

**LEICHTAG FOUNDATION
CONFLICT OF INTEREST POLICY
Updated Version Adopted by the Board of Directors November 19, 2013**

Executive Summary

The most-frequent method for impugning the conduct of a charity is to "expose" self-interest in the actions of its leaders. Each director of the Leichtag Foundation has a duty to every other director, as well as to himself and herself and his or her family, to permit no action to ever be taken by the Board of Directors that might ever be the fodder for an "exposé" of questionable conduct.

The strongest defense to any such exposé is to be able to answer "The board was aware of that fact when the vote was taken. Indeed, after fully disclosing all the relevant facts, including his or her family's involvement in the related matter, [the interested director] did not vote on the grant." For this defense to be offered, the minutes of the meeting at which the grant (or other activity) was approved must reflect that the disclosure was made, and that the individual(s) involved did not participate in the discussion or vote.

From these observations of human conduct, plus an examination of the California Corporations Code and the Internal Revenue Code, it emerges that a Conflict of Interest Policy is necessary.

Historical records do not contain mention of any person ever asking for a legal document that is "long, complicated and difficult to read." In contrast, requests for a comprehensive "one-page agreement" are ubiquitous. The problem with the proverbial "one-pager" is that there are insufficient standards for the Board of Directors to know that the requirements of law have been met.

The following is admittedly lengthy. A sincere effort has been made to "prune" it to the minimum verbiage that will fully protect the Foundation and each of its directors. Thank you for your understanding.

**Article I
Purpose and Expectations**

Lee and Toni Leichtag established this Foundation exclusively to advance charitable purposes for the public good. The Board honors the Founders' values by requiring the highest ethical standards of the directors, advisors, and staff; by using the Foundation's assets efficiently for the Foundation's philanthropic objectives; and by taking measures to assure that decisions are not influenced by self-interest. This Conflict of Interest Policy is intended to provide guidance on how to deal appropriately with situations that involve, or may appear to involve, the presence of interest, conflicts of interest, and to comply with federal and state laws concerning conflicts of interest.

The purposes of this Conflict of Interest Policy are to:

1. Protect the interests of the Leichtag Foundation, a California nonprofit public benefit corporation (the “Foundation”), when it contemplates entering into a transaction or arrangement or making a grant that might directly or indirectly benefit the private interests of a Foundation director, advisor, consultant, employee or other interested person as defined below, or might result in a possible excess benefit transaction. This Policy is intended to supplement but not replace any applicable state and federal laws prohibiting self-dealing, private inurement or certain transactions benefitting disqualified persons as well as those state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations. An explanation of the self-dealing laws is attached as an appendix to this Policy in Attachment 3.

2. Facilitate effective governance and maintain public trust. Effective governance depends on decision making by directors, advisors, consultants, staff and other interested persons that is unbiased and that appears to be unbiased. The Foundation recognizes that the appearance of a conflict of interest can damage its credibility and reputation and compromise its ability to fulfill its mission and programmatic goals.

3. Facilitate the involvement of Foundation directors, advisors, consultants, staff and other interested persons in the community. While interested persons are encouraged to be involved in the community, this Policy recognizes that conflicts of interest may arise not only through direct and indirect business and financial interests, but as a result of personal relationships. The Foundation recognizes the benefits of encouraging associations with other charitable entities that could be appropriate recipients of grants. It is predictable that people with interest and expertise in the nonprofit sector often will have such associations. This Policy describes, among other things, how decisions involving these and similar situations should be dealt with to ensure the integrity of the process. Its basic purpose is to avoid both the reality and the perception that those involved with the Foundation have used their positions to derive inappropriate financial, personal or institutional benefits, and it should be interpreted and applied to achieve this purpose.

In order to assure impartial decision making, it is the policy of the Foundation that any conflicts of interest, or apparent or potential conflicts of interest, be fully disclosed at the earliest point in time that the interested person becomes aware of the potential conflict, and in any event, no later than a decision is made on the matter involved, and that no director, advisor, or staff member participate (other than by providing information) in any decision or preceding decision process in which he or she has a conflict of interest. The Board of Directors will not approve, and the Foundation will not participate in, any self-dealing transaction prohibited by law. Directors should be aware that such disclosure protects themselves, in addition to the good name of the Foundation. For example, a transaction that is fair to the Foundation when approved, but which subsequently “turns bad” for the Foundation, is generally not subject to rescission if there was full disclosure when approved.

