

**College of Visual Arts  
Policy Regarding Conflicts of Interest and Duties of  
Trustees and Officers**

**1. Purpose**

Trustees, College Officers, and College Managers of the College of Visual Arts (“College”) owe a duty of loyalty to the College. Among other things, this requires that the College and its Trustees, College Officers, and College Managers not engage in impermissible conflicts of interest or confer excessive private benefit.

The purpose of this policy is to help Trustees, College Officers, and College Managers identify situations that pose potential conflicts of interest and to protect the interest of the College of Visual Arts (“College”) when it is considering entering into a Transaction or Agreement that might benefit the private interest of a Trustee, College Officer, or College Manager. This policy is intended to supplement, but not to replace the provisions of Minnesota Statute § 317A.255 and any other state laws governing conflicts of interest applicable to nonprofit corporations. If there is an inconsistency between the requirements and procedures described in this policy and those of any statute applicable to conflicts of interest in nonprofit corporations, the statute shall control.

**2. Definitions**

A. Trustee

A Trustee is a member of the College’s Board of Directors, known as the “Board of Trustees” (Article II, §2.1, College of Visual Arts Bylaws).

B. College Officer/College Manager

A College Officer or a College Manager is an employee of the College who has the authority to enter into binding Agreements and sign contracts on behalf of the College.

C. Interested Person

A Trustee, a member of a committee with Board-delegated powers, a College Officer, or a College Manager who has a direct or indirect Financial Interest or a Fiduciary Responsibility, as defined below, is an Interested Person.

D. Financial Interest

A person has a Financial Interest if the person has, directly or indirectly, through business, investment, or his or her Immediate Family:

1. An ownership or investment interest in any entity with which the College has a Transaction or Agreement; or
2. A Compensation arrangement with the College or with any entity or individual with which the College has a Transaction or Agreement; or

3. A potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which the College is negotiating a Transaction or Agreement.

A Financial Interest is not necessarily a conflict of interest. A person who has a Financial Interest may have a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

#### E. Fiduciary Responsibility

A person has a Fiduciary Responsibility towards an organization or individual if he or she:

1. Occupies a position of special confidence towards such organization or individual with which the College is negotiating a Transaction or Agreement;
2. Holds in trust property in which another person has the beneficial title of interest, when the trust property is the subject of a potential Transaction or Agreement with the College; or
3. Has a duty of loyalty or duty of care to an organization with which the College is negotiating a Transaction or Agreement (by virtue of serving as an officer or director of any organization or other position with similar responsibilities). A duty of loyalty requires the person to refrain from dealing with the organization on behalf of a party having an interest adverse to the organization and refrain from competing with the organization. A duty of care requires the person to discharge his or her duties in good faith and in a manner he or she reasonably believes to be in the best interests of the organization.

A Fiduciary Responsibility is not necessarily a conflict of interest. A person who has a Fiduciary Responsibility has a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

#### F. Compensation

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. Gifts and favors include any gratuitous service, loan, discount, money, or article of value, but do not include loans from financial institutions on customary terms, articles of nominal value ordinarily used for sales promotion, ordinary "business lunches," or reasonable entertainment consistent with local social or business customs.

#### G. Immediate Family

Immediate Family members include but are not limited to a spouse, domestic partner, parent, child, brother, sister, or spouse of a child, brother, or sister.

#### H. Transaction or Agreement

A Transaction or Agreement is any agreement or relationship that is substantial, involving the sale or purchase of goods, services, or rights of any kind, the providing or

receipt of a loan or grant, or the establishment of any other kind of pecuniary relationship. Making a gift to the College is not a Transaction or Agreement under this policy.

### **3. Discharge of Duties**

It is the responsibility of each Trustee, member of a committee with Board-delegated powers, College Officer, and College Manager to discharge his or her duties in good faith, in a manner the person reasonably believes to be in the best interests of the College, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

### **4. Conflicts Procedure**

#### **A. Duty to Disclose**

An Interested Person must disclose the existence of his or her Financial Interest or Fiduciary Relationship in connection with any actual or possible conflict of interest and disclose all material facts relating to his or her Financial Interest or Fiduciary Relationship to the Board Chair, the Chair of the relevant committee with Board-delegated powers, or the College President. This disclosure must be made as soon as the Interested Person becomes aware of the circumstances giving rise to a possible conflict of interest.

