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## **CONFLICT OF INTEREST POLICY**

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Polk County Continuum of Care  
Homeless Coalition of Polk  
County Lead Agency  
1815 Crystal Lake Drive  
Lakeland, FL 33801

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## **PURPOSE**

1. The purpose of this Board conflict of interest policy is to protect the Polk County Continuum of Care's (CoC) interests when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer of the CoC or might result in a possible excess benefit transaction.
2. This policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.
3. This policy is also intended to identify "independent" directors.

## **DEFINITIONS**

1. Interested person -- Any director, principal officer, or member of a committee with board of directors delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
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 CoC has a transaction or arrangement,
  - b) A compensation arrangement with the CoC or with any entity or individual with which the CoC 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 CoC is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board decides that a conflict of interest exists, in accordance with this policy.

3. Independent Voting Member of the Governing Body -- A director shall be considered "independent" for the purposes of this policy if he or she is "independent" as defined in the instructions for the IRS 990 at attachment B.

## **CONTINUUM OF CARE CODE OF CONDUCT**

The following Code of Conduct provides a foundation of ethics for the Polk County Continuum of Care

The Continuum prohibits the solicitation and acceptance of gifts or gratuities (anything of monetary value) by officers, employees and agents for their personal benefit. Ask yourself if the gift would have been offered if you did not have your position. If the answer is "No" then you should decline accepting the gift.

- 1 The Continuum promotes impartiality in performing official duties, and prohibits any activity representing a conflict of interest. You should not act on a matter if a reasonable person who knew the circumstances of the situation could legitimately question your fairness.

2. The Continuum prohibits the misuse of position. You cannot use your position with the Continuum for your own personal gain or for the benefit of family or friends.
3. Board members and Lead Agency employees including the executive director shall:
  - a) Put forth honest effort in the performance of their duties.
  - b) Shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Continuum without previous Board approval.
  - c) Disclose waste, fraud, abuse, and corruption to appropriate authorities.
  - d) Adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

Violation of this any portion of this code will be subject to disciplinary action which could include immediate termination. The code has been distributed to the Continuum's Board of Directors, as well as posted on the Continuum's website. A link to the code has also been distributed to the Continuum's partner agencies.

## **PROCEDURES**

1. Duty to Disclose -- In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board.
2. Recusal of Self – Any director may recuse himself or herself at any time from involvement in any decision or discussion in which the director believes he or she has or may have a conflict of interest, without going through the process for determining whether a conflict of interest exists.
3. Determining Whether a Conflict of Interest Exists -- After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the Board meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board members shall decide if a conflict of interest exists.
4. Procedures for Addressing the Conflict of Interest:
  - a) An interested person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
  - b) The President of the Board shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
  - c) After exercising due diligence, the Board shall determine whether the CoC can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
  - d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the CoC's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
5. Violations of the Conflicts of Interest Policy:

- a) If the Board has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **RECORDS OF PROCEEDINGS**

The minutes of the Board shall contain:

- a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict of interest in fact existed.
- b) The names of the persons who were present for 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.

## **COMPENSATION**

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

## **ANNUAL STATEMENTS**

1. Each director, principal officer and member of a committee with Board delegated powers shall annually sign a statement which affirms such person:
  - a) has received a copy of the conflict of interest policy,
  - b) has read and understands the policy,
  - c) has agreed to comply with the policy, and
  - d) understands the CoC 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.

The Annual Conflict of Interest Statement is an attachment to this policy.

2. Each voting member of the Board shall annually sign a statement which declares whether such person is an independent voting member of the governing body.

3. If at any time during the year, the information in the annual statement changes materially, the director shall disclose such changes and revise the annual disclosure form.
4. The Board shall regularly and consistently monitor and enforce compliance with this policy by reviewing annual statements and taking such other actions as are necessary for effective oversight.

## **PERIODIC REVIEWS**

To ensure the CoC operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a) Whether compensation arrangements and benefits are reasonable, based on competent survey information (if reasonably available), and the result of arm's length bargaining.
- b) Whether partnerships, joint ventures, and arrangements with management organizations, if any, conform to the CoC's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement or impermissible private benefit or in an excess benefit transaction.

## **USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for above, the CoC may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

# ATTACHMENT A: ANNUAL CONFLICT OF INTEREST STATEMENT

## POLK COUNTY CONTINUUM OF CARE

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

Board Position: \_\_\_\_\_

Conflict of Interest:

I affirm the following:

I have received a copy of the CoC Conflict of Interest Policy. \_\_\_\_\_ (initial)

I have read and understand the policy. \_\_\_\_\_ (initial)

I agree to comply with the policy. \_\_\_\_\_ (initial)

I understand that the CoC is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes. \_\_\_\_\_ (initial)

Disclosures:

1. Do you have a financial interest (current or potential), including a compensation arrangement, as defined in the Conflict of Interest policy with the CoC? Yes No

a. If yes, please describe it: \_\_\_\_\_

b. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy?

Yes No

2. In the past, have you had a financial interest, including a compensation arrangement, as defined in the Conflict of Interest policy with the CoC? Yes No

a. If yes, please describe it, including when (approximately): \_\_\_\_\_

b. If yes, has the financial interest been disclosed, as provided in the Conflict of Interest policy?

