

Introduction to Managing a Nonprofit

Managing and working with nonprofit organizations can be both a challenging and a rewarding experience. Nonprofit organizations are distinct entities with many special needs and requirements that make them different from for-profit corporations. They are generally supported by a variety of individuals who are willing to commit time and energy to make a difference in their communities.

The following documents are designed to assist nonprofit directors in carrying out their fiduciary duties. You may also wish to check with the secretary of state or nonprofit regulatory agency in your state for other requirements that may apply.

Finally, the following websites contain information you may find useful in working with nonprofit organizations. They are provided as reference resources at your discretion.

Internal Revenue Service
The Council on Foundations
GuideStar — The National Database of Nonprofit Organizations
Planned Giving Design Center
BoardSource
Association of Small Foundations

<http://www.irs.gov/>
<http://www.cof.org/>
<http://www.guidestar.com/>
<http://www.pgdc.com/>
<http://www.boardsource.org/>
<http://www.smallfoundations.org/>

Managing a nonprofit

The obligations of a director

- Directors of a nonprofit organization have a fiduciary duty to that nonprofit. The two main fiduciary obligations of a director of a nonprofit are the duties of care and loyalty.
- The duty of care requires that a director be adequately informed to function effectively and that he or she discharge his or her duties in good faith using the care that a prudent person would use in similar circumstances.
- The duty of loyalty requires a director to act in the best interest of the nonprofit, and not for his or her personal advantage or benefit. The duty of loyalty usually relates to conflicts of interest that may arise during board service.

Contents of this package

This package contains five documents designed to assist nonprofit directors in carrying out their fiduciary duties. In this regard the package includes the following sample documents that may be adapted by the nonprofit for its use:

- Conflicts of interest policy questionnaire
This questionnaire can be used to gather information necessary to implement and enforce a conflicts of interest policy.
- Conflicts of interest policy
A conflicts of interest policy can help the board protect the nonprofit against conflicts of interest.
- Investment policy questionnaire
This easy to follow question and answer list will help the nonprofit determine the parameters of its investment policy.
- Investment policy
This investment policy may be adapted by the nonprofit to outline its investment goals and objectives.
- Investment review checklist
This checklist can be used annually to monitor the nonprofit's investments. An annual review of the nonprofit's investments and compliance with the investment policy will help ensure that the board is meeting its fiduciary obligations.

We strongly encourage you to consult legal counsel to make sure that any of these samples adopted by the nonprofit conform to state and other laws applicable to the nonprofit.

Conflicts of interest – introduction

To ensure compliance with the duty of loyalty, directors should avoid any conflict of interest. A director of a nonprofit organization has a direct or indirect conflict of interest when he or she has a financial interest in an entity that does substantial business with the nonprofit. This conflict could arise for a director in situations such as:

- currently or potentially owning or investing in an entity that does substantial business with the nonprofit, or
- currently or potentially receiving compensation or any other benefit from an entity that does substantial business with the nonprofit.

It is also possible that a conflict of interest exists when a director also serves on the board of an entity that does substantial business with the nonprofit.

It is prudent for a nonprofit board to adopt a conflicts of interest policy. We have attached a model conflicts of interest policy that is based on the IRS model policy, and a conflicts of interest policy questionnaire for directors and certain officers. This questionnaire should be completed before adopting the initial conflicts of interest policy and reviewed at least annually thereafter.

The board should review the conflicts of interest policy at least annually.

Sample conflicts of interest policy questionnaire of [Name of nonprofit] (“Nonprofit”)

The following conflicts of interest policy questionnaire shall be completed annually by the directors of Nonprofit as well as the following senior officers: president, senior vice president, general counsel, treasurer, secretary and any other officer with discretionary authority to bind Nonprofit.

For purposes of this questionnaire, a “member of your family” includes your spouse, parent, sibling, child or any other relative who resides with you in the same household.

A. Financial interest questions

1. Do you or a member of your family have an ownership or investment interest in any entity that does substantial business with Nonprofit? **[You may choose to limit the definition of ownership or investment interest. For example you could limit the definition of these terms by stating: “An ownership or investment interest of less than 5% voting stock or voting power does not have to be disclosed on this questionnaire.”]**

____ Yes*

____ No

*If yes, please list each ownership or investment interest:

Percentage ownership/investment interest

Entity

2. In the past 12 months, did you or a member of your family receive any payment or benefit, either directly or indirectly, from an entity that does substantial business with Nonprofit? **[You may choose to limit the definition of payment or benefit. For example you could limit the definition of these terms by stating: “Any payments or benefit received from a single entity totaling less than \$1,000 over a one year period does not have to be disclosed.”]**

____ Yes*

____ No

*If yes, please list each payment or benefit and the entity:

Payment/benefit

Entity

3. With respect to you and any member of your family, are you aware of any potential or future (i) ownership of or investment interest in, or (ii) payment or benefit from an entity that does substantial business with, Nonprofit?

