revise as needed.
- Bylaws help during disputes.
- Policies and procedures provide operational guidance.



## Agendas

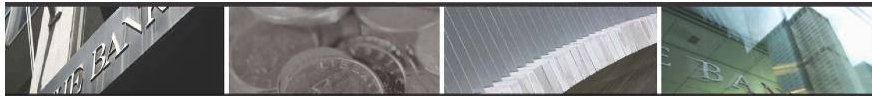
- Separate governance issues from management issues.
- Strategic plan guides how you organize Board agendas.
- Use of annual calendar.
- Organization, effectiveness, timeliness.
- Set the meeting agenda.
- Distribute materials in advance.
- Read materials in advance.





## Consent Agenda

- List of items and appropriate attachments that are non-controversial items and do not require discussion, but require ratification by the Board.
- Routine matters.
- Adopted as a single motion with the consent of the Board.
- Use of consent agenda allows for more efficient use of meeting time.
- Never use to avoid discussing important or controversial issues.



## Minutes

- Date and location of the meeting.
- Start and finish of meeting.
- Who is in attendance and their titles.
- If meeting participants were in person or on the phone.
- The presentations made.
- Summary of questions that were asked and answered.
- Notes that discussions and deliberations occurred.
- A clear indication of actions taken and opposing or abstaining members.
- Action items from meeting distributed after and responsibility assigned.



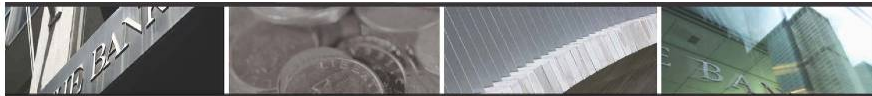


## Resolutions

- Difference between Resolutions and Minutes.
- “Whereas” clause.
- Now, Therefore Be it

Resolved.....

Be it further resolved, that the proper officers of X be, and hereby are, authorized, empowered, and directed to take such further actions as they may deem, in their discretion, necessary, appropriate, and convenient to carry out the intent of the aforesaid resolutions.



## Strategic Planning

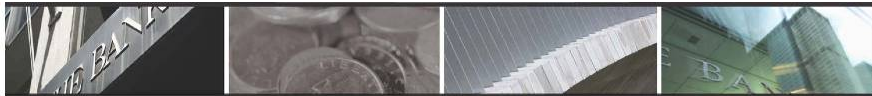
- A systematic process used to agree upon priorities for the organization.
  - Reach agreement on major issues.
  - Establishes priorities.
  - Defines each person’s role in helping the organization achieve its mission and goals.
  - Process FIRST, Document SECOND, Follow-up THIRD.





## Code of Ethics Policy

- Act in best interest of company.
- Participate.
- Recuse yourself.
- Be informed.
- Receiving gifts.
- Confidentiality.
- Conflict of interest.



## Conflict of Interest Policy

- Form 990 question.
- A conflict of interest arises when a person in a position of authority may benefit financially from a decision he or she could make in such capacity.
- Includes indirect benefits.
- Duty to Disclose.
- Process for disclosing Conflict of Interest.
- Procedures for addressing.

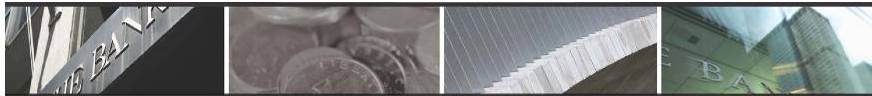






## Whistleblower Policy

- Form 990 question.
- Sarbanes-Oxley Act
  - Criminal offense to punish whistleblowers who report to law enforcement officials truthful information about the possible commission of a federal offense.
  - Criminal offense to alter, destroy, conceal a document, record another object with the intent to impair its integrity or availability for use in an official proceeding or otherwise.



## Compensation Policy

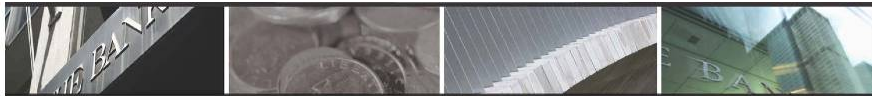
- Form 990 asks about process.
- Consistency.
- Guidelines with ranges.
- Who determines pay.
- Document how compensation is determined.





## Investment Policy

- Define general objectives.
- Set asset allocation.
- Set asset quality.
- Who has responsibility for investment decisions.
- Periodic review.



## Gift Acceptance Policy

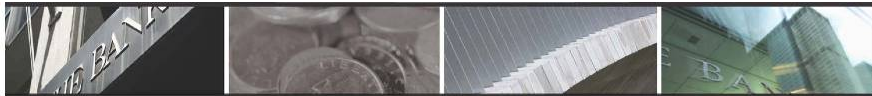
- Form 990 question.
- Consistency and good judgment.
- Define assets that are acceptable.
- Establish gift forms that are acceptable.
- Define the non-profits role in gift administration.





## Joint Venture Policy

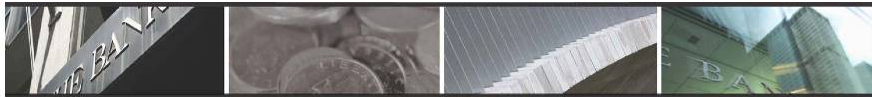
- Form 990 question.
- Association of two or more companies to carry on a specific business enterprise or activity.
- Safeguard tax exempt status.
- Give priority to exempt and purpose over profits.
- Not engaging in activities that would jeopardize exempt status.



## Document Retention Policy

- Guidelines for length of time documents should be retained.
- Protection against allegations of wrong doing and lawsuits.
- List of categories along with length of time documents should be retained.
- Provide guidance for both paper and electronic documents.
- Destruction should be halted in the event of an investigation or lawsuit.





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# **EXAMPLES OF POLICIES**

The following policies are sample policies for informational purposes only. Bybel Rutledge LLP makes no representations regarding the legal sufficiency or appropriateness of the policies for your organizations.

## Code of Ethics

### I. Introduction

### II. Statement of Values

### III . The Code of Ethics

### IV. Afterword

#### I. Introduction

As a matter of fundamental principle, the nonprofit community should adhere to the highest ethical standards because it is the right thing to do. As a matter of pragmatic self-interest, the community should do so because public trust in our performance is the bedrock of our legitimacy. Donors and volunteers support charitable organizations because they trust them to carry out their missions, to be good stewards of their resources, and to uphold rigorous standards of conduct.

The Michigan Nonprofit Association and other nonprofit organizations must earn this trust every day and in every possible way. But organizations are, at base, people, and it is up to the people of the nonprofit sector—board members, executive leaders, staff and volunteers—to demonstrate their ongoing commitment to the core values of integrity, honesty, fairness, openness, respect, and responsibility.

The nonprofit sector comprises a diverse array of organizations large and small, those that make grants and those that raise funds from the public, those that operate at the community and state level. That diversity is one of the abiding strengths of the nonprofit sector.

Each organization in the nonprofit sector should have a formally adopted code of ethics with which all of their trustees, staff and volunteers are familiar and to which they adhere. This MNA Code of Ethics is such a document.

Adherence to the law is the minimum standard of expected behavior. Nonprofit organizations must do more, however, than simply obey the law. We must embrace the highest standards of integrity. Transparency, openness and responsiveness to public concerns must be integral to our behavior.