It is the continuing responsibility of all directors, advisors, consultants, staff and other interested persons to review their outside business interests, philanthropic interests,

personal interests, and family and other close relationships for actual, apparent, or potential conflicts of interest with respect to the Foundation, and to promptly disclose the nature of the interest or relationship at the earliest possible point in time that the potential conflict is known.

A director might suggest that the disclosure required under this Policy will result in some invasion of such director's personal privacy. That is a correct suggestion. Service on the Foundation's Board of Directors necessarily results in some intrusion into the personal relationships and financial affairs of a director. A director not willing to suffer such partial loss of privacy should reconsider his or her participation on the Foundation's Board of Directors.

Article II Definitions

2.1 Interested Person

Any director, officer, employee, consultant, advisor or member of a committee, who has a direct or indirect financial or other interest, as defined below, is an interested person. Any family member of an interested person shall also be considered an interested person. For this purpose, in-laws and domestic partners (whether or not married) should be treated as a "family member." The specific definitions are found at Section 2.4 below.

2.2 Financial Interest

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

- a. An existing or potential ownership or investment interest in any entity with which the Foundation has a transaction or arrangement, or to which it may make a grant, contribution or matching gift; or
- b. An existing or potential compensation arrangement or governing relationship (e.g. serving as a board or committee member, even if uncompensated) with any entity or individual with which the Foundation has or proposes to have a transaction or arrangement, or to which it proposes to make a grant, contribution or matching gift; or
- c. An existing or potential ownership or investment interest in, compensation arrangement with, fiduciary duty with respect to, or other significant affiliation with any entity or individual with which the Foundation proposes to have a transaction or arrangement or to which it proposes to make a grant.

Compensation includes direct and indirect remuneration or other payments for services (such as consulting fees or honoraria) as well as gifts or favors that are not insubstantial or de minimis in

value or nature. Compensation also includes payments by an entity to a covered person who is serving as an officer or board member of the entity.

2.3 Other Interests Subject to This Policy

a. Relationships with Grantees:

With respect to entities that may be actual or potential recipients of grants made by the Foundation, an individual will be regarded as having a financial interest in the entity, if the person has, directly or indirectly through family or affiliation, (i) an employment or governing relationship (such as serving as a board member, even if uncompensated), or (ii) the potential to receive any substantial benefit from the grant not otherwise available to the public on substantially the same terms.

The actual or potential receipt by a covered person of any substantial gift or favor from a grantee or from a third party in connection with an actual or potential grant, contribution or matching gift is subject to this Policy, and constitutes a financial interest. However, reimbursement by the Foundation of out-of-pocket expenses incurred by Foundation staff for the purposes of investigating or monitoring grantees consistent with the Foundation's policies and procedures for reimbursement of ordinary and reasonable business expenses, would not, by itself, be considered a financial interest for these purposes. In addition, participating in dinners or social events that are purchased by the Foundation would not, by itself, violate this Policy.

b. Relationships with Philanthropic Organizations

From time to time, the President and CEO of the Foundation may be requested to serve on the board of directors (or in a similar leadership role) of a grant-making charitable or governmental entity; a funders collaborative; or a professional organization of grantmakers (collectively a "philanthropic organization") which may also be a grantee of the Foundation. While the Foundation recognizes that the President will have statutory duties of loyalty and care to such a philanthropic organization, the Foundation may conclude that the benefits to the Foundation of the President's board service outweigh the perceived conflict of such a relationship. Representative service on the board of directors (or in a similar leadership role) of a philanthropic organization shall not be deemed a conflict of interest under this policy provided that the following three conditions are met: (1) the Foundation's minutes shall reflect that the Representative Service was entered into with the approval of the Foundation's Board of Directors and the minutes of the Foundation's Board of Directors meeting at which such a request was made identify this Section 2.3b in the approval.; (2) the Foundation's representatives shall not be compensated by the philanthropic organization; and (3) the Foundation's Board of Directors shall re-approve the continuation of such Representative Service at the more frequent of (i) when the term of office at the philanthropic organization is renewed, and (ii) three years following the Foundation's most recent approval of such Representative Service. If these conditions are met, the Foundation

