

# Young Men's Christian Association of Greater Richmond

## Conflicts of Interest

### Why is a Conflict of Interest Policy Important?

- Key staff and volunteers must make decisions based on the best interests of the YMCA, not decisions that, directly or indirectly, further their own interests or the interests of a third party.
- This duty of loyalty is a legal duty that is imposed under state and federal law.
- A conflict of interest policy protects both the YMCA and its leaders by assuring that potential conflicts are identified on a timely basis and appropriately addressed.
- The IRS Form 990 asks whether the YMCA has a written conflict of interest policy and a procedure for reporting potential conflicts of interest.

### How do Potential Conflicts Arise?

- A potential conflict of interest can arise when the YMCA is considering taking some action that also benefits the private interests of an influential person at the YMCA (i.e. board and committee members, key employees). For example, a contract with a company owned by a Board member, or his/her family member, could create a conflict of interest.
- Even if the person thinks s/he can be impartial, it is important to report the potential conflict so that the YMCA is aware of it before any action is taken.

### Resolving Potential Conflicts of Interest

- It is very important that any potential conflict be disclosed and resolved before the board takes action on the matter where a conflict may exist.
- Disclosure is made as a written response to a "Conflicts of Interest Annual Questionnaire". When potential conflicts are disclosed, the Audit Committee will evaluate whether or not they pose a true conflict.
- This evaluation will not involve the interested party.
- The review process and the decision reached will be documented in the minutes of the meeting.

## Reporting Potential Conflicts of Interest is Important

- Because YMCA leaders are also often business leaders who have relationships with the YMCA, it is not unusual for potential conflicts of interest to occur.
- It is important to report all potential conflicts of interest so that the YMCA has complete transparency when making decisions.
- If the YMCA makes a decision without knowing all the facts, it can lead to public embarrassment, legal penalties and loss of public trust.
- A reporting procedure and Annual Questionnaire require YMCA leaders to be forthcoming in notifying the YMCA of any potential conflict of interest so that the YMCA's integrity and reputation are not harmed by real or perceived inappropriate conduct.

## Duty of Continuous Reporting

- All YMCA leaders must understand that the “duty to disclose” is continuous.
- If any potential conflict of interest arises after the Annual Questionnaire has been submitted, it should be disclosed in writing to the Chief Financial Officer.
- Failure to timely and adequately respond to the Annual Questionnaire, or to make any subsequent disclosure, is grounds for board action.

# Young Men's Christian Association of Greater Richmond

## Conflict of Interest Policies and Procedures

### I. PURPOSE OF THE CONFLICT OF INTEREST POLICY

The purpose of this conflict of interest policy of the Young Men's Christian Association of Greater Richmond, hereinafter referred to as "YMCA", is to protect the YMCA when it is contemplating entering into a contract, transaction or arrangement that has the potential for benefiting the private interest of a "Significant Person" (as defined below). 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.

### II. STATEMENT OF POLICY

Directors, officers, employees and volunteers of the YMCA shall adhere to the highest standards of honesty, ethics, propriety, good faith and fair dealing in all activities relating to the YMCA.

Compliance with the YMCA's Conflict of Interest Policies and Procedures is a condition of employment or service to the YMCA.

No YMCA director, officer, employee or volunteer or "Family Member" (as defined below) shall accept gifts, entertainment, discounts, benefits, gratuities, or favors of any kind from any person, firm or corporation with whom the YMCA is a party to a contract, transaction or arrangement, or with whom the YMCA is contemplating entering into a contract, transaction or arrangement, which could reasonably be expected to influence, or create the appearance of influencing the individual's actions affecting the YMCA. This prohibition is not intended to preclude business meals or other nominal matters in the reasonable and ordinary course of business.

The YMCA will not engage in any contract, transaction or arrangement involving a "Conflict of Interest" (as defined below) without establishing appropriate safeguards to protect the interests of the YMCA. To that end:

- a. Each Significant Person must promptly, fully and timely comply with the disclosure requirements set forth in this policy, or as otherwise adopted by the Board of Directors or its Executive Committee in accordance with this policy.
- b. All material transactions, contracts or arrangements involving a Conflict of Interest must be reviewed by the Audit Committee ("Committee").
- c. The Committee must determine by a majority vote of disinterested persons that appropriate safeguards and/or actions are in place to protect the interests of the YMCA and are consistent with the purposes of this Policy.
- d. Where appropriate, the Committee shall seek advice of legal counsel.
- e. The Committee shall report to the Board of Directors of the YMCA ("Board"), at least annually, on the results of its review.