#### II. Statement of Values

Any code of ethics is built on a foundation of shared values. MNA values:

The role of nonprofits in society (including relevance and outcomes)

Innovation and excellence (including partnerships, collaboration, and commitment)

Diversity and inclusiveness

Accountability and transparency (including openness, honesty, trust and integrity)

These values lead directly to the Code of Ethics that follows. The values inform and guide the actions that MNA should take in developing our policies and informing their practices.

### III . The Code of Ethics

#### A. Personal and Professional Integrity

MNA staff, board members and volunteers shall act with honesty, integrity and openness in all their dealings as representatives of the organization. MNA promotes a working environment that values respect, fairness and integrity.

#### B. Mission

MNA shall have a clearly stated mission and purpose, approved by the Board of Trustees, in pursuit of the public good. The MNA mission is “to enhance the effectiveness of the Michigan nonprofit sector in serving society”. All MNA programs shall support that mission and all who work for or on behalf of the organization will understand and be loyal to that mission and purpose. The mission shall be responsive to the constituencies and communities served by MNA and of value to the society at large.

#### C. Governance

MNA shall have an active governing body, the Board of Trustees, which is responsible for setting the mission and strategic direction of the organization and oversight of the finances, operations, and policies of the organization. The Board of Trustees:

Ensures that its board members or trustees have the requisite skills and experience to carry out their duties and that all members understand and fulfill their governance duties acting for the benefit of MNA and its public purpose;

Has a conflict of interest policy that ensures that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means; and

Is responsible for the hiring, firing, and regular review of the performance of the President & CEO, and ensures that the compensation of the chief executive officer is reasonable and appropriate;

Ensures that the President & CEO and appropriate staff provide the governing body with timely and comprehensive information so that the governing body can effectively carry out its duties;

Ensures that the organization conducts all transactions and dealings with integrity and honesty;

Ensures that the organization promotes working relationships with board members, staff, volunteers, and program beneficiaries that are based on mutual respect, fairness and openness;

Ensures that the organization is fair and inclusive in its hiring and promotion policies and practices for all board, staff and volunteer positions;

Ensures that policies of the organization are in writing, clearly articulated and officially adopted;

Ensures that the resources of the organization are responsibly and prudently managed; and,

Ensures that the organization has the capacity to carry out its programs effectively.

#### D. Legal Compliance

MNA will be vigilant in compliance with laws, regulations and applicable conventions that govern and regulate our organization.

#### E. Responsible Stewardship

MNA shall manage its' funds responsibly and prudently. This should include the following considerations:

It spends a reasonable percentage of its annual budget on programs in pursuance of its mission;

It spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional management;

MNA compensates staff, and any others who may receive compensation, reasonably and appropriately;

MNA has reasonable fundraising costs, recognizing the variety of factors that affect fundraising costs;

MNA will maintain an appropriate level of funds to maintain our mission and purpose and not accumulate excessive reserve funds;



MNA ensures that all spending practices and policies are fair, reasonable and appropriate to fulfill the mission of the organization; and,

All financial reports are factually accurate and complete in all material respects.

#### F. Openness and Disclosure

MNA shall provide comprehensive and timely information to the public, the media, and all stakeholders and is responsive in a timely manner to reasonable requests for information. All information about MNA will fully and honestly reflect the policies and practices of the organization. Basic informational data about the organization, such as the Form 990, reviews and compilations, and audited financial statements will be posted on the MNA website or otherwise available to the public. All solicitation materials accurately represent the organization's policies and practices and will reflect the dignity of program beneficiaries. All financial, organizational, and program reports will be complete and accurate in all material respects.

#### G. Program Evaluation

MNA will regularly review program effectiveness and have mechanisms to incorporate lessons learned into future programs. MNA is committed to improving program and organizational effectiveness and develops mechanisms to promote learning from its activities and the field. MNA will be responsive to changes in its field of activity and the needs of its constituencies.

#### H. Inclusiveness and Diversity

MNA shall have a policy of promoting inclusiveness and its staff, board and volunteers reflect diversity in order to enrich its programmatic effectiveness. MNA shall take meaningful steps to promote inclusiveness in its hiring, retention, promotion, board recruitment and constituencies served.

#### I. Fundraising

MNA shall raise funds from the public and from donor institutions and be truthful in solicitation materials. MNA will respect the privacy concerns of individual donors and expends funds consistent with donor intent. MNA shall disclose important and relevant information to potential donors.

In raising funds, MNA will respect the rights of donors, as follows:

To be informed of the MNA mission, the way the resources will be used and their capacity to use donations effectively for their intended purposes;

To be informed of the identity of those serving on the MNA governing board and to expect the board to exercise prudent judgment in its stewardship responsibilities;

To have access to the most recent MNA financial reports;

To be assured their gifts will be used for the purposes for which they were given;

To receive appropriate acknowledgement and recognition;

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by the law;

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature;

To be informed whether those seeking donations are volunteers, MNA employees or hired solicitors;

To have the opportunity for their names to be deleted from mailing lists that MNA may intend to share; and,

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

#### IV. Afterword

While the MNA Board of Trustees has given its approval to this document, it will continue to be reviewed and revised as necessary.

A code of ethics is, by necessity, general in outlining broad ethical principles. It is not a detailed set of recommended practices on a specific issue. In many cases, those more specific recommended practices are provided by existing standards by national, regional, and subsector-specific groups. This code of ethics statement is intended as a model that organizations can draw from in reviewing or adopting a code of ethics.



# CODE OF ETHICS

## Mission

The mission of the Colorado Nonprofit Association is to lead, serve and strengthen Colorado nonprofit organizations.

## Code of Ethics

Given its mission, the Colorado Nonprofit Association has adopted a code of ethics to guide its board members, committee members and staff in their conduct when acting on behalf of the Colorado Nonprofit Association. The Code contains broad principles reflecting the types of behavior the Colorado Nonprofit Association expects towards constituents, donors, employees, peers and the public.

This policy is not intended as a stand-alone policy. It does not embody the totality of the Colorado Nonprofit Association ethical standards, nor does it answer every ethical question or issue that might arise. Rather, it is one element of a broader effort to create and maintain a quality organization that gives ethical conduct the highest priority. This Code will be reviewed periodically.

Board members, committee members and staff should:

1. Listen to our stakeholders and make all reasonable efforts to satisfy their needs and concerns within the scope of our mission, and to strive for excellence and innovation and demonstrate professional respect and responsiveness to constituents, donors and others.
2. Make an effort to understand, respect and support our constituents from other cultures, exemplified by the contributions of our staff and executive leadership, and to contribute to an organizational culture that respects the diverse, individual contributions of staff and leadership.
3. Respect the confidentiality of sensitive information about the Colorado Nonprofit Association, its members, constituents, donors, board and employees.
4. Comply with applicable federal, state and local laws, regulations and fiduciary responsibilities in an effort to create transparency in all of our operations.
5. For the board of directors, provide credible and effective oversight to the organization's work without personal bias.
6. Not accept commissions, gifts, payments, loans, promises of future benefits or other items of value from anyone who has or may seek some benefit from the Colorado Nonprofit Association in return, other than occasional gifts of nominal value that are in keeping with good business ethics.
7. Abide by the governing documents and policies of the Colorado Nonprofit Association.
8. Be accountable for adhering to this Code of Ethics.
9. Implement and follow a Conflict of Interest Policy.
10. Implement and follow a Whistleblower Policy.

11. Act at all times in accordance with the highest ethical standards and in the best interest of the Colorado Nonprofit Association, its members, constituents, donors and reputation.
12. Openly and honestly tell the truth.
13. Honor our commitments and promises to the best of our abilities.
14. Appropriately acknowledge contributions from other individuals and organizations who help facilitate our goals.
15. Not be deceptive in our fundraising activities or in prospecting for new members to join the Colorado Nonprofit Association.
16. Advocate for all nonprofit organizations, but not for any specific initiative - being respectful to the sector as a whole.
17. Not lobby with the intent to influence individual candidates.