#### **B. Conflict of Interest Procedures**

1. At the time that the Board or committee with Board-delegated powers considers the Transaction or Agreement involving the Interested Person, the Board Chair, the Committee Chair, or the Interested Person must disclose the material facts concerning the Financial Interest or Fiduciary Relationship. If present at the meeting, the Interested Person must then leave the meeting room while the remaining members decide whether a conflict of interest exists. If a conflict of interest is determined to exist, the Interested Person shall not actively participate in the discussion of or vote on the proposed Transaction or Agreement, and the Interested Person shall not be counted in determining whether a quorum is present. The Interested Person may make a presentation concerning the Transaction or Agreement and answer questions of a factual nature posed by the Board members, but shall not attempt to exert his or her personal influence with respect to the matter, either at or outside a meeting.
2. If appropriate, the Board Chair or Committee Chair may appoint a disinterested person or committee to investigate alternatives to the proposed Transaction or Agreement.
3. After exercising due diligence, the Board or committee shall determine whether the College can obtain a more advantageous Transaction or Agreement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous Transaction or Agreement that would not give rise to a conflict of interest is not reasonably attainable under the circumstances, the Board or committee shall determine by a majority vote of the disinterested trustees or committee members whether the Transaction or Agreement is in the College's best interest and whether the Transaction is fair and reasonable to the College. The Board or committee shall make its decision whether to enter into the Transaction or Agreement in conformity with this determination.

**5. Violations**

Procedure

- A. If the Board or committee has reasonable cause to believe that a person subject to this policy has failed to disclose a Financial Interest or Fiduciary Responsibility as required in Section 4 (A) or failed to discharge his or her duties in accordance with Section 3, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure.
- B. If, after hearing the response of the person and investigating further as may be warranted under the circumstances, the Board or committee determines that the person has, in fact, failed to disclose a Financial Interest or Fiduciary Responsibility or failed to discharge his or her duties in accordance with this policy, it shall take appropriate disciplinary and corrective action.

**6. Records of Proceedings**

The minutes of meetings of the Board or committee shall contain:

- A. The names of the persons who disclosed or otherwise were found to have a Financial Interest or Fiduciary Responsibility in connection with an actual or possible conflict of interest, the nature of the Financial Interest or Fiduciary Responsibility, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision whether a conflict of interest existed.
- B. The names of the persons who were present for discussions and votes relating to the Transaction or Agreement, the content of the discussions, including any alternatives to the proposed Transaction or Agreement, and a record of any votes taken.

**7. Employment Matters Concerning Trustees**

A Trustee who is also an employee of the College shall not vote on Board or committee decisions concerning any terms and conditions of his or her employment, including Compensation, performance evaluations or reviews, discipline, or discharge. A Trustee-Employee may be excused from Board or committee meetings at which these matters are discussed, at the discretion of the Board or committee chairperson.

**8. Annual Conflicts of Interest Statement**

Each Trustee, member of a committee with Board-delegated powers, College Officer, and College Manager shall complete and sign a Conflicts of Interest Statement at the time of his or her initial election or appointment and annually, thereafter. This statement provides information but does not replace the duty to disclose specified in section 4 (A) above. The current form is attached hereto as Exhibit A.

Adopted by the College of Visual Arts Board on the 10<sup>th</sup> day of June, 2008.

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/s/  
Melissa Schoenherr  
Board Secretary

Exhibit A

**College of Visual Arts  
Annual Conflicts of Interest Statement**

The undersigned, a Trustee, member of a committee with Board-delegated powers, College Officer, or College Manager of the College of Visual Arts, hereby acknowledges the following:

1. I have received a copy of the College of Visual Arts Policy Regarding Conflicts of Interest and Duties of Trustees and Officers (the "Policy").
2. I have read and understand the Policy.
3. I agree to comply with the Policy.
4. I understand that the Policy applies to the Board of Trustees, all committees and subcommittees having Board-delegated powers, and all College Officers and College Managers.
5. I understand that the College is a nonprofit organization and that in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of their tax-exempt purposes.
6. The following information concerning conflicts and potential conflicts is true, correct, and complete, to the best of my knowledge:

A. I serve or represent the College in the following capacities:

Title(s): \_\_\_\_\_

B. I am a director, officer, employee, or legal representative, or I have a material financial or beneficial interest in the following organizations which may have a conflict of interest with the College:

Organization:

Title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. I am not involved in any activity or transaction, nor am I a party to a contract involving interests which could be found to be adverse to the College except for the following:

\_\_\_\_\_  
\_\_\_\_\_

D. I am not pursuing any business opportunities which might adversely affect the College except for the following:

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E. I bring to your attention the following potential conflicts of interest in addition to those, if any, disclosed in B, C, and D above: (If none, insert "None.")

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Signature