President may participate with full involvement in the development and approval of grants from the Foundation to the philanthropic organization.

c. **Other Potentially Conflicting Interests:**

There may exist other, less obvious or more remote actual or potential conflicts of interest that are sufficiently substantial and probable that their existence calls into question the appearance of fairness or propriety of the Foundation's decision making processes. Any person who is concerned about the appearance of such an interest or potential interest shall review the matter with the President and CEO. Any such interest may be disclosed by any person and may be addressed in the discretion of the President and CEO pursuant to the procedures contained in this Policy. In the event the interest involves the President and CEO, such matters shall be reported to the Chair of the Board.

A financial or other interest is not necessarily a conflict of interest. Under Article II, Section 2.6, a person who has a financial or other material interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

2.4 Affiliation

For purposes of this Policy, an affiliation is the close involvement with a vendor, service provider, or grantee on the part of: (a) a director of the Foundation, (b) an advisor to the Foundation, (c) a staff member of the Foundation, or (d) a brother or sister (by whole or half blood), ancestor, spouse or domestic partner (whether or not married), brother-in-law or sister-in-law (by whole or half blood), son-in-law, daughter-in-law, father-in-law, mother-in-law, children, grandchildren, great grandchildren, and spouses of children, grandchildren, or great grandchildren).

Affiliation includes, but is not limited to, serving as a Board member, employee, or consultant to a current or potential grantee, service provider, or vendor, or doing business with the grantee, service provider, or vendor. Directors, advisors, and the staff of the Foundation shall communicate fully with the Foundation regarding such affiliations and any other relationship or commitment that could affect, or be seen to affect, the impartial fulfillment of their roles in the affairs of the Foundation. Doubts about whether a relationship warrants disclosure under this Policy should be resolved in favor of disclosure.

2.5 Duty to Disclose; Other Duties

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of any direct or indirect financial or other interest and be given the opportunity to disclose all material facts to the approval body that is considering the proposed transaction, arrangement or grant. Such disclosure shall be made as sufficiently in advance so that the approval body can be provided with full analysis and information regarding the proposed matter before acting upon it. An interested person shall also (i) refrain from being a party to, advocating for or facilitating any transaction on behalf of or with a person or entity that has a business relationship with the Foundation, unless the provisions of Section 2.3 of this Article II

have been met, (ii) endeavor to avoid actions that adversely impact the reputation, integrity or independence of the Foundation, and (iii) strive generally to avoid conflicts of interest or the appearance or perception of conflicts of interest with the Foundation.

2.6 Determining Whether a Conflict of Interest Exists

After disclosure of the financial or other interest and all material facts, and after any discussion with the interested person, unless specifically requested to remain present by the President and CEO or in the case of a disclosure involving the President and CEO, by the Board Chair, the interested person shall leave the governing body meeting while the determination of a conflict of interest is discussed and voted upon. The remaining governing body members shall decide if a conflict of interest exists.

Nothing in this Policy shall authorize an approval body to approve, or the Foundation to engage in, an act of self-dealing, private inurement or a transaction affording a prohibited benefit to a disqualified person or any other act prohibited by applicable law.

Nothing in this Policy shall authorize any covered person to accept any gift, favor, prerequisite or benefit having a substantial value except pursuant to all applicable policies, procedures and practices of the Foundation.

2.7 Procedures for Addressing the Conflict of Interest

- a. Procedures for Addressing Conflicts of Interest in Commercial Matters
 1. The approval body shall, if appropriate, appoint a disinterested person or other committee to investigate alternatives to the proposed transaction or arrangement.
 2. After exercising reasonable due diligence, the approval body shall determine whether the Foundation 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 approval body shall determine, by a majority vote of the disinterested members if applicable, (i) whether the transaction or arrangement is in the Foundation's best interest and for its own benefit, and (ii) whether the transaction is fair and reasonable to the Foundation. The approval body shall then make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.
- b. Procedures for Addressing Conflicts of Interest in Grantmaking

Unless well known to the director(s) or staff considering a proposed grant, disclosure should be made, orally or in writing to the President or chair of the advisory body, whenever a grant involving a conflict or apparent conflict of interest is being considered. Such disclosure should be made at the time the grant is first discussed with the governing body or made known to the interested party or sooner to the President.