### **Compliance, Monitoring and Reporting**

The Colorado Nonprofit Association management is responsible for communicating this Code of Ethics to all members of the board of directors, standing committee members, as well as staff, staff interns and staff volunteers and for ensuring its adherence at all times.

Ratified by the Colorado Nonprofit Association's Board of Directors on December 10, 2008.

(Adapted with the permission of The Donors Forum of Chicago)

# COLORADO NONPROFIT ASSOCIATION

## CODE OF ETHICS – DISCLOSURE FORM

This form must be completed by all members of the board of directors, standing committee members, as well as staff, staff interns and staff volunteers upon their joining the organization.

The undersigned, by their affixed signature, accept and agree to abide by the Code of Ethics policy.

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Signature

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Printed Name

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Position within the organization (e.g. board member, committee member, staff, etc.)

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Date

(ratified by the Colorado Nonprofit Association's Board of Directors on December 10, 2008)

## Appendix A: Sample Conflict of Interest Policy

**Note:** Items marked *Hospital insert – for hospitals that complete Schedule C* are intended to be adopted by hospitals.

### Article I Purpose

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director 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 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.

#### *[Hospital Insert – for hospitals that complete Schedule C*

*If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]*

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

### 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 Organization 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 Organization'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 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 Organization 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 Organization 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 Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

***[Hospital Insert – for hospitals that complete Schedule C***

- d. Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

#### **Article VI** **Annual Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization 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 Organization 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 Organization'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 Organization 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.



**SAMPLE**  
**Board Member Conflict of Interests Disclosure Form**

Date: \_\_\_\_\_

Name: \_\_\_\_\_

A conflict of interest, or an appearance of a conflict, can arise whenever a transaction, or an action, of [Name of Nonprofit] conflicts with the personal interests, financial or otherwise, of that of a board member, or an immediate family member of a board member, or that the board member's employer (collectively "your personal interests").

Please describe below any relationships, transactions, or positions you hold (volunteer or otherwise), or circumstances that you believe could create a conflict of interest, now or in the future, between [Name of Nonprofit] and your personal interests, financial or otherwise:

\_\_\_\_\_ I have no conflict of interests to report.

I have the following conflict of interests, or potential conflicts of interests, to report:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

I have reviewed [Name of Nonprofit's] conflict of interests of policy and I understand that it is my obligation to disclose a conflict of interests, or appearance of a conflict, to the chair of the board when a conflict, or appearance of a conflict, arises, and that for transactions in which I have a conflict, I will abstain from any vote on the matter involving the conflict.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_





## Sample Confidentiality Agreements for Information about Clients

NOTE: These samples are provided for educational purposes only and should not be considered legal or other professional advice. The National Council of Nonprofits encourages nonprofits to seek the advice of competent professional advisors prior to adopting this or any template document.

### SAMPLE #1

#### **Confidentiality Policy for Employees, Volunteers and Board Members**

Respecting the privacy of our clients, donors, members, staff, volunteers and of the [Name of Nonprofit] itself is a basic value of [Name of Nonprofit]. Personal and financial information is confidential and should not be disclosed or discussed with anyone without permission or authorization from the [executive director]. Care shall also be taken to ensure that unauthorized individuals do not overhear any discussion of confidential information and that documents containing confidential information are not left in the open or inadvertently shared.

Employees, volunteers and board members of [Name of Nonprofit] may be exposed to information which is confidential and/or privileged and proprietary in nature. It is the policy of [Name of Nonprofit] that such information must be kept confidential both during and after employment or volunteer service. Staff and volunteers, including board members, are expected to return materials containing privileged or confidential information at the time of separation from employment or expiration of service.

Unauthorized disclosure of confidential or privileged information is a serious violation of this policy and will subject the person(s) who made the unauthorized disclosure to appropriate discipline, including removal/dismissal.

### SAMPLE #2

#### **Confidentiality Policy**

All information concerning clients, former clients, our staff, volunteers, and financial data, and business records of [Name of Nonprofit] is confidential. "Confidential" means that you are free to talk about [Name of Nonprofit] and about your program and your position, but you are not permitted to disclose clients' names or talk about them in ways that will make their identity known. No information may be released without appropriate authorization. This is a basic component of client care and business ethics. The board of directors, staff and our clients rely on paid and volunteer staff to conform to this rule of confidentiality.

[Name of Nonprofit] expects you to respect the privacy of clients and to maintain their personal and financial information as confidential. All records dealing with specific clients must be treated as confidential. General information, policy statements or statistical material that is not identified with any individual or family is not

classified as confidential. Staff members are responsible for maintaining the confidentiality of information relating to other staff members and volunteers, in addition to clients.

Failure to maintain confidentiality may result in termination of your employment, or other corrective action. This policy is intended to protect you as well as [Name of Nonprofit] because in extreme cases, violations of this policy also may result in personal liability.

*Rationale*

Confidentiality is the preservation of privileged information. By necessity personal and private information is disclosed in a professional working relationship. Part of what you learn is necessary to provide services to the applicant or client; other information is shared within the development of a helping, trusting relationship. Therefore, most information gained about individual clients through an assignment is confidential in terms of the law, and disclosure could make you legally liable. Disclosure could also damage your relationship with the client and make it difficult to help the person.

Before you begin your assignment as a staff member/volunteer, you should be aware of the laws and penalties for breaching confidentiality. Although the agency is liable for your acts within the scope of your duty, giving information to an unauthorized person could result in the agency's refusal to support you in the event of legal action. Violation of the state statutes regarding confidentiality of records is punishable upon conviction by fines or by imprisonment or by both.

**Certification**

I have read [Name of Nonprofit]'s policy on confidentiality and the Statement of Confidentiality presented above. I agree to abide by the requirements of the policy and inform my supervisor immediately if I believe any violation (unintentional or otherwise) of the policy has occurred. I understand that violation of this policy will lead to disciplinary action, up to and including termination of my service with [Name of Nonprofit].

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

SAMPLE #3

**ACKNOWLEDGEMENT OF CONFIDENTIALITY OF CLIENT INFORMATION**

I agree to treat as confidential all information about clients or former clients and their families that I learn during the performance of my duties as \_\_\_\_\_ (position title), and I understand that it would be a violation of policy to disclose such information to anyone without checking first with my supervisor.

Signature of Staff Member/Volunteer \_\_\_\_\_

Date \_\_\_\_\_ Name \_\_\_\_\_

SAMPLE #4

**Confidentiality Policy**

It is the policy of [Name of Nonprofit] that board members and employees of [Name of Nonprofit] will not disclose confidential information belonging to, or obtained through their affiliation with [Name of Nonprofit] to any person, including their relatives, friends, and business and professional associates, unless [Name of Nonprofit] has authorized disclosure. This policy is not intended to prevent disclosure where disclosure is required by law.

Board members, volunteers and employees are cautioned to demonstrate professionalism, good judgment, and care to avoid unauthorized or inadvertant disclosures of confidential information and should, for example, refrain from leaving confidential information contained in documents or on computer screens in plain view.

Upon separation of employment and at the end of a board member's term, he or she shall return, all documents, papers, and other materials, that may contain confidential information.

Failure to adhere to this policy will result in discipline, up to and including separation of employment or service with [Name of Nonprofit].