____ Yes*

____ No

*If yes, please provide details:

4. Do you currently serve on the board of directors of an entity that does substantial business with Nonprofit?

____ Yes*

____ No

*If yes, please provide details:

B. Federal tax status

1. Do you understand that in order to maintain its federal tax status, Nonprofit must engage primarily in activities that accomplish one or more of its tax-exempt purposes?

____ Yes

____ No

I hereby certify that the information contained in this annual conflicts questionnaire is true, complete and correct to the best of my knowledge and belief.

Print Name

Date

Signature

Title

[After a conflicts of interest policy is adopted by the board, this page should be added to all conflicts of interest policy questionnaires used annually.]

C. Conflicts of interest policy questions

	Yes	No
Have you received a copy of the conflicts of interest policy?		
Have you read and understood the conflicts of interest policy?		
Do you agree to comply with the conflicts of interest policy?		

Sample conflicts of interest policy of [Name of nonprofit] (“Nonprofit”)

Article I – Purpose

The purpose of the conflicts of interest policy is to protect Nonprofit’s interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of Nonprofit. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations, trusts or foundation.

Article II – Definitions

Interested person

Any director, principal officer, or member of a committee with board-delegated powers who has a direct or indirect financial interest, as defined below, is an interested person.

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 Nonprofit has a transaction or arrangement, or
[You may choose to limit the definition of ownership or investment interest. For example you could limit the definition of these terms by stating: “An ownership or investment interest of less than 5% voting stock or voting power does not have to be disclosed on this questionnaire.”]
- b. A compensation arrangement with Nonprofit or with any entity or individual with which the Nonprofit has a transaction or arrangement, or
[You may choose to limit the definition of payment or benefit. For example you could limit the definition of these terms by stating: “Any payments or benefit received from a single entity totaling less than \$1,000 does not have to be disclosed.”]
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which Nonprofit is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

Article III – Procedures

A. Duty to disclose

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence and nature of his or her financial interest to the directors and members of committees with board-delegated powers considering the proposed transaction or arrangement.

B. Determining whether a conflict of interest exists

After disclosure of the financial interest, the interested person shall leave the board or committee meeting while the financial interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

C. Procedures for addressing the conflict of interest

1. The chair of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
2. After exercising due diligence, the board or committee shall determine whether Nonprofit can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
3. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in Nonprofit's best interest and for its own benefit and whether the transaction is fair and reasonable to Nonprofit and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

D. Violations of the conflicts of interest policy

1. If the board or committee has reasonable cause to believe that a director has failed to disclose actual or possible conflicts of interest, it shall inform the director of the basis for such belief and afford the director an opportunity to explain the alleged failure to disclose.
2. If, after hearing the response of the director and making such further investigation as may be warranted in the circumstances, the board or committee determines that the director has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article IV – Records and minutes

The minutes of the 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 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 therewith.

Article V – Compensation committee (if applicable)

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from Nonprofit for services is precluded from voting on matters pertaining to that member's compensation.

Article VI – Annual statements

Each director, principal officer and member of a committee with board-delegated powers shall annually sign a statement which affirms that 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.
- d. Understands that Nonprofit is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Article VII – Periodic reviews

Periodic reviews shall be conducted to ensure that Nonprofit operates in a manner consistent with its purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable and the result of arm's-length bargaining.
- b. Whether Nonprofit's business arrangements and transactions reflect reasonable payments for goods and services, further Nonprofit's goals and objectives and do not result in inurement or impermissible private benefit.

Investment policy – Introduction

Responsibility for the investment of a nonprofit's assets, including any endowments or substantial cash reserves, may be handled by the board or delegated to an investment committee of the board. As a general matter, a nonprofit will be held to the standard of care set forth in the Uniform Management of Institutional Funds Act (UMIFA). Under this law, which has been adopted by most states, those responsible for managing the assets of a nonprofit will be required to:

“... act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims...”

A nonprofit's investment policy should take into account the nonprofit's (i) risk tolerance, (ii) investment objectives, and (iii) spending objectives. The policy and the nonprofit's investments should be reviewed by the board of directors at least annually, and from time to time with investment professionals.

After adopting an investment policy, the board of directors, in consultation with an investment professional, should determine the asset-class allocations needed to fulfill the policy objectives.