If there is a Board deliberation on the merits of a grant to an organization with which a director is affiliated, the interested director shall, in addition to abstaining from voting, leave the room after having answered any relevant questions posed by other directors. If the grant is authorized without discussion as part of a motion to approve the docket, the interested director shall announce before any discussion occurs, his or her abstention from that particular docket item.

While grants may be made to organizations that employ a director, advisor, or family member of a director, advisor, or staff member, or that contract for the provision of goods or services from any of those individuals, no grant to such an organization shall include funds designated to pay the compensation for such employment, goods, or services.

c. Transactions Not Normally Considered by the Board.

If there is a conflict of interest or apparent conflict of interest in connection with a transaction that would not normally go to an advisory board (such as a contract within the discretion of the President or other staff, or a Presidential Discretionary grant), the President may determine that the transaction involves no economic interest of any affiliated party. In that case, the President shall consult outside legal counsel to determine whether federal or state law treats the transaction as self-dealing even in the absence of any economic interest. If outside legal counsel concludes that, on the facts provided, there is no self-dealing, the matter may be referred to the Executive Committee of the Board for review and, if appropriate, approval. In the event the potential or apparent conflict involves the President, the Chairman of the Board shall have the responsibilities otherwise assigned to the President under this paragraph; in the event it involves either the President or the Chairman, the Vice-Chairman of the Board shall participate in the review in lieu of the individual involved.

The Foundation will generally avoid any transaction that results in direct or indirect material economic benefit to any affiliated person. If the Board believes that such a transaction is in the best interests of the Foundation, and if the transaction is not prohibited by federal or state law, the Board may, with the advice of counsel to the extent the Board deems such advice necessary to its determination, consider the transaction in accordance with the relevant procedures set forth in the California Nonprofit Corporation Law.

Nothing in this Policy shall authorize an approval body to approve, or the Foundation to engage in, an act of self-dealing, private inurement or a transaction affording a prohibited benefit to a disqualified person or any other act prohibited by applicable law.

Nothing in this Policy shall authorize any covered person to accept any gift, favor, prerequisite or benefit having a substantial value except pursuant to all applicable policies, procedures and practices of the Foundation.

2.8 Violations of the Conflict of Interest Policy

- a. If the governing body 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 body determines that the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including but not limited to removing such interested person from any position held with the Foundation.

Article III 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 or other interest in connection with an actual or possible conflict of interest, the nature of the interest, any action taken to determine whether a conflict of interest was present, and the governing body'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, arrangement, or grant; 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 IV Compensation

- a. A voting member of the governing body who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation except as it relates to compensation generally paid to all such members.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation 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 Foundation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article V Annual Statements

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

- a. Has received a copy of the Conflict of Interest Policy;
- b. Has read and understands the Conflict of Interest Policy;
- c. Has agreed to comply with the Conflict of Interest Policy;
- d. Understands that the Foundation is a charitable organization and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes; and
- e. Discloses any conflicts or potential conflicts of interest.

Such disclosure shall take essentially the same form as Attachment 1 to this Conflict of Interest Policy. Other forms or means of disclosure may be approved from time to time by the governing board or committee. In addition to the annual filing requirement, the disclosure form shall be filed whenever significant changes or transactions are being contemplated or have occurred which necessitate an amendment to the form to ensure timely disclosure and transparency. Completion of the form shall not relieve any interested person of his or her duty to disclose any actual or potential conflict of interest concerning any matter before the governing board or committee, as set forth in Article II.

Article VI Periodic Reviews

To ensure that the Foundation 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 Foundation'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 VII Use of Outside Experts

When conducting the periodic reviews as provided for in Article VI, the Foundation 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.