## SAMPLE WHISTLEBLOWER POLICY AS OF DECEMBER 1, 2009

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### NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. These sample policies are not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulations in the samples necessarily fit the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization. For more information, see the related Form 990 Policy Series Memorandum at: <http://www.publiccounsel.org/tools/assets/files/WBMemo.pdf>.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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### WHISTLEBLOWER PROTECTION POLICY

A. Application. This Whistleblower Protection Policy applies to all of the Organization's staff, whether full-time, part-time, or temporary employees, to all volunteers, to all who provide contract services, and to all officers and directors, each of whom shall be entitled to protection.

B. Reporting Credible Information. A protected person shall be encouraged to report information relating to illegal practices or violations of policies of the Organization (a "Violation") that such person in good faith has reasonable cause to believe is credible. Information shall be reported to the [Insert title of person designated for this position]

(the “Compliance Officer”), unless the report relates to the Compliance Officer, in which case the report shall be made to [Insert another person’s title, or the Board of Directors, or the Audit Committee or another appropriate committee of the Board of Directors] which shall be responsible to provide an alternative procedure.

Anyone reporting a Violation must act in good faith, and have reasonable grounds for believing that the information shared in the report indicates that a Violation has occurred.

C. Investigating Information. The Compliance Officer shall promptly investigate each such report and prepare a written report to the Board of Directors. In connection with such investigation all persons entitled to protection shall provide the Compliance Officer with credible information. All actions of the Compliance Officer in receiving and investigating the report and additional information shall endeavor to protect the confidentiality of all persons entitled to protection.

D. Confidentiality

The Organization encourages anyone reporting a Violation to identify himself or herself when making a report in order to facilitate the investigation of the Violation. However, reports may be submitted anonymously by *[select one or more of the following (or insert other procedure):* [filling out a “Whistleblower Reporting Form” and depositing the form in a designated box] / [filling out a “Whistleblower Reporting Form” and mailing it to [insert appropriate recipient, such as the chair of the appropriate committee]] / [calling the anonymous hotline established by the Organization for this purpose]/. Reports of Violations or suspected Violations will be kept confidential to the extent possible, with the understanding that confidentiality may not be maintained where identification is required by law or in order to enable the Organization or law enforcement to conduct an adequate investigation.

E. Protection from Retaliation. No person entitled to protection shall be subjected to retaliation, intimidation, harassment, or other adverse action for reporting information in accordance with this Policy. Any person entitled to protection who believes that he or she is the subject of any form of retaliation for such participation should immediately report the same as a violation of and in accordance with this Policy.

Any individual within the Organization who retaliates against another individual who has reported a Violation in good faith or who, in good faith, has cooperated in the investigation of a Violation is subject to discipline, including termination of employment or volunteer status.

F. Dissemination and Implementation of Policy. This Policy shall be disseminated in writing to all affected constituencies. The Organization shall adopt procedures for implementation of this Policy, which may include:

- (1) documenting reported Violations;

- (2) working with legal counsel to decide whether the reported Violation requires review by the Compliance Officer or should be directed to another person or department;
- (3) keeping the board of directors [and the audit committee or other applicable committee] informed of the progress of the investigation;
- (4) interviewing employees;
- (5) requesting and reviewing relevant documents, and/or requesting that an auditor or counsel investigate the complaint; and
- (6) preparing a written record of the reported violation and its disposition, to be retained for a specified period of time.

The procedures for implementation of this Policy shall include a process for communicating with a complainant about the status of the complaint, to the extent that the complainant's identity is disclosed, and to the extent consistent with any privacy or confidentiality limitations.

## SAMPLE COMPENSATION POLICY AS OF MAY 26, 2010

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### NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. These sample policies are not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulations in the samples necessarily fit the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization. For more information, see the related Form 990 Policy Series Memorandum at: <http://www.publiccounsel.org/tools/assets/files/CompMemo.pdf>.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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## COMPENSATION POLICY FOR OFFICERS, DIRECTORS, TOP MANAGEMENT OFFICIAL AND KEY EMPLOYEES

### 1. Policy and Purposes

This is the policy of ORGANIZATION (the “organization”) with respect to the review and approval of compensation of its officers and employees. [*Alternate introductory sentence for 501(c)(3) and 501(c)(4) organizations:* It is the policy of ORGANIZATION (the “organization”) that all compensation paid by the organization is reasonable based upon a review of comparability information.] This policy provides a procedure for the review and approval of the compensation of the officers, directors

[trustees], CEO, executive director or top management official, and key employees of the organization (“Compensated Individuals”) consistent with applicable federal tax law and California law. (The IRS Form 990 definitions for some of the identified positions are included in the Appendix and used in this policy with the same meanings.)

## **2. Procedure for Approval of Compensation**

**A. General.** The board of directors or trustees, or authorized committee (“Governing Body”) shall review and approve the compensation of Compensated Individuals.

[THE FOLLOWING VERSION OF PARAGRAPH B IS FOR FORM 990 FILERS (OTHER THAN 501(c)(3) AND (c)(4) ORGANIZATIONS):]

**B. Specific Requirements.** The Governing Body reviewing and approving compensation for Compensated Individuals shall satisfy the following requirements or procedures:

**(1) Approval by Persons Without a Conflict of Interest.** Compensation shall be reviewed and approved by the Governing Body, provided that persons with a conflict of interest with respect to the compensation arrangement at issue are not involved. Members of the Governing Body do not have a conflict of interest if they (a) are not benefitting from or participating in the compensation arrangement; (b) are not in an employment relationship subject to the direction or control of any person benefitting from or participating in the compensation arrangement; (c) do not receive compensation or other payments subject to the approval of any person benefitting from or participating in the compensation arrangement; (d) have no material financial interest affected by the compensation arrangement; and (e) do not approve a transaction providing economic benefits to any person participating in the compensation arrangement, who in turn has or will approve a transaction providing economic benefits to the member. (Form 990, Part VI, Line 15, 2009 Instructions; Treas. Reg. § 53.4958-6(c)(1)(iii).)

**(2) Use of Comparability Data.** In its review and approval of compensation, the Governing Body shall review and use data and surveys of comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations. (Form 990, Part VI, Line 15, 2009 Instructions.)

**(3) Recording Compensation Deliberations.** The Governing Body shall contemporaneously document and maintain records with respect to the deliberations and decisions regarding the compensation arrangement. (Form 990, Part VI, Line 15, 2009 Instructions.)

[IF THE ORGANIZATION HOLDS PROPERTY FOR CHARITABLE PURPOSES AND THEREFORE MAY BE SUBJECT TO CALIFORNIA GOVERNMENT CODE § 12586(g), THE FOLLOWING LANGUAGE SHOULD BE ADDED:]



**(4) Review and Approval for Certain Executive Officers.** In addition to the requirements of this policy applicable to all Compensated Individuals, any compensation set for the CEO or president, and CFO or treasurer, (or individuals with equivalent powers, duties or responsibilities comparable to these positions), must also be determined to be just and reasonable. The Governing Body's review and approval shall occur initially upon hiring, whenever the term of employment, if any, is renewed or extended, and whenever the compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

[THE FOLLOWING ALTERNATIVE VERSION OF PARAGRAPH B IS FOR 501(c)(3) AND 501(c)(4) ORGANIZATIONS, WHICH ARE SUBJECT TO INTERMEDIATE SANCTIONS FOR EXCESS BENEFITS UNDER 26 U.S.C. § 4958. (NOTE: COMPLIANCE WITH DETAILED REGULATIONS MAY CREATE A REBUTTABLE PRESUMPTION THAT THE COMPENSATION IS REASONABLE AND NOT AN EXCESS BENEFIT PURSUANT TO TREAS. REG. § 53.4958-6):]