This Policy applies to (a) Significant Persons, and (b) any material contract, transaction or arrangement involving the YMCA.

### III. DEFINITIONS APPLICABLE TO THE POLICY

**Significant Person.** Any YMCA director, officer, “Key Employee” (as defined below) or member of a committee of the Board is a Significant Person. In addition, for purposes of implementation of this policy, Association Officers, Branch Executive Directors and any other volunteer or employee, at the request of the Audit Committee or at the discretion of the Chief Financial Officer, will be considered a Significant Person.

**Key Employee** Any persons, other than officers, directors, and trustees, who (a) had reportable compensation exceeding \$150,000 for the year (the “\$150,000 test”); (b) had or shared organization-wide control or influence similar to that of an officer, director, or trustee, or managed or had authority or control over at least 10 percent of the organization’s activities (the “responsibility test”); and (c) were within that group of the organization’s top 20 highest paid persons for the year who satisfied both the \$150,000 test and the responsibility test.

**Conflict of Interest.** A Conflict of Interest exists whenever a Significant Person has a “Significant Personal Interest” (as defined below) in a proposed contract, transaction or arrangement to which the Y may be a party.

**Significant Personal Interest.** A Significant Personal Interest exists if the Significant Person, directly or indirectly, through business, investment, or “Family Member” (as defined below), has a(n):

- a. ownership or investment interest in any entity with which the YMCA has a material contract, transaction or arrangement;
- b. compensation arrangement with the YMCA (other than salaries of YMCA employees);
- c. compensation arrangement with any entity or individual with which the YMCA has a material contract, a transaction or arrangement;
- d. potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the YMCA is negotiating (or is proposing to negotiate) a material contract, a transaction or arrangement; or
- e. fiduciary position (*e.g.*, member, officer, director, committee member), whether compensated or uncompensated, with another, unaffiliated organization (i) **which directly competes with the YMCA in terms of services or for charitable contributions**; or (ii) with which the YMCA has (or is proposing to enter into) a material contract, transaction or arrangement.

Compensation includes direct and indirect remuneration, consulting fees, board or advisory committee fees, honoraria, as well as gifts or favors that are not insubstantial.

*A Significant Personal Interest is not necessarily a Conflict of Interest.* Article V describes the procedure that will be used to decide whether or not a Conflict of Interest exists.

**Family Member.** With respect to a Significant Person, a “Family Member” means:

- a. the Significant Person’s spouse;
- b. a brother, sister, parent, grandparent, child, grandchild, or great grandchild (by whole or half blood) of the Significant Person or the Significant Person’s spouse, or
- c. the spouse of an individual listed in paragraph (b),

However, a Family Member includes individuals listed in paragraphs (a) and (b) (other than a child) *only* if the individual lives in the Significant Person’s household, the Significant Person manages the individual’s financial affairs, or the Significant Person is aware without special inquiry that the Family Member holds a particular Interest.

#### **IV. PROCEDURES FOR IDENTIFICATION OF POTENTIAL CONFLICTS OF INTEREST**

The process of administering the Questionnaire, summarizing the information and reporting Conflicts of Interest to the Committee is the responsibility of the Chief Financial Officer (“CFO”) under the direction of the President & Chief Executive Officer.

**Annual Questionnaire.** Each Significant Person shall completely, accurately and timely submit the *Conflict of Interest Annual Questionnaire* (the “Annual Questionnaire”) as instructed by the CFO.

**Duty to Disclose.** An Annual Questionnaire recipient must disclose the existence of any potential Conflict of Interest and be given the opportunity to disclose all material facts in order for the Committee to consider the proposed contract, transaction or arrangement. Such information must be provided so that decisions are made with full knowledge and understanding of the Significant Person’s interest.