We have attached a sample investment policy as well as a sample investment policy questionnaire. This questionnaire, which should be completed before adopting the investment policy, will assist you in thinking through the major aspects of the investment policy.

Sample investment policy questionnaire

The questions that follow will help you focus on the major themes of an investment policy.

1. Which of the following long-term goals are important to you when managing the nonprofit's assets? You may select more than one of the following:

- ☐ Consistency
- ☐ Capital protection
- ☐ Capital appreciation
- ☐ Liquidity
- ☐ Other (please specify) _____

2. A nonprofit should establish a spending rate relative to its income and assets. What statement best describes your spending goals each year?

- ☐ Spend all or a specified percentage of all of the income (interest and dividends) earned from investing assets
- ☐ Spend a certain percentage of a moving average of the assets' market value (i.e., "5% of a three-year moving average of the assets' market value").
- ☐ Increase spending by a constant dollar amount each year to match inflation.
- ☐ Increase spending by a constant dollar amount, thereafter adjusted upward by a percentage, each year to match inflation.
- ☐ Increase spending by a fixed percentage of the assets each year to match inflation.
- ☐ Other (please specify) _____

3. Along with return and spending objectives, a nonprofit must balance risk tolerance and inflation concerns. Which term best describes your level of risk tolerance?

- ☐ High
- ☐ Medium
- ☐ Low

4. Besides mutual funds, are any other types of investments permitted? If so, please specify.

5. Are there any investments that the nonprofit does not want to permit? If so, please specify.

6. Are there any other restrictions on investments (e.g., percentage limitations on particular investments or types of investments or limitation on the number of investments)?

7. Once the investments are selected, it is important to periodically rebalance them. A nonprofit should have a rebalancing policy to ensure that its asset allocation does not shift too far from policy guidelines. How often do you think the nonprofit should rebalance its investments?

- ☐ Quarterly
- ☐ Semi-annually
- ☐ Annually
- ☐ Other (please specify) _____

8. Who will be responsible for monitoring the nonprofit's investments each year?

- ☐ The board of directors
- ☐ The investment committee
- ☐ An officer or employee of the nonprofit
- ☐ Other (please specify) _____

9. Investment results and expenses should also be monitored. What standards should be used to monitor the nonprofit's investment results?

- ☐ Comparison to applicable peer-group investments over several time frames
- ☐ Comparison to a relevant index over several time frames
- ☐ Other (please specify) _____

10. What standards will be used to monitor the nonprofit's investment expenses?

- ☐ Comparison to applicable peer-group investments
- ☐ Surveys or other data provided in nonprofit or investment publications
- ☐ Analysis of increases/decreases in expenses over a relevant time frame
- ☐ Other (please specify) _____

Sample investment policy of [Name of nonprofit] (“Nonprofit”)

Purpose

This investment policy describes the long-term investment objectives of the Nonprofit, establishes investment principles for the Nonprofit's assets and creates guidelines for evaluating investment decisions.

Statement of investment objectives

The two primary investment objectives are:

1. to cause the total value of the assets to appreciate, over time, exclusive of growth derived from donations and
2. to provide a continuing and dependable cash payout that is stable — and preferably growing in real terms — after giving effect to inflation.

To accomplish these goals, Nonprofit should maximize the return on its investments, consistent with the appropriate level of risk and subject to a generation of adequate current income.

Additionally, the assets should be diversified at all times to provide reasonable assurance that investment in a single security or class of securities will not have a significant impact on the assets. Specifically, Nonprofit should have diversified investment options that have materially different risk and return characteristics.

The prudent person rule

In making investment decisions and in supervising and managing assets, a person with investment responsibility for Nonprofit should act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

Investments

In selecting investments, consideration will be given to the requirements for spending, liquidity, diversification, safety of principal, yield, maturity, and the quality and capability of investment managers.

Nonprofit will be permitted to invest in the following categories of investments:

- *Growth investments* — These investments seek to maximize value over time, but are the most volatile from day to day. They invest primarily in stocks of companies that have a strong potential for growth.
- *Growth-and-income investments* — These investments seek to provide both growth and income. They generally aren't as volatile as growth investments due to a focus on dividend-paying stocks and some bond holdings as well.
- *Equity-income investments* — These investments seek current income and long-term growth of capital, primarily through dividends paid by stocks and/or interest paid by bonds.
- *Balanced investments* — These investments seek conservation of capital and current income, as well as long-term growth of both capital and income by investing in stocks, bonds and other fixed-income investments.