**B. Specific Requirements.** The Governing Body reviewing and approving compensation for Compensated Individuals shall satisfy the following requirements or procedures:

**(1) Approval by Persons Without a Conflict of Interest.** Compensation shall be reviewed and approved by the Governing Body, provided that persons with a conflict of interest with respect to the compensation arrangement at issue are not involved. Members of the Governing Body do not have a conflict of interest if they (a) are not benefitting from or participating in the compensation arrangement; (b) are not in an employment relationship subject to the direction or control of any person benefitting from or participating in the compensation arrangement; (c) do not receive compensation or other payments subject to the approval of any person benefitting from or participating in the compensation arrangement; (d) have no material financial interest affected by the compensation arrangement; and (e) do not approve a transaction providing economic benefits to any person participating in the compensation arrangement, who in turn has or will approve a transaction providing economic benefits to the member. (Form 990, Part VI, Line 15, Instructions; Treas. Reg. § 53.4958-6(c)(1)(iii).)

**(2) Use of Comparability Data.** In its review and approval of compensation, the Governing Body shall affirmatively determine that compensation is reasonable to the organization based upon information sufficient to determine whether the value of services is the amount that would ordinarily be paid for like services by like enterprises, whether taxable or tax exempt, under like circumstances. Relevant information includes, but is not limited to, compensation levels paid by similarly situated organizations, both taxable and tax exempt, for functionally comparable positions; the availability of similar services in the geographic area of the organization; current compensation surveys compiled by independent firms; and actual written offers from similar institutions competing for the services of the compensated person. If the organization has average annual gross receipts of less than \$1 million for the prior three tax years, the Governing Body will have

appropriate comparability information if it has information on compensation paid by three comparable organizations in the same or similar communities for similar services. (Form 990, Part VI, Line 15, 2009 Instructions; Treas. Reg. §§ 53.4958-4(b), 53.4958-6(c)(2)).

**(3) Recording Compensation Deliberations.** The Governing Body's review and approval of compensation shall be promptly recorded in the minutes of its meetings and contain: (a) the terms of the compensation and the date approved; (b) the names of the members of the Governing Body who were present during the discussion and those who voted on the approved compensation; (c) the comparability data obtained and relied upon, and how it was obtained; (d) any action taken with respect to consideration of the compensation by a member of the Governing Body who had a conflict of interest with respect to the compensation; and (e) if the reasonable compensation is higher or lower than the range of comparability data obtained, the basis for the decision. Such minutes shall be reviewed and approved by the Governing Body as reasonable, accurate and complete within a reasonable time after the review and approval of the compensation. (Form 990, Part VI, Line 15, 2009 Instructions; Treas. Reg. § 53.4958-6(c)(3).)

[IF THE ORGANIZATION HOLDS PROPERTY FOR CHARITABLE PURPOSES AND THEREFORE MAY BE SUBJECT TO CALIFORNIA GOVERNMENT CODE § 12586(g), THE FOLLOWING LANGUAGE SHOULD BE ADDED:]

**(4) Review and Approval for Certain Executive Officers.** In addition to the requirements of this policy applicable to all Compensated Individuals, any compensation set for the CEO or president, and CFO or treasurer, (or individuals with equivalent powers, duties or responsibilities comparable to these positions), must be determined to be just and reasonable. The Governing Body's review and approval shall occur initially upon hiring, whenever the term of employment, if any, is renewed or extended, and whenever the compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees.

## SAMPLE INVESTMENT POLICY AS OF SEPTEMBER 14, 2010

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### NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

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Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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### INVESTMENT POLICY OF [NAME] (the “Organization”) <sup>1</sup>

#### PURPOSE OF INVESTMENT POLICY

The purpose of this Investment Policy is to provide a clear statement of the Organization’s investment objective, to define the responsibilities of the Board of Directors and any other parties involved in managing the Organization’s investments, and to identify or provide target asset allocations, permissible investments and diversification requirements.

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<sup>1</sup> Thank you to Tamkin Foundation, Inc. for permission to incorporate language from the Foundation’s Investment Policy Statement into this Sample Policy.

## **INVESTMENT OBJECTIVE**

The overall investment objective of the Organization is to maximize the return on invested assets while minimizing risk and expenses. This is done through prudent investing and planning, as well as through the maintenance of a diversified portfolio.

## **GENERAL PROVISIONS**

- All transactions shall be for the sole benefit of the Organization.
- The Directors shall consider updating the Organization's investment policy on an annual basis.
- The Directors shall conduct an annual review of the Organization's investment assets to verify the existence and marketability of the underlying assets or satisfy themselves that such a review has been conducted in connection with an independent audit (if any) of the Organization's financial statements.
- Any investment that is not expressly permitted under this Policy must be formally reviewed and approved by the Directors.
- The Directors will endeavor to operate the Organization's investment program in compliance with all applicable state, federal and local laws and regulations concerning management of investment assets [including IRC §4944 if the Organization is classified as a private foundation for federal tax purposes.]
- Investments shall be diversified with a view to minimizing risk.

## **DELEGATION OF RESPONSIBILITY; RELIANCE ON EXPERTS AND ADVISORS**

- The Board of Directors has ultimate responsibility for the investment and management of the Organization's investment assets.
- The Board may delegate authority over the Organization's investments to a properly formed and constituted Investment Committee, being a Board Committee comprised only of directors.
- The Board or Board Committee may hire outside experts as investment consultants or investment managers.
- The Board may also establish an advisory committee (which may include non-directors) to provide investment advice to the Board or to the Board Committee. Advisory committees have no authority to act for the Board, but may monitor

compliance with the investment policy, recommend changes, and assist the Board or Board Committee in selecting and retaining Investment Managers to execute this Investment Policy.

### **RESPONSIBILITIES OF THE BOARD, OR IF AUTHORITY IS DELEGATED, THE INVESTMENT COMMITTEE**

- The Board, or if authority is delegated, the Investment Committee, is charged with the responsibility of managing the investment assets of the Organization. The specific responsibilities of the Board or the Investment Committee, as applicable, include:
  1. Communicating the Organization's financial needs to the Investment Managers on a timely basis.
  2. Determining the Organization's risk tolerance and investment horizon and communicating these to the appropriate parties.
  3. Establishing reasonable and consistent investment objectives, policy guidelines and allocations which will direct the investment of the assets, to be reviewed by the Board on an annual basis.
  4. Prudently and diligently selecting one or more qualified investment professionals, including investment managers(s), investment consultant(s), and custodian(s).
  5. Regularly evaluating the performance of investment manager(s) to assure adherence to policy guidelines and to monitor investment objective progress.
  6. Developing and enacting proper control procedures; e.g., replacing investment manager(s) due to a fundamental change in the investment management process, or for failure to comply with established guidelines.

### **RESPONSIBILITIES OF INVESTMENT MANAGERS**

- Each investment manager will invest assets placed in his, her or its care in accordance with this investment policy.
- Each investment manager must acknowledge in writing acceptance of responsibility as a fiduciary.
- Each investment manager will have full discretion in making all investment decisions for the assets placed under his, her or its care and management, while operating within all policies, guidelines, constraints, and philosophies outlined in

this Investment Policy. Specific responsibilities of investment manager(s) include:

1. Discretionary investment management, including decisions to buy, sell, or hold individual securities, and to alter allocation within the guidelines established in this statement.
2. Reporting, on a timely basis, monthly investment performance results.
3. Communicating any major changes in the economic outlook, investment strategy, or any other factors that affect implementation of investment process.
4. Informing the Board, or if authority is delegated, the Investment Committee, regarding any changes in portfolio management personnel, ownership structure, investment philosophy, etc.
5. Voting proxies, if requested by the Board, or if authority is delegated, the Investment Committee, on behalf of the Organization.
6. Administering the Organization's investments at reasonable cost, balanced with avoiding a compromise of quality. These costs include, but are not limited to, management and custodial fees, consulting fees, transaction costs and other administrative costs chargeable to the Organization.

