

CONFLICT OF INTEREST POLICY
for
WEST INDIANAPOLIS DEVELOPMENT CORP. (WIDC)

ARTICLE I

Purpose

The purpose of this Conflict of Interest Policy is to protect West Indianapolis Development Corporation (WIDC)'s interest when contemplating the execution of a transaction or arrangement that might benefit the private interest of a board member, officer, director or employee of WIDC or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

ARTICLE II

Definitions

- A. CDBG: Community Development Block Grant.
- B. Disqualified Person: A disqualified person is any person who was in a position to exercise substantial influence over the affairs of the applicable tax-exempt organization at any time during the look back period. It is not necessary that the person actually exercise substantial influence, only that the person be in a position to do so.
- C. Excess Benefit Transaction: An excess benefit transaction is a transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of a disqualified person, and the value of the economic benefit provided by the organization exceeds the value of the consideration received by the organization. In an excess benefit transaction, the general rule for the valuation of property, including the right to use property, is fair market value.
- D. Fair Market Value: The price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to use property, and both having reasonable knowledge of all relevant facts.

- E. Financial Interest: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
1. An ownership or investment interest in any entity with which the WIDC has a transaction or arrangement;
 2. A compensation arrangement with WIDC or with any entity or individual with which WIDC has a transaction or arrangement; or
 3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which WIDC is negotiating a transaction or arrangement.
 - a. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
 4. Note: A financial interest is not necessarily a conflict of interest. Under Article III, Section (B) of this Policy, a person who has a financial interest may have a conflict of interest only if the appropriate governing board, committee decides that a conflict of interest exists.
- F. HOME program: HOME Investment Partnership Program. This program was developed and is funded by Housing and Urban Development (HUD) for state and local governments, often in partnership with local nonprofit organizations, to provide temporary and permanent housing to low income households and those experiencing homelessness.
- G. Immediate family: This relates to relationships for which a potential conflict of interest may arise. The term includes: spouses; parents (including step-parents); children (including step-children); grandparents, grandchildren, siblings, and in-laws.
- H. Interested Person: Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined above, is an interested person.
- I. Owner/Developer: If in this category and a conflict of interest arises, the City of Indianapolis or participating jurisdiction will determine whether to grant a waiver.

ARTICLE III
Procedures

A. Duty to Disclose

1. In General. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest in writing and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
2. Disclosure if the conflict is associated with HUD, CDBG or the HOME program:
 - a. Disclosure provisions concerning a conflict of interest is outlined in:
 1. 24 CFR §92.356 for HOME-funded programs
 2. 24 CFR §570.611 for CDBG-funded programs
 - b. HUD provisions mandate immediate disclosure of all tenants living in HOME assisted units that are employed by the owner, developer, project sponsor, or property management company.
 - c. A waiver is required from the City of Indianapolis if WIDC is acting as an owner/developer and its employees, officers or agents are living in the units.

B. Determining Whether a Conflict of Interest Exists

1. In General. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.
2. If conflict is associated with HUD, CDBG Grant or HOME program 24 CFR §92.356 and §570.611 provides specific guidelines as to what comprises a conflict of interest. Below is an outline of the rules:
 - a. Any employee; agent; consultant; officer; elected or appointed official of the PJ; state recipient or sub-recipient; private, for profit or not-for profit owner; developer; community housing development organization (CHDO); or sponsors of CHDO's (including officers,

employees, agents and/or consultants) are subject to a conflict of interest if that person or entity:

1. Exercises any functions or responsibilities with respect to activities assisted with HUD, CDBG, or HOME funds;
 2. Is in a position to participate in a decision making process or gain inside information with regard to these activities;
 3. May obtain a financial interest or benefit from a HUD, CDGB, or HOME-assisted activity including solicitation or acceptance of gratuities; favors; occupation of a HUD, CDBG, or HOME-assisted housing unit, or anything of monetary value from contractors or their agents; or
 4. Has an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereof.
- b. This applies to interests either for themselves or those with whom they have immediate family or business ties, during their tenure or for one year thereafter.
- c. Exceptions to this rule may be granted. (See Article III, Section (C)(2)).
3. Due Diligence Checklist
- a. In general: To ensure that WIDC continues to be fair and impartial in its dealings, housing, and fund distribution, WIDC will seek full disclosure of any potential conflict of interests.
 - b. To avoid private inurement, excess benefit transactions, or self-dealings, WIDC will use a checklist to be completed with all potential conflict of interest situations. The following assertions will be included on the checklist:
 1. All applicants are qualified to request assistance.
 2. Proper promotion, publication advertising, and/or other notification was made to the public at large of the availability housing or housing assistance. A description of what notification was done will be included on the checklist.