ATTACHMENT 1 to CONFLICT OF INTEREST POLICY

CONFIDENTIAL

THE LEICHTAG FOUNDATION

CONFLICT OF INTEREST DECLARATION AND
ANNUAL DISCLOSURE FORM

For Directors, Committee Members, Employees, Consultants and Advisors:

Name: _____ (please print)

Address: _____

Telephone: () _____

Occupation: _____

Name of
Employer: _____

Employer's
Address: _____

Name of Spouse, Domestic Partner, or other Person of Similar Relationship:

Address: _____

Telephone: () _____

Occupation of Spouse, Domestic Partner, or other Person of Similar Relationship:

Name of Employer for Spouse, Domestic Partner, or other Person of Similar Relationship:

Employer's
Address: _____

1. Have you received compensation from The Leichtag Foundation (the "Foundation") for services rendered to the Foundation (whether as a part-time or full-time employee, independent contractor, consultant or otherwise):

A. within the previous 12 months?:

(Check One) Yes No

B. within the previous 60 months?:

(Check One) Yes No

Additional Comments:

2. Do you anticipate the receipt of compensation from the Foundation for the rendering of services as described in question 1 above during the upcoming 12 months?

(Check One) Yes No

Additional Comments:

3A. Do you have an ownership or investment interest in any entity with which the Foundation has engaged in a transaction or arrangement within the previous 12 months? If so, please list the entity and describe your interest therein.

(Check One) Yes No

Additional Comments:

3B. Do you have an ownership or investment interest in any entity with which the Foundation has engaged in a transaction or arrangement within the previous 60 months? If so, please list the entity and describe your interest therein.

(Check One) Yes No

Additional Comments:

4. Do you anticipate obtaining an ownership or investment interest in any entity with which it is likely the Foundation will engage in a transaction or arrangement within the upcoming 12 months? If so, please list the entity and describe your interest therein.

(Check One) _____ Yes _____ No

Additional Comments:

5. If any person bearing any of the following relationships to you ("Family Member") has been compensated by the Foundation within the previous 60 months for services rendered to it as described in question 1 above or has an ownership or investment interest in any entity with which the Foundation has engaged in a transaction or arrangement within the previous 60 months, please list his or her name in the following space and indicate the person's relationship to you by using the relationships designated below (if no such person is being compensated or has such an interest, please print the word "none" in the first space):

("Family Member" is defined as brother or sister (by whole or half blood), ancestor, spouse, brother-in-law or sister-in-law (by whole or half blood), son-in-law, daughter-in-law, father-in-law, mother-in-law, children, grandchildren, great grandchildren, and spouses of children, grandchildren, or great grandchildren).

Name - Relationship

_____	-	_____
_____	-	_____
_____	-	_____

Additional Comments, including dates (approximate if necessary):

6. If any Family Member will likely receive compensation from the Foundation for the rendering of services to it as described in question 1 above, or anticipates obtaining an ownership or investment interest in any entity with which the Foundation will engage in a transaction or arrangement within the next 12 months, please list his or her name in the following space and indicate that person's relationship to you (if no such person anticipates receipt of such compensation, please print the word "none" in the first space):

Name - Relationship

_____	-	_____
_____	-	_____
_____	-	_____

Additional Comments:

7. Are you a director, an officer, or an employee in, or fiduciary of, any business or entity (e.g., a bank, real estate brokerage firm, consulting firm, construction company, insurance brokerage firm, architectural firm, law firm, accounting firm, medical group, etc.) which has done business with the Foundation, or currently is or is contemplating doing business with the Foundation:

A. within the previous 12 months?:

(Check One) _____ Yes _____ No

B. within the previous 60 months?:

(Check One) _____ Yes _____ No

If yes, please explain (type of business, type(s) of transaction(s), relationship):

Please also summarize your compensation or other financial arrangements, if any, with such business or entity concerning compensation received by you, directly or indirectly, from any such business transaction with the Foundation:

8. Are you a director, an officer, or an employee in, or fiduciary of, any associations, community organizations, nonprofit corporations or charitable programs that have sought or may in the future seek to receive funding from the foundation? If so, please list below such organizations and the nature of your affiliation:

Organization - Affiliation

_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____
_____	-	_____

Additional Comments:

9. Are you or any Family Member or any institution by which you or such Family Member are employed or with which you or such Family Member are affiliated in any manner applying for or receiving grant funding from the Foundation? If so, please list below the institutions and nature of your affiliation and details of your relationship.

Name – Affiliation

_____	-	_____
_____	-	_____
_____	-	_____

Additional Comments:

10. Do you or any Family Member receive direct or indirect monetary compensation for providing any advisory services to potential donors or potential grantees of the Foundation? If so, please explain the arrangement with the potential donors or grantees and the nature and annual amount of such compensation.