#### **GENERAL INVESTMENT GUIDELINES**

- A copy of this Investment Policy shall be provided to all Investment Managers.
- The Organization is a tax-exempt organization as described in section 501(c)(3) [or section 501(c)(6), etc., as applicable] of the Internal Revenue Code. This tax-exempt status should be taken into consideration when making Organization investments.
- The Organization is expected to operate in perpetuity; therefore, a 10 year investment horizon shall be employed. Interim fluctuations should be viewed with appropriate perspective. [The foregoing may or may not be included, as applicable, depending upon the Organization's liquidity requirements.]
- A cash account shall be maintained with a zero to very low risk tolerance to keep cash available for grant distributions, tax obligations and other anticipated expenses.
- Transactions shall be executed at reasonable cost, taking into consideration prevailing market conditions and services and research provided by the executing broker.

- Permitted investments include: [Provide a list of permitted investments here] Cash and cash equivalents, marketable securities including equities and fixed income securities, \_\_\_\_\_, \_\_\_\_\_.

[Note: The Organization should determine its own credit quality standards and prohibited transactions, based on its investment objectives and risk tolerance. The following two bullet items represent samples only and are not recommended for use without review by investment counsel.]

- No fixed income security shall have an equivalent credit quality below investment grade at the time of purchase, defined as:
  1. BBB by Standard & Poors for straight bonds and convertibles
  2. Baa3 by Moody's Investor Service for straight bonds and convertibles
  3. A1 by Standard & Poors for short term securities
  4. P1 by Moody's Investor Service for short-term securities
  5. AAA for money market accounts
- The following transactions are prohibited: Purchase of non-negotiable securities, derivatives, high risk or junk bonds, private placements, precious metals, commodities, short sales, any margin transactions, straddles, warrants, options, life insurance contracts, leverage or letter stock.

## **DIVERSIFICATION**

- The Organization will maintain a reasonable diversification of investment assets between asset classes and investment categories at all times.
- Investments in the equity securities of any one company shall not exceed [5%] of the portfolio nor shall the total securities position (debt and equity) in any one company exceed [10%] of the portfolio.
- Reasonable sector allocations and diversification shall be maintained. No more than [25%] of the entire portfolio may be invested in the securities of any one sector.
- Investments within the investment portfolio should be readily marketable.
- The investment portfolio should not be a blind pool; each investment must be available for review.

## ASSET ALLOCATION

- The asset allocation policy shall be predicated on the following factors:
  1. Historical performance of capital markets adjusted for the perception of the future short and long-term capital market performance.
  2. The correlation of returns among the relevant asset classes.
  3. The perception of future economic conditions, including inflation and interest rate assumptions.
  4. Liquidity requirements for the projected grants and other charitable expenditures.
  5. The relationship between the current and projected assets of the Organization and projected liabilities.

## ALLOCATION RANGE

[Note: The Organization should determine its own allocations, based on its investment objectives and cash needs. The following allocation schedule is only a sample and is not recommended for use without review by investment counsel.]

Asset Allocation Range	Target	Upper limit
Cash & Equivalents	5%	0 – 15%
Fixed Income	40%	20 – 60%
Equities: Domestic Large Cap	25%	20 – 40%
Equities: Domestic Small/Mid Cap	20%	10 – 25%
Equities: International	10%	5 – 15%

- Rebalancing shall be done on a semi-annual basis or more frequently if deemed necessary.

## PERFORMANCE

- Performance objectives are to be met on a net of fees basis. The investment performance of each asset allocation class will be measured on two levels: against inflation objectives for the total Organization and against index objectives for individual portfolio components. Investment performance shall be measured no



less than quarterly on a net of fees basis. Performance shall be evaluated on a three to five year basis to allow for market fluctuations and volatility.

\*\*\*\*\*

**Nonprofit  
Risk Management  
Center** 

...find the answer here

**SAMPLE  
Gift Acceptance Policies**

**SAMPLE #1**

1. [Name of Nonprofit] solicits and accepts gifts that are consistent with its mission and that support its core programs, as well as special projects.
2. Donations and other forms of support will generally be accepted from individuals, partnerships, corporations, foundations, government agencies, or other entities, subject to the following limitations:
  - a. [describe limitations here, such as delivered to the agency, new or nearly new condition, proof of ownership.]
3. Gifts of Real Property, Personal Property or Securities may only be accepted upon approval of the [name of appropriate reviewing body, such as the nonprofit's Finance Committee].

**SAMPLE #2**

1. [Organization Name] solicits and accepts gifts that are consistent with its mission.
2. Donations will generally be accepted from individuals, partnerships, corporations, foundations, government agencies, or other entities, without limitations.
3. In the course of its regular fundraising activities, [Organization Name] will accept donations of money, real property, personal property, stock, and in-kind services.
4. Certain types of gifts must be reviewed prior to acceptance due to the special liabilities they may pose for [Organization Name]. Examples of gifts which will be subject to review include gifts of real property, gifts of personal property, and gifts of securities.

**SAMPLE #3**

[in the format of a corporate resolution]

Whereas [Organization Name] actively solicits gifts and grants to further the mission of the organization, and

These sample policies are shared for educational purposes only and should not be considered legal advice for any specific situation. The Nonprofit Risk Management Center encourages all nonprofits to have governance policies reviewed by legal counsel. [www.nonprofitrisk.org](http://www.nonprofitrisk.org)

Whereas there is the potential for controversy if certain gifts are accepted, the organization has adopted the following Gift Acceptance Policy:

When considering whether to solicit or accept gifts, the organization will consider the following factors:

- Values—whether the acceptance of the gift compromises any of the core values of [Organization Name]
- Compatibility—Whether there is compatibility between the intent of the donor and the organization’s use of the gift
- Public Relationships—whether acceptance of the gift damage the reputation of [Organization Name]
- Primary Benefit—whether the primary benefit is to [Organization Name], versus the donor
- Consistency—is acceptance of the gift consistent with prior practice?
- Form of Gift—Is the gift offered in a form that [Organization Name] can use without incurring substantial expense or difficulty?
- Effect on Future Giving—Will the gift encourage or discourage future gifts?

All decisions to solicit and/or accept potentially controversial gifts will be made by the Executive Committee of the Board in consultation with the Executive Director. The primary consideration will be the impact of the gift on the organization.

#### SAMPLE #4

[Organization Name] solicits and accepts gifts for purposes that will help the organization further and fulfill its mission. [Organization Name] urges all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts, including the resulting tax and estate planning consequences. The following policies and guidelines govern acceptance of gifts made to [Organization Name] for the benefit of any of its operations, programs or services.

*Use of Legal Counsel*—[Organization Name] will seek the advice of legal counsel in matters relating to acceptance of gifts when appropriate. Review by counsel is recommended for:

- A. Gifts of securities that are subject to restrictions or buy-sell agreements.
- B. Documents naming [Organization Name] as trustee or requiring [Organization Name] to act in any fiduciary capacity.
- C. Gifts requiring [Organization Name] to assume financial or other obligations.
- D. Transactions with potential conflicts of interest.
- E. Gifts of property which may be subject to environmental or other regulatory restrictions.