3. Any prior benefits immediate family members have received will be documented including name, relationship, and type and date of benefit.
4. Assurance has been made that no other potential, non-conflicting, applicant has been denied in favor of a conflicting applicant and that the benefits have been made available to the public.
5. The applicant had no role in the decision making process of assistance.

C. Procedures for Addressing the Conflict of Interest

1. In General

a. If under \$500 per person per year:

1. The Executive Director will have the discretion to determine whether or not a conflict of interest exists.
2. If a conflict of interest does exist, the Executive Director will determine whether a fair market value is being given in exchange for the product or services rendered.
3. The Executive Director will collect documentation to support all fair market analysis decisions made.

b. If over \$500.00 per person per year:

1. An interested person may make a presentation at the governing board or committee 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. A quorum must be present for any vote.
2. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the governing board or committee shall determine whether WIDC 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.

4. Any contemplated transaction must be done at a fair market value to avoid the Excess Benefits Transaction provision of the United States Tax Code.
 5. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine, by a majority vote of the disinterested directors, whether the transaction or arrangement is in WIDC'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.
2. HOME program exception/waiver to conflict of interest
 - a. Upon written request, HUD may grant an exception to the conflict of interest on a case-by-case basis when it determines that an exception will further the purposes of the HOME program and the effective and efficient administration of the PJ. (Specific factors to be considered are listed in 24 CFR §92.356(e) and (f)(2)(i)-(v).
 - b. The City of Indianapolis grants exceptions for owners or developers who seek waivers to 24 CFR §92.356.
 3. WIDC will maintain a record and file with all request and response documents in regards to exceptions WIDC receives from the City of Indianapolis or HUD.
- D. Violations of the Conflicts of Interest Policy
1. If the governing board or committee has reasonable cause to believe a member has failed to disclose any 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.

2. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.
3. Tax consequences: Excess Benefit Transactions (Title 26, Subtitle D, Chapter 42, Subchapter D, Section 4958 of the Federal Tax Code)
 - a. Excess Benefit Transaction definition. (See Article II, Section (B)).
 - b. Penalties for disqualified person(s) and management for acquiescence or failure to comply: For the disqualified person, it is 25% of the excess benefit. For managers, it is 10% of the excess benefit. If not corrected, the penalty can increase to 200% of the excess benefit tax.
 - c. Safe Harbor Guidelines: If the disqualified person cures the excess benefit transaction following reasonable care guidelines, the penalties may be abated.

ARTICLE IV

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 interest in connection with an actual or possible conflict of interest;
- B. The nature of the financial interest;
- C. Any action taken to determine whether a conflict of interest was present;
- D. The governing board's or committee's decision as to whether a conflict of interest in fact existed;
- E. The names of the persons who were present for discussions and votes relating to the transaction or arrangement;
- F. The content of the discussion, including any alternatives to the proposed transaction or arrangement; and
- G. A record of any votes taken in connection with the proceedings.

- H. All due diligence checklists used to assess waivers or exceptions submitted to HUD or the City of Indianapolis will be kept.

ARTICLE V

Compensation

- A. In General
 - 1. A voting member of the governing board who receives compensation, directly or indirectly, from WIDC 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 WIDC for services is precluded from voting on matters pertaining to that member's compensation.
 - 3. Both aforementioned types of voting members are prohibited from providing information to any committee regarding compensation.
- B. HUD, CDBG, or HOME program (See Article III, Section (B)(2)).

ARTICLE VI

Annual Statements

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

ARTICLE VII

Periodic Reviews

To avoid jeopardizing its tax-exempt status, WIDC shall conduct periodic reviews. 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; and

- B. Whether partnerships, joint ventures, and arrangements with management organizations:
1. Conform to WIDC's written policies;
 2. Are properly recorded;
 3. Reflect reasonable investment or payments for goods and services;
 4. Further charitable purposes; and
 5. Do not result in inurnment, impermissible private benefit, or an excess benefit transaction.

ARTICLE VIII

Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, WIDC 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.

ARTICLE IX

References

- A. WIDC Articles of Incorporation: Section (2)(i)
- B. WIDC Bylaws: Section 12
- C. WIDC Board of Directors Standards of Conduct: 2nd Bullet
- D. WIDC Personnel Policies Section 6.5 and Section 6.6
- E. U.S. Department of Housing and Urban Development CPD 98-9 HOME Program Conflict of Interest Provisions
- F. Code of Federal Regulations 24 CFR 92.356
- G. City of Indianapolis, Department of Metropolitan Development, Division of Community Development Grant Management Policies
- H. US Code Title 26, Subtitle D, Chapter 42, Subchapter D, § 4958, Taxes On Excess Benefit Transactions

Adopted by the WIDC Board of Directors on January 16, 2008