By signing this form, I hereby certify that:

- The above information is complete and accurate to the best of my knowledge.
- I have received, read and understand the Foundation’s Conflict of Interest Policy.
- I agree to comply with the Foundation’s Conflict of Interest Policy.
- I understand that the Foundation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt charitable purposes and cannot serve private interests.
- I acknowledge my continuing obligation to timely inform the Foundation of any change in my (or my Family Members’) outside activities that alter the above information and that may raise a potential conflict of interest, and I agree to promptly complete and submit a new form to disclose such change or such potential conflict of interest.

Signature

Date

ATTACHMENT 2 to CONFLICT OF INTEREST POLICY

FORM OF RESOLUTION

FOR USE WHERE A PROPOSED TRANSACTION OR GRANT INVOLVES A CONFLICT
OF INTEREST OF A MEMBER OF THE BOARD OR BOARD COMMITTEE

“WHEREAS, the material facts of [the transaction or grant] and of Member’s interest in such transaction or grant have been disclosed to and considered by the Board; and

WHEREAS, the Board without the participation or vote of Member, has determined that (1) entering into such transaction will benefit the Leichtag Foundation (the “Foundation”), (2) such transaction is fair and reasonable as to the Foundation, and (3) after reasonable investigation under the circumstances, it appears that the Foundation cannot obtain a more advantageous arrangement with reasonable effort under the circumstances.

THEREFORE BE IT RESOLVED that such transaction be and hereby is approved as authorized.”

ATTACHMENT 3 to CONFLICT OF INTEREST POLICY
PRIVATE FOUNDATION SELF-DEALING RULES

As a private foundation, the Leichtag Foundation is subject to the self-dealing rules established by section 4941 of the Internal Revenue Code. These rules tightly regulate all transactions between the Foundation and its directors, officers, and other "disqualified persons." The conceptual starting point of the self-dealing rules is that a private foundation should not engage in economic transactions with disqualified persons even if those transactions result in the net transfer of value to the foundation. The rules establish an important, but limited, exception under which a foundation may pay reasonable compensation to a disqualified person and reimburse reasonable expenses for personal services that are reasonable and necessary to advance the exempt purposes of the foundation.

Sanctions. The sanctions for violating the self-dealing rules fall primarily on the disqualified person(s) involved in a self-dealing transaction, who must both pay a penalty tax and "correct" the violation. Correction generally requires both undoing the transaction to the extent possible and also placing the foundation in a financial position "not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards."

Directors and officers who knowingly, willfully, and without reasonable cause approve a self-dealing transaction are also subject to financial penalty and a correction obligation.

Definition of Disqualified Persons. For purposes of the self-dealing rules, disqualified persons include:

- A foundation's directors and officers as well as other "foundation managers" who have decision authority over a specific transaction;
- Substantial contributors to the foundation;
- Family members of the foregoing (i.e., spouses, ancestors, lineal descendants through great-grandchildren, and spouses of such descendants); and
- Any entity (other than another section 501(c)(3) organization) in which disqualified persons own a 35 percent or greater ownership interest.

Transactions Prohibited Under the Self-Dealing Rules.

- Selling, exchanging, or leasing of property between a private foundation and a disqualified person is an act of self-dealing, even if the foundation pays demonstrably less than the fair market value of the property it receives. A contribution of property subject to a mortgage is treated as a sale or exchange, and hence, constitutes self-dealing.
- Lending of money or other extension of credit by a foundation to a disqualified person is an act of self-dealing. In addition, a disqualified person may not lend to a foundation unless the loan is interest free and the proceeds are used exclusively for charitable purposes.

Where a disqualified person has made an interest-free loan to a foundation, the foundation may not repay the loan with property other than cash.

- Furnishing of goods, services, or facilities by a disqualified person to a private foundation is an act of self-dealing unless these items are offered free of charge. Conversely, a foundation may provide goods, services, or facilities to a disqualified person only if the disqualified person is treated no differently from other members of the public to whom the foundation also makes these items available.
- Payment of compensation to a disqualified person and reimbursement of related expenses are acts of self-dealing unless the services are personal services that are reasonable and necessary to carrying out the purposes of the foundation and the compensation and reimbursements are reasonable in amount.

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