*Restrictions on Gifts*—[Organization Name] will not accept gifts that (a) would result in [Organization Name] violating its corporate charter, (b) would result in [Organization Name] losing its status as an IRC § 501(c)(3) not-for-profit organization, (c) are too difficult or too expensive to administer in relation to their value, (d) would result in any unacceptable

consequences for [Organization Name], or (e) are for purposes outside [Organization Name]'s mission. Decisions on the restrictive nature of a gift, and its acceptance or refusal, shall be made by the Executive Committee, in consultation with the Executive Director.

*Gifts Generally Accepted Without Review—*

- *Cash.* Cash gifts are acceptable in any form, including by check, money order, credit card, or on-line. Donors wishing to make a gift by credit card must provide the card type (e.g., Visa, MasterCard, American Express), card number, expiration date, and name of the card holder as it appears on the credit card.
- *Marketable Securities.* Marketable securities may be transferred electronically to an account maintained at one or more brokerage firms or delivered physically with the transferor's endorsement or signed stock power (with appropriate signature guarantees) attached. All marketable securities will be sold promptly upon receipt unless otherwise directed by [Name of Organization]'s Investment Committee. In some cases marketable securities may be restricted, for example, by applicable securities laws or the terms of the proposed gift; in such instances the decision whether to accept the restricted securities shall be made by the Executive Committee.
- *Bequests and Beneficiary Designations under Revocable Trusts, Life Insurance Policies, Commercial Annuities and Retirement Plans.* Donors are encouraged to make bequests to [Organization Name] under their wills, and to name [Organization Name] as the beneficiary under trusts, life insurance policies, commercial annuities and retirement plans.
- *Charitable Remainder Trusts.* [Organization Name] will accept designation as a remainder beneficiary of charitable remainder trusts.
- *Charitable Lead Trusts.* [Organization Name] will accept designation as an income beneficiary of charitable lead trusts.

*Gifts Accepted Subject to Prior Review—*Certain forms of gifts or donated properties may be subject to review prior to acceptance. Examples of gifts subject to prior review include, but are not limited to:

- *Tangible Personal Property.* The Executive Committee shall review and determine whether to accept any gifts of tangible personal property in light of the following considerations: does the property further the organization's mission? Is the property marketable? Are there any unacceptable restrictions imposed on the property? Are there any carrying costs for the property for which the organization may be responsible? Is the title/provenance of the property clear?
- *Life Insurance.* [Organization Name] will accept gifts of life insurance where [Organization Name] is named as both beneficiary and irrevocable owner of the insurance policy. The donor must agree to pay, before due, any future premium payments owing on the policy.
- *Real Estate.* All gifts of real estate are subject to review by the Executive Committee. Prior to acceptance of any gift of real estate other than a personal residence, [Organization Name] shall require an initial environmental review by a qualified environmental firm. In the event that the initial review reveals a potential problem, the organization may retain a qualified environmental firm to conduct an environmental audit. Criteria for acceptance of gifts of real

estate include: Is the property useful for the organization's purposes? Is the property readily marketable? Are there covenants, conditions, restrictions, reservations, easements, encumbrances or other limitations associated with the property? Are there carrying costs (including insurance, property taxes, mortgages, notes, or the like) or maintenance expenses associated with the property? Does the environmental review or audit reflect that the property is damaged or otherwise requires remediation?

## **SAMPLE Policy for Board Review of Joint Ventures and Partnerships**

In compliance with Internal Revenue Service guidelines for approval and management of any joint venture entered into by ABC Nonprofit, Inc. (“ABC”), the Board of Directors adopts the following guidelines.

### Activities Subject to this Policy

For the purposes of this policy, the term “Joint Venture” is defined as any arrangement, including contractual or more formal arrangements undertaken through a limited liability company, partnership, or other entity, through which ABC and another entity jointly undertake any activity or business venture, or otherwise agree to joint ownership of any asset. A Joint Venture may include both taxable and tax-exempt activities.

### Approval and Management of Joint Activities

Before making any decision to participate in a Joint Venture, ABC will ensure that the Joint Venture furthers ABC’s exempt purposes and will negotiate at arm’s length contractual and other terms of participation that safeguard ABC’s exemption from federal income tax. Such terms shall be in writing in the operating agreement of the Joint Venture and shall include the following minimum requirements:

- With respect to any whole joint venture (that is, a joint venture in which ABC contributes substantially *all* of its assets to the enterprise), ABC’s control over the Joint Venture through fifty-one percent (51%) or more of the voting rights and/or veto power;
- With respect to any ancillary joint venture (that is, a joint venture to which a portion of ABC’s resources are contributed), ABC would, at a minimum, maintain sole control over the tax-exempt aspects of the Joint Venture and would have voting and ownership interests in the Joint Venture that are consistent with ABC’s capital contributions;
- A requirement that any subsequent contract with ABC’s partner in the Joint Venture be negotiated at arm’s length and for fair market value;
- A requirement that the Joint Venture give priority to ABC’s tax-exempt purposes over maximization of profit for the participants of the Joint Venture; and
- A prohibition on activities that would jeopardize ABC’s tax-exempt status.

Where there is any question as to whether a particular Joint Venture may pose a risk to ABC's tax-exempt status, a decision to enter into such Joint Venture will be made only in consultation with legal and/or tax counsel.





## SAMPLE DOCUMENT RETENTION AND DESTRUCTION POLICY AS OF DECEMBER 1, 2009

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### NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. These sample policies are not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulations in the samples necessarily fit the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization. For more information, see the related Form 990 Policy Series Memorandum at: <http://www.publiccounsel.org/tools/assets/files/DocMemo.pdf>.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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## DOCUMENT RETENTION AND DESTRUCTION POLICY

### 1. Policy and Purposes

This Policy represents the policy of \_\_\_\_\_ (the "organization") with respect to the retention and destruction of documents and other records, both in hard copy and electronic media (which may merely be referred to as "documents" in this Policy). Purposes of the Policy include (a) retention and maintenance of documents necessary for the proper functioning of the organization as well as to comply with applicable legal requirements; (b) destruction of documents which no longer need to be retained; and (c) guidance for the Board of Directors, officers, staff and other constituencies with respect to their responsibilities concerning document retention and destruction. Notwithstanding the foregoing, the organization reserves the right to revise or revoke this Policy at any time.

## **2. Administration**

**2.1 Responsibilities of the Administrator.** The organization's \_\_\_\_\_ [CEO, President, Executive Vice President, Vice President for \_\_\_, etc.] shall be the administrator ("Administrator") in charge of the administration of this Policy. The Administrator's responsibilities shall include supervising and coordinating the retention and destruction of documents pursuant to this Policy and particularly the Document Retention Schedule included below. The Administrator shall also be responsible for documenting the actions taken to maintain and/or destroy organization documents and retaining such documentation. The Administrator may also modify the Document Retention Schedule from time to time as necessary to comply with law and/or to include additional or revised document categories as may be appropriate to reflect organizational policies and procedures. The Administrator is also authorized to periodically review this Policy and Policy compliance with legal counsel and to report to the Board of Directors as to compliance. The Administrator may also appoint one or more assistants to assist in carrying out the Administrator's responsibilities, with the Administrator, however, retaining ultimate responsibility for administration of this Policy.