- *Bond investments* — These investments seek to provide current income. Their primary investment vehicle is bonds.
- *Cash-equivalent investments* — These investments are the most stable as they try to preserve the original investment but are limited in their ability to keep up with inflation.
- *[Other — Please specify **from question #4 on the Investment Policy Questionnaire***

Nonprofit will not be permitted to invest in the following:

[Please specify **from question #5 on the Investment Policy Questionnaire**

Asset allocation and rebalancing

Nonprofit's asset allocation guidelines will be consistent with its investment objectives and risk tolerance. These guidelines are designed to provide the highest probability of meeting or exceeding Nonprofit's return objectives with the lowest possible risk.

Nonprofit will rebalance its portfolio of investments periodically.

[Asset allocation objectives can be described specifically, as a series of ranges or in general terms].

Review and monitor investments

Periodic reviews of the investments will be conducted at least annually. Among other things, such reviews will evaluate:

- the general conditions and trends prevailing in the economy, securities market, and mutual fund industry.
- whether each investment remains consistent with Nonprofit's overall investment objectives.
- whether the investments are adequately diversified.
- a comparison of the investment results with established indexes or benchmarks over a series of different time horizons.
- the fee structure and expense ratio of selected investments as compared with other alternatives available in the marketplace.
- the experience and qualifications of the personnel providing the investment management services.

Proxy voting

Responsibility for proxy voting rests with the board of directors or its delegate. The board or its delegate will review the proxy statements and vote in a manner that is consistent with the goals and interests of Nonprofit.

Sample investment review checklist of [Name of nonprofit] (“Nonprofit”)

Introduction

At least once a year, Nonprofit's investments and investment policy should be reviewed. Investments should be considered individually and as part of a complete investment program.

Among the things to take into account:

1. Objectives and diversification

- Are the objectives of each investment still consistent with Nonprofit's overall investment objectives and goals?
- Are the investments adequately diversified?

2. Investment results

- Consider the nature and quality of the investment management services provided to Nonprofit.
- Examine general conditions and prevailing trends in the economy, the securities markets and the mutual fund industry.
- Compare the results of the investments with appropriate industry benchmarks over a series of different time horizons.
- Analyze the fee structure and expense ratios of the investments in relation to other alternatives available in the marketplace.
- Check the experience and qualifications of personnel providing the investment management services.

3. Investment expenses

- What are the expenses associated with each investment?
- How do these expenses compare with those of similar funds in their peer group?
- Are Nonprofit's overall investment expenses reasonable?

The “Investment Review Checklist” that begins on the next page can be used to complete the review of Nonprofit's investments. It can also serve as an agenda for the board or investment committee's investment review meeting. Documentation of the review process is important and provides a written record demonstrating procedural prudence. You should consult with your legal adviser to make sure the documentation is adequate.

Checklist

- ☐ Consider and review any changes to the investment policy. (If any changes are recommended, make sure to document them and adjust the remainder of this review to take them into account.)
- ☐ Review Nonprofit's spending policy in the context of Nonprofit's investment results to confirm that investments continue to provide income sufficient to meet spending objectives.
 - Review the past year's and next year's projected expenses to ensure compatibility with investment results and objectives.
 - Consider any adjustments to spending objectives.
- ☐ Review Nonprofit's investments for the prior year, consistent with Nonprofit's investment policy.
 - Consider the nature and quality of investment management services provided to Nonprofit. The evaluation should start with an assessment of the provider and include the provider's investment philosophy.
 - Compare investment results to a peer group of investments.
 - Compare investment results to a relevant index, which is an appropriate, broad-based index, such as the Standard & Poor's 500 Composite Index or the MSCI® EAFE Index. These comparisons should be made over meaningful time frames like 1-, 5-, and 10-year periods.
- ☐ Review Nonprofit's investment expenses.
 - Compare the expenses of Nonprofit's investments with those of applicable peer-group investments.
 - Compare the expenses of Nonprofit's investments with those found in surveys of other data provided in other investment publications.
 - Analyze increases/decreases in expenses over relevant time frames, such as the life of Nonprofit and recent 1-, 5-, and 10-year periods.
- ☐ Check the experience and qualifications of the investment manager(s).
 - Have there been any changes in the personnel providing investment management services in the past year?
 - What's the average number of years of experience for the managers of each investment?
- ☐ Consider any changes to Nonprofit's investments.
 - Look at investment results over a number of different time periods e.g., 1-, 5-, and 10-year periods and the life of the fund.
 - Ask whether or not each investment fits into the philosophy and objectives of Nonprofit.
 - Document any decision to change investments, including the rationale for the change.
 - Review and/or rebalance asset allocation, if any.
- ☐ Review investments that are subject to special restrictions or limitations.
 - Review appropriateness of the investments.
 - Review compliance with the special restrictions or limitations.
 - Consider if the restrictions can be changed or eliminated.