

Connecticut Land Trust Service Bureau

Practice Note #8: Land Trusts and Conflict of Interest

It's good business practice to have a written Conflict of Interest (COI) policy, especially for non-profits. *Surprisingly, very few land trusts in our state have one in place. Most believe them to be unnecessary, stating that "we've never had any conflicts arise."*

In Connecticut, a high percentage of land trust directors also serve on town commissions, particularly Planning & Zoning or Conservation. A director serving on a regulatory town commission will have to consider whether voting on an issue on either board will conflict with the best interests of the other organization. Many directors are lawyers, real estate agents or appraisers who might represent clients that also have business with the land trust. Some directors are paid by their trusts to provide specific services, or goods and services are purchased by the trust from a company owned by a director. Directors or their families might grant a conservation easement to the trust, or purchase properties in which the trust might also be potentially interested. **If not managed carefully, these and other situations can set the stage for a potential COI.** *In practice, most instances of COI are unintentional.*

The laws governing directors' conflicting interest transactions for non-stock corporations are set forth in the Connecticut General Statutes (§33-1127 to §33-1130). These are not easy to interpret and provide little guidance on specific situations. According to Board Source, an organization devoted to the strengthening of non-profit boards, "*most conflicts of interest fall into a gray area where ethics and public perception are more relevant than statutes or precedents.*" **Though no conflict may actually exist, the mere perception that it does can result in grave problems for the land trust, causing it to expend considerable time and effort on "damage control" within the community it serves.**

Some COI situations can result in loss of the trust's tax exempt status. And under new IRS regulations covering intermediate sanctions, transactions that result in private inurement can result in the leveling of **substantial penalties against land trust directors.**

As the old saying goes "an ounce of prevention is worth a pound of cure." Trusts with a policy in place are better equipped to recognize and deal with a COI when it occurs, and prevent it from becoming a major problem. *Fortunately, COI policies can be quickly adopted and easily implemented.*

At the very least, a COI policy for land trusts should provide for the following:

- ◆ a definition of the types of conducts or actions that raise COI concerns;
- ◆ review of individual transactions by uninvolved board members, i.e., recusal from vote (and generally discussion) by those with the potential conflict;
- ◆ procedures for regular, written disclosure of potential and actual conflicts (financial, professional and other affiliations relevant to their work as a board member), including director sign-off on a statement that summarizes key elements of the policy;
- ◆ review and discussion of potential conflicts, the duty of loyalty and the board's conflict of interest policy during the recruitment of new board members.

For a sample COI policy see over. Each trust should develop a policy that meets its own needs and have it reviewed by an attorney to be sure it reflects the standards of Connecticut state law.

Sample Conflict of Interest Policy - Legacy Land Trust -- Fort Collins, Colorado

Preamble: The Legacy Land Trust's (LLT) effectiveness is dependent on its credibility and reputation for objectivity and fairness. At the same time, individual members of Legacy Land Trust's Board of Directors (Director), as landowners and members of the community, may be potential participants or provide professional business assistance in a LLT transaction. Furthermore, the Internal Revenue Code prohibits private inurement and private benefit, or benefits obtained from a non-profit entity such as LLT by insiders. To avoid actual and perceived conflicts of interest, the Board of Directors of Legacy Land Trust adopts the following Conflict of Interest Policy.

Definition: A conflict of interest exists whenever a Director (including spouse, siblings, parents or children of a Director) has a material interest in a transaction or project under consideration by the LLT Board of Directors. A conflict of interest also exists whenever an organization which employs or retains a Director or to which a Director formally provides advice, direction or counsel is known by the Director to have a material interest in a transaction or project under consideration by the LLT Board of Directors. A material interest includes payment by LLT for any services that may be rendered by a Director to advance a project or a transaction.

Policies to Avoid Conflict of Interest and Obligations of Directors

- ◆ The Land Trust will not conduct business with any business or professional entity in which a Director, staff member or family member of a Director or staff member holds a substantial ownership interest. Directors having an interest in an entity with which the Land Trust is considering establishing a business relationship are obligated to disclose such interest.
- ◆ Paid staff members are prohibited from serving as Directors.
- ◆ No Land Trust Director shall be compensated for work performed on behalf of the Land Trust or for services provided to the Land Trust.
- ◆ Directors may, as individuals or through their companies, donate services for the Land Trust's benefit for which no compensation is provided.
- ◆ Directors may receive reimbursement of expenses only when expressly approved by the Board of Directors (e.g. materials, travel, and miscellaneous expenses).
- ◆ The Land Trust may not buy land from, sell land to or exchange land with any Director or staff member.
- ◆ The Land Trust may accept donations of land or interests in land from Directors or staff, if these donations meet the organization's mission, existing criteria for land acquisitions and criteria for acceptance of donations.

When considering Land Trust business, every Director must have an undivided allegiance to the Land Trust's mission and hold in confidence confidential information about the organization. Conflicts of interest may arise over competing loyalties. To avoid such problems, the following policies are adopted:

- ◆ Directors must disclose any real or apparent conflicts of interest with their role as a Land Trust Director.
- ◆ Directors must recuse themselves from Board or Committee discussions and voting in situations where a conflict or potential conflict arises.
- ◆ A Director may not use knowledge of the Land Trust's operations for personal or business use or for the use of other non-profit organizations.
- ◆ Issues discussed at Land Trust Board and Committee meetings are confidential and should not be discussed by Directors or staff with individuals outside the organization, unless public discussion is expressly authorized by the Board.

This Practice Note is funded in part through a New England Leadership Grant from the Land Trust Alliance (LTA) Northeast Program underwritten by LTA's generous individual and foundation supporters.