**2.2 Responsibilities of Constituencies.** This Policy also relates to the responsibilities of board members, staff, volunteers and outsiders with respect to maintaining and documenting the storage and destruction of the organization's documents. The Administrator shall report to the Board of Directors (the board members acting as a body), which maintains the ultimate direction of management. The organization's staff shall be familiar with this Policy, shall act in accordance therewith, and shall assist the Administrator, as requested, in implementing it. The responsibility of volunteers with respect to this Policy shall be to produce specifically identified documents upon request of management, if the volunteer still retains such documents. In that regard, after each project in which a volunteer has been involved, or each term which the volunteer has served, it shall be the responsibility of the Administrator to confirm whatever types of documents the volunteer retained and to request any such documents which the Administrator feels will be necessary for retention by the organization (not by the volunteer). Outsiders may include vendors or other service providers. Depending upon the sensitivity of the documents involved with the particular outsider relationship, the organization, through the Administrator, shall share this Policy with the outsider, requesting compliance. In particular instances, the Administrator may require that the contract with the outsider specify the particular responsibilities of the outsider with respect to this Policy.

**3. Suspension of Document Destruction; Compliance.** The organization becomes subject to a duty to preserve (or halt the destruction of) documents once litigation, an audit or a government investigation is reasonably anticipated. Further, federal law imposes criminal liability (with fines and/or imprisonment for not more than 20 years) upon whomever "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or in relation to or contemplation of any such matter or case." Therefore, if the Administrator becomes aware that litigation, a governmental audit or a government investigation has been instituted, or is reasonably anticipated or contemplated, the Administrator shall

immediately order a halt to all document destruction under this Policy, communicating the order to all affected constituencies in writing. The Administrator may thereafter amend or rescind the order only after conferring with legal counsel. If any board member or staff member becomes aware that litigation, a governmental audit or a government investigation has been instituted, or is reasonably anticipated or contemplated, with respect to the organization, and they are not sure whether the Administrator is aware of it, they shall make the Administrator aware of it. Failure to comply with this Policy, including, particularly, disobeying any destruction halt order, could result in possible civil or criminal sanctions. In addition, for staff, it could lead to disciplinary action including possible termination.

**4. Electronic Documents; Document Integrity.** Documents in electronic format shall be maintained just as hard copy or paper documents are, in accordance with the Document Retention Schedule. Due to the fact that the integrity of electronic documents, whether with respect to the ease of alteration or deletion, or otherwise, may come into question, the Administrator shall attempt to establish standards for document integrity, including guidelines for handling electronic files, backup procedures, archiving of documents, and regular checkups of the reliability of the system; provided, that such standards shall only be implemented to the extent that they are reasonably attainable considering the resources and other priorities of the organization.

**5. Privacy.** It shall be the responsibility of the Administrator, after consultation with counsel, to determine how privacy laws will apply to the organization's documents from and with respect to employees and other constituencies; to establish reasonable procedures for compliance with such privacy laws; and to allow for their audit and review on a regular basis.

**6. Emergency Planning.** Documents shall be stored in a safe and accessible manner. Documents which are necessary for the continued operation of the organization in the case of an emergency shall be regularly duplicated or backed up and maintained in an off-site location. The Administrator shall develop reasonable procedures for document retention in the case of an emergency.

**7. Document Creation and Generation.** The Administrator shall discuss with staff the ways in which documents are created or generated. With respect to each employee or organizational function, the Administrator shall attempt to determine whether documents are created which can be easily segregated from others, so that, when it comes time to destroy (or retain) those documents, they can be easily culled from the others for disposition. For example, on an employee-by-employee basis, are e-mails and other documents of a significantly non-sensitive nature so that they might be deleted, even in the face of a litigation hold with respect to other, more sensitive, documents? This dialogue may help in achieving a major purpose of the Policy - - to conserve resources -- by identifying document streams in a way that will allow the Policy to routinely provide for destruction of documents. Ideally, the organization will create and archive documents in a way that can readily identify and destroy documents with similar expirations.

**8. Document Retention Schedule. [Periods are suggested but are not necessarily a substitute for counsel's own research and determination as to appropriate periods.]**

<u>Document Type</u>	<u>Retention Period</u>
<b>Accounting and Finance</b>	
Accounts Payable	7 years
Accounts Receivable	7 years
Annual Financial Statements and Audit Reports	Permanent
Bank Statements, Reconciliations & Deposit Slips	7 years
Canceled Checks – routine	7 years
Canceled Checks – special, such as loan repayment	Permanent
Credit Card Receipts	3 years
Employee/Business Expense Reports/Documents	7 years
General Ledger	Permanent
Interim Financial Statements	7 years
<b>Contributions/Gifts/Grants</b>	
Contribution Records	Permanent
Documents Evidencing Terms of Gifts	Permanent
Grant Records	7 yrs after end of grant period
<b>Corporate and Exemption</b>	
Articles of Incorporation and Amendments	Permanent
Bylaws and Amendments	Permanent
Minute Books, including Board & Committee Minutes	Permanent
Annual Reports to Attorney General & Secretary of State	Permanent
Other Corporate Filings	Permanent
IRS Exemption Application (Form 1023 or 1024)	Permanent
IRS Exemption Determination Letter	Permanent
State Exemption Application (if applicable)	Permanent
State Exemption Determination Letter (if applicable)	Permanent
Licenses and Permits	Permanent
Employer Identification (EIN) Designation	Permanent
<b>Correspondence and Internal Memoranda</b>	
Hard copy correspondence and internal memoranda relating to a particular document otherwise addressed in this Schedule should be retained for the same period as the document to which they relate.	
Hard copy correspondence and internal memoranda relating to routine matters with no lasting significance	Two years
Correspondence and internal memoranda important to the organization or having lasting significance	Permanent, subject to review

**Electronic Mail (E-mail) to or from the organization**

Electronic mail (e-mails) relating to a particular document otherwise addressed in this Schedule should be retained for the same period as the document to which they relate, but may be retained in hard copy form with the document to which they relate.

E-mails considered important to the organization or of lasting significance should be printed and stored in a central repository . Permanent, subject to review

E-mails not included in either of the above categories 12 months

**Electronically Stored Documents**

Electronically stored documents (e.g., in pdf, text or other electronic format) comprising or relating to a particular document otherwise addressed in this Schedule should be retained for the same period as the document which they comprise or to which they relate, but may be retained in hard copy form (unless the electronic aspect is of significance).

Electronically stored documents considered important to the organization or of lasting significance should be printed and stored in a central repository (unless the electronic aspect is of significance). Permanent, subject to review

Electronically stored documents not included in either of the above categories Two years

**Employment, Personnel and Pension**

Personnel Records 10 yrs after employment ends  
Employee contracts 10 yrs after termination  
Retirement and pension records Permanent

**Insurance**

Property, D&O, Workers' Compensation and General Liability Insurance Policies Permanent  
Insurance Claims Records Permanent

**Legal and Contracts**

Contracts, related correspondence and other supporting documentation 10 yrs after termination  
Legal correspondence Permanent

**Management and Miscellaneous**

Strategic Plans 7 years after expiration  
Disaster Recovery Plan 7 years after replacement  
Policies and Procedures Manual Current version with revision history

**Property – Real, Personal and Intellectual**

Property deeds and purchase/sale agreements	Permanent
Property Tax	Permanent
Real Property Leases	Permanent
Personal Property Leases	10 years after termination
Trademarks, Copyrights and Patents	Permanent

**Tax**

Tax exemption documents & correspondence	Permanent
IRS Rulings	Permanent
Annual information returns – federal & state	Permanent
Tax returns	Permanent

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