**Continuing Disclosures.** **If, after completion of the Annual Questionnaire, any Annual Questionnaire recipient becomes aware of anything that could give rise to a potential Conflict of Interest with respect to a proposed contract, transaction or arrangement involving the YMCA, the Annual Questionnaire recipient shall promptly disclose that interest to the CFO, who will inform the Committee of the disclosure for purposes of evaluation.**

#### **V. PROCEDURE FOR DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS**

The CFO will submit a confidential report to the Committee concerning any potential Conflict of Interest together with recommendations concerning the same. The Committee will make a report to the Board or its Executive Committee, including recommendations for any actions to be taken by the Board or Executive Committee.

The Committee shall determine by a majority vote of disinterested directors whether the disclosed interest may result in a Conflict of Interest after meeting, discussing and voting on the matter. The Committee shall:

- a. review responses to the Annual Questionnaire and any continuing disclosures that are made during the year;
- b. take such steps as are necessary to identify interests and review any so identified;
- c. make such further investigation as it deems appropriate with regard to interests disclosed or identified; and

- d. determine whether any such interest gives rise to a Conflict of Interest.

The Committee may request additional information concerning the relevant interest from all reasonable sources before reaching a determination. An Annual Questionnaire respondent may be asked to make a presentation at the 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.

## **VI. PROCEDURE WHEN A CONFLICT OF INTEREST EXISTS**

Where a Conflict of Interest is determined to exist, the YMCA shall not enter into the proposed contract, transaction or arrangement unless the Committee has complied with the following:

- a. The Committee shall, evaluate the reported matter, including, as deemed necessary, investigating alternatives to the proposed contract, transaction or arrangement.
- b. After exercising due diligence, the Committee shall determine whether the YMCA can, with reasonable efforts, obtain a more advantageous contract, transaction or arrangement from a person or entity without a Conflict of Interest.
- c. If a more advantageous transaction or arrangement is not reasonably possible or practical, the Committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the YMCA's "best interest", for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Committee shall make its decision as to whether to enter into the contract, transaction or arrangement.
- d. The Committee will recommend to the Board or its Executive Committee whether to approve the contract, transaction or arrangement.

## **VII. PROCEDURE FOR VIOLATIONS OF THE POLICY**

- a. If the Committee has reasonable cause to believe a Significant Person has failed to comply with the disclosure requirements in this Policy, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Committee determines the person has failed to disclose an actual or possible Conflict of Interest, it shall report the person's failure to the Board for appropriate disciplinary and/or corrective action, up to and including termination of employment or volunteer service.

## **VIII. DOCUMENTATION OF PROCESS**

The minutes of the Committee shall contain:

- a. The names of the Significant Persons who disclosed or otherwise were found to have an interest being considered at such meeting by the Committee, the nature of the interest, any action taken to determine whether a Conflict of Interest was present, and the Committee's decision as to whether a Conflict of Interest in fact existed.
- b. The names of the persons who were present for discussions relating to the contract, transaction or arrangement, 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.
- c. If appraisals (for tangible property) or third party comparable data (for compensation) were considered by the Committee, the nature and source of the data.
- d. The Committee's recommendation, as necessary, to the Board or Executive Committee, regarding the contract, transaction or arrangement.

The minutes of the Board or its Executive Committee shall contain, as appropriate:

- a. The Board's or Executive Committee's decision regarding recommendations of the Committee
- b. Documentation that the Board or its Executive Committee have received a report from the Committee regarding the Committee's review of Conflicts of Interests and any actions taken by the Board or Executive Committee with respect thereto.

## **IX. ANNUAL AFFIRMATION STATEMENT**

Each Significant Person shall annually sign the statement at the end of the attached Annual Questionnaire and affirm:

The person has received a copy of this Conflict of Interest Policy,

The person has read and understands the Conflict of Interest Policy,

The person agrees to comply with the Conflict of Interest Policy, and

The person understands the YMCA is a charitable organization and, in order to maintain its federal tax exemption, it must continuously engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **X. PERIODIC REVIEWS**

To ensure that the YMCA operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic (at least annual) reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

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Whether compensation arrangements and benefits are reasonable, are based on competent survey information, and are the result of arm's length bargaining.

Whether partnerships, joint ventures, and arrangements with management organizations conform to the YMCA'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.

The Board is responsible to assure these reviews are performed, and may delegate to a committee or task force, which would report results to the Board.