Yes No

3. Are you an independent voting member of the governing body, as defined in the Conflict of Interest policy? Yes No

a. If you are not independent, why? \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **ATTACHMENT B: EXTRACT FROM THE 2014 INSTRUCTIONS FOR FORM 990 RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX**

Line 1b. Enter the number of *independent voting members of the governing body* as of the end of the organization's tax year. A member of the governing body is considered "independent" only if all four of the following circumstances applied at all times during the organization's tax year.

1. The member was not compensated as an officer or other employee of the organization or of a related organization (see the Instructions for Schedule R (Form 990)) except as provided in the religious exception discussed below. Nor was the member compensated by an unrelated organization or individual for services provided to the filing organization or to a related organization, if such compensation is required to be reported in Part VII, Section A.
2. The member did not receive total compensation exceeding \$10,000 during the organization's tax year (including a short year, regardless of whether such compensation is reported in Part VII) from the organization and related organizations as an independent contractor, other than reasonable compensation for services provided in the capacity as a member of the governing body. For example, a person who receives reasonable expense reimbursements and reasonable compensation as a director of the organization does not cease to be independent merely because he or she also receives payments of \$7,500 from the organization for other arrangements.
3. Neither the member, nor any family member of the member, was involved in a transaction with the organization (whether directly or indirectly through affiliation with another organization) that is required to be reported on Schedule L (Form 990 or 990-EZ) for the organization's tax year.
4. Neither the member, nor any family member of the member, was involved in a transaction with a taxable or tax-exempt related organization (whether directly or indirectly through affiliation with another organization) of a type and amount that would be reportable on Schedule L (Form 990 or 990-EZ) if required to be filed by the related organization. *Note.* The independence standard for purposes of Part VI is not the same as the "absence of conflict of interest" standard for purposes of the rebuttable presumption under Treas. Reg. section 53.4958-6, which focuses on conflicts with respect to a particular transaction.

A member of the governing body is not considered to lack independence merely because of the following circumstances.

1. The member is a donor to the organization, regardless of the amount of the contribution.
2. Religious exception: The member has taken a bona fide vow of poverty and either (a) receives compensation as an agent of a religious order or a section 501(d) religious or apostolic organization, but only under circumstances in which the member does not receive taxable income (see Rev. Rul. 77-290, 1977-2 C.B. 26 and Rev. Rul. 80-332, 1980-2 C.B. 34) or (b) belongs to a religious order that receives sponsorship or payments from the organization or a related organization which do not constitute taxable income to the member.
3. The member receives financial benefits from the organization solely in the capacity of being a member of the charitable or other class served by the organization in the exercise of its exempt function, such as being a member of a section 501(c)(6) organization, so long as the financial benefits comply with the organization's terms of membership.

**Example 1.** B is a voting member of the organization's board of directors. B is also a partner with a profits and capital interest greater than 5% in a law firm, C, that charged \$120,000 to the organization for legal services in a court case. The transaction between C and the organization must be reported on Schedule L (Form 990 or 990-EZ) because it is a transaction between the organization and an entity of which B is a more than 5% owner, and because the payment to C from the organization exceeded \$100,000 (see the Instructions to Schedule L (Form 990 or 990-EZ), Part IV, regarding both factors). Accordingly, B is not an independent member of the governing body because the \$120,000 payment must be reported on Schedule L (Form 990 or 990-EZ) as an indirect business transaction with B. If B were an associate attorney (an employee) rather than a partner with a greater than 5% interest, and not an officer, director, trustee, or owner of the law firm, the transaction would not affect B's status as an independent member of the organization's governing body.

**Example 2.** D is a voting member of both the organization's governing body and the governing body of C, a related organization. D's daughter, E, received \$40,000 in taxable compensation as a part-time employee of C. D is not an independent member of the governing body, because E received compensation from C, a related organization to D, and the compensation was of a type (compensation to a family member of a member of C's governing body) and amount (over \$10,000) that would be reportable on Schedule L (Form 990 or 990-EZ) if the related organization, C, were required to file Schedule L (Form 990 or 990-EZ).

**Example 3.** C was Board Chair of X school during the tax year. X's bylaws designate the following as officer positions: Board Chair, Secretary, and Treasurer. C set the agenda for board of directors meetings, officiated board meetings, coordinated development of board policy and procedure, was an ex officio member of all committees of the board, conducted weekly staff meetings, and performed teacher and staff evaluations. X compensated C during the tax year for C's services. This compensation was attributable to C's board and committee activities, and to C's non-director activities involving staff meetings and evaluations. Because X compensated C for services as an officer/employee, C is not an independent member of the governing body. See Rev. Rul. 68-597 and Rev. Rul. 57-246 for a description of the distinction between director services and officer services.

**Example 4.** Same facts as in Example 3, except that the Board Chair position was not designated as an officer position under X's Bylaws, board resolutions, or state law. Nevertheless, because X compensated C for non-director activities involving staff meetings and evaluations during the tax year, C is deemed to have received compensation as an employee—not as a governing body member—for those activities. Therefore, C is not an independent member of the governing body.

**Example 5.** Same facts as in Example 3, except that: (1) C conducted only director and committee activities during the tax year; (2) C did not conduct staff meetings and evaluations; and (3) X compensated C a reasonable amount for C's Board Chair services during the tax year, but did not provide any other compensation to C in any other capacity. C's independence as a Board member is not compromised by receiving compensation from X as a Board member (and not as an officer or employee).