

UPSA BOARD OF DIRECTORS
CONFLICT OF INTEREST POLICY

Introduction

Conflict of interest occurs when a member of the Board of Directors of a not-for-profit organization participates in decision-making about a matter that may benefit that director, or someone with whom the Board member has a close personal relationship, directly or indirectly, regardless of the size of that benefit.

Conflict of interest does NOT mean that UPSA cannot acquire help from its Board members, or the organizations they represent, or use their services.

UPSA's Board is made up of leading sales producers, business people, lawyers, managers, and others whose expertise is of considerable value to the organization, both as board members and as professionals. Our intent in this policy is to ensure that UPSA can continue to use the expertise of its Board members while protecting the credibility and ethical reputation of the Board and the organization.

The objectives of this policy are:

- To establish clear standards for Board members' conduct when a potential conflict arises
- To provide guidelines for Board members' conduct after the conflict has been disclosed, to ensure that the conflict continues to be properly handled

The Statutory Requirement

The legal consequences of a Board member participating in a decision on a matter in which the Board member has an interest are as follows.

- The Board member may be liable to account to UPSA for any profits made from the transaction
- The transaction may be "voided" by UPSA.
- The board member may be subject to any penalty of fines levied by the Internal Revenue Service or other regulatory agencies of the Federal or State government for which they deem an officer, director or person of influence has personally inured.

To avoid these results, § 13.1-871. "Director conflicts of interests" of the Virginia Administrative Code for Corporations (the statute under which UPSA is incorporated) contains an express disclosure requirement (see attached).

Significantly, the Virginia Administrative Code for Corporations only provides a mechanism to avoid the situation in which a Board member becomes liable to account to UPSA for profits made from a transaction in which the Board member is involved. The disclosure of an interest by a Board member does not, on its own, render the contract non-voidable by UPSA. At common law, a contract in which a Board member has an interest is only rendered non-

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voidable if it is sanctioned by the members of the corporation, in addition to the Board of Directors.

Principles

UPSA 's conflict of interest policy is based on two principles:

Members of the Board of Directors must not participate, or be perceived as participating, in any decision making on any matter which may directly or indirectly benefit that director, or anyone with whom the director has a close personal relationship

Members of the Board of Directors should not use, or be perceived as using, their status as directors to gain privileged access to the members, board or staff of UPSA for the presentation of programming or service proposals.

Policy

1. Before any meeting of the Board of Directors, an agenda will be circulated to each Director, with agenda items described in sufficient detail to allow members of the Board of Directors to identify possible conflicts of interest.
2. A member of the Board of Directors with a conflict of interest will declare the same in writing to the Chair of the meeting prior to the introduction of the agenda item in question. The written disclosure will explain
 - The fact that a conflict of interest may exist
 - The nature and extent of the interest
 - The nature and amount of the potential direct or indirect benefit to the member of the Board of Directors
3. The particulars of any such disclosure are noted in the minutes of the meeting.
4. The member of the Board of Directors who has disclosed a conflict of interest regarding an agenda item will refrain from participating in discussions and voting on the item, and will leave the meeting room when the Board reaches that agenda item. The Director's departure from the meeting room will be noted in the minutes. After discussion by the Board of that agenda item, the Director will return, and the return shall be noted in the minutes.
5. Members of the Board of Directors will follow standard UPSA procedures for submitting proposals or requests of any kind to UPSA, whether

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solicited or unsolicited. All such proposals should be submitted to and reviewed by management. If management determines that the proposal would be advantageous for UPSA, management should bring it forward to the Board of Directors for approval. In other words, at the time that the Board considers a proposal in which a member of the Board of Directors has an interest, management should be responsible to speak to the advantages and disadvantages of the proposal

This will apply to:

- Proposals for acquisition or licensing of a television production
- Responses to UPSA - issued requests for proposals, tenders, or requests for service
- Certified Partnerships and other partner agreements
- Requests for event sponsorship or advertising
- Unsolicited business proposals

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From the State of Virginia Administrative Code for Corporations

§ 13.1-871. Director conflicts of interests.

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect personal interest. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction; or
2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of this section, a director of the corporation has an indirect personal interest in a transaction if (i) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (ii) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation. A vote or consent of an entity in which the director has an interest described in the preceding sentence is deemed to be a vote or consent of the director for purposes of this section.

C. For purposes of subdivision 1 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect personal interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect personal interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect personal interest in the transaction does not affect the validity of any action taken under subdivision 1 of subsection A of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

D. For purposes of subdivision 2 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be cast by members whether or not present, that may be counted under this subsection. A director who has a direct or indirect personal interest in the transaction may not vote to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision 2 of subsection A of this section. His vote, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, who are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522.)