**XI. USE OF OUTSIDE EXPERTS—**

When conducting the periodic reviews as provided for in Article X, the YMCA may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

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Approved:    Audit Committee    -    May 13, 2009

Executive Committee    -    May 21, 2009

## Young Men's Christian Association of Greater Richmond ("YMCA")

# Conflict of Interest Annual Questionnaire

### Purpose of this Questionnaire

The Conflict of Interest Policy (the "Policy") adopted by the Board of Directors of the YMCA of Greater Richmond requires disclosure of certain interests. It is not uncommon to have these interests, but it is very important to make them known to the YMCA .

Use this Annual Questionnaire to disclose whether you or your Family Members have certain affiliations, interests or relationships, and/or have taken part in transactions that, in light of your relationship to the YMCA, might possibly give rise to an actual, apparent or potential conflict of interest.

### How to Use this Questionnaire

1. Please read the Conflict of Interest Policy for the definitions of all capitalized terms used in the Annual Questionnaire.
2. Answer all questions. Check "No" where applicable (**please do not leave any question blank if the correct response is "no"**).
3. Any response should take into consideration your relationship with and your role within the YMCA.
4. Where this Annual Questionnaire refers to "you," it is also referring separately to each Family Member. For purposes of this Annual Questionnaire, the definition of "Family Member" is extremely inclusive. Please refer to the definition provided in Section III of the Conflict of Interest Policy.
5. Your response should indicate whether you are disclosing an interest of you or of a Family Member (and, in the case of a Family Member, the nature of your relationship with that Family Member).
6. Include all material facts as requested by this Annual Questionnaire.
7. Disclose all possible interests that currently exist, even if you previously reported them. Interests that are new either since the filing of your last Annual Questionnaire, or since the beginning of your relationship with the YMCA should also be reported on this Annual Questionnaire. A potential Conflict of Interest can arise from many circumstances, not just those described in this Annual Questionnaire. **You must report to the Board any relationship that creates an interest that occurs between now and the completion of the next Annual Questionnaire. Any potential Conflicts of Interest that arise after the Annual Questionnaire has been completed should be immediately reported to the CFO.**
8. Complete the Annual Questionnaire, date it and sign the affirmation at the end of the document.

**CONFLICT OF INTEREST QUESTIONNAIRE AND ACKNOWLEDGMENT**

**NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

In accordance with the purposes and intent of the Conflict of Interest Policy adopted by the YMCA of Greater Richmond, a copy of which has been furnished to me, I hereby disclose that I or my Family Members have the following affiliations, interests or relationships, and/or have taken part in the following transactions:

**I. BACKGROUND**

A. What position(s) do you hold and what relationship(s) do you maintain with respect to the YMCA (*e.g.*, trustee, director, committee member, officer, Key Employee, executive, professional advisor, vendor, etc.)?

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

**II. OUTSIDE INTERESTS**

A. Do you or any Family Member (as defined previously) hold, directly or indirectly, through business, investment or immediate family, any of the following:

i. An ownership or investment interest in a company that does or may do business with, or that competes with, the YMCA, regardless of the percentage of ownership or value of the ownership interest?

( ) No ( ) Yes - Explain below

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

ii. A compensation arrangement with any company that does or may do business with, or that competes with, the YMCA (such as compensation for employment or independent contractor services, consulting fees, board stipends or fees, advisory committee fees, honoraria and the like)?

( ) No ( ) Yes - Explain below

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

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iii. A director, trustee, officer or board committee position with any other company or not-for-profit organization that does or may do business with, or that competes with the YMCA (**including competition for grants or donations**)?

( ) No ( ) Yes - Explain below

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iv. Any personal loans, advances or other borrowing from, or indebtedness to, any customer or supplier who also does or may do business with the YMCA? (You may exclude charge cards, and personal or mortgage loans at market rates at financial institutions such as banks, finance companies, insurance companies, and savings and loan associations.)

( ) No ( ) Yes - Explain below

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B. Do you or any Family Member compete, directly or indirectly, with the YMCA in the purchase or sale of property, rights, interests or services or with respect to any transaction to which the YMCA is a party?

( ) No ( ) Yes - Explain below

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C. Do you or any Family Member provide directive, managerial, consultative or other services to or on behalf of any other company that does or may do business with, or that competes with, the YMCA?

( ) No ( ) Yes - Explain below

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D. Do you or any Family Member employ or otherwise retain any YMCA personnel for work on non-YMCA business done outside of the YMCA?

( ) No ( ) Yes - Explain below

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E. Have you or any Family Member used YMCA property to conduct business that is not YMCA business, without prior approval of an executive of the YMCA?

( ) No ( ) Yes - Explain below

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F. If you are employed by the YMCA, have you or any Family Member accepted assignments outside of the YMCA, either as an employee or as an independent contractor, over and above your primary or full-time assignment with the YMCA?

( ) No ( ) Yes - Explain below

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G. Do you or any Family Member hold an elected or appointed office or other position of public responsibility that serves residents in the YMCA's service area?

( ) No ( ) Yes - Explain below

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H. Have you or any Family Member been a party to any action, suit or proceeding during the past five years that might be deemed material to evaluating your ability, your integrity or your interests with respect to the YMCA?

( ) No ( ) Yes - Explain below

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I. Do you or any Family Member know of any recent or pending actions, suit or proceeding in which you have an interest adverse to the interests of, or are a party adverse to the YMCA?

( ) No ( ) Yes - Explain below

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**III. INSIDE ACTIVITIES**

A. In your area of direct responsibility within the YMCA, do you employ or otherwise retain any Family Member or other individual with whom you have a business or personal relationship?

( ) No ( ) Yes - Explain below

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B. Have you or any Family Member attempted to influence the YMCA concerning the employment or retention of any Family Member or other individual with whom you have a business or personal relationship?

( ) No ( ) Yes - Explain below

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C. Attached to this form is a complete list of the directors, officers, Key Employees and significant service providers for the YMCA of Greater Richmond. We need certain additional information to complete the annual Form 990 tax return for the YMCA. Please answer the following questions as they pertain to the attached list:

i. **Is any person on the list a Family Member?**

If yes, please specify name and relationship: \_\_\_\_\_

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ii. **Are you an employee of any person or entity on the list?**

If yes, please specify employer(s): \_\_\_\_\_

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iii. **Do you (PERSONALLY, and not through any business interests) have a written contract with any person or entity on the list?** (You may exclude charge cards, and personal or mortgage loans at market rates at financial institutions such as banks, finance companies, insurance companies, and savings and loan associations.)

If yes, please specify name and relationship: \_\_\_\_\_

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- iv. **Do you (PERSONALLY, and not through any business interests), together with any person or persons on the list, have more than a 35% ownership interest in any corporation, partnership or trust?**

If yes, please specify name and relationship: \_\_\_\_\_

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**IV. GIFTS, GRATUITIES AND ENTERTAINMENT**

- A. Have you or any Family Member accepted gifts, entertainment, benefits, discounts or other favors from any outside entity that does, or is seeking to do, business with, or is a competitor of, the YMCA, under circumstances which someone might think that such action was intended to influence or possibly would influence you in the performance of your duties on behalf of the YMCA? This does not prohibit the acceptance of reasonable entertainment by suppliers or prospective suppliers or items of nominal value that are clearly tokens of respect or friendship and not related to any particular transaction or activity when the value of such entertainment or items does not exceed One Hundred Dollars (\$100.00).

( ) No ( ) Yes - Explain below

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- B. Have you or any Family Member accepted any gifts, honoraria, perquisites, favors or benefits valued in excess of One Hundred Dollars (\$100.00) from customers, suppliers or agents of the YMCA?

( ) No ( ) Yes - Explain below

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**V. OTHER**

In the space below, please disclose any other interest, activities, investments, arrangements, events, transactions or involvement that you think might be relevant for full disclosure of all actual, apparent or possible Conflicts of Interest involving yourself, Family Members or others in accordance with the terms and intent of the YMCA's Conflict of Interest Policies. If none, indicate "none." [Use additional pages as necessary.]

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**VI. AFFIRMATION**

I hereby state that:

- (i) I have received a copy of the YMCA of Greater Richmond's Conflict of Interest Policy,
- (ii) I have read and understand the Conflict of Interest Policy,
- (iii) I agree to comply with the Conflict of Interest Policy,
- (iv) I understand that the YMCA of Greater Richmond is a charitable organization and that, to maintain its federal tax-exempt status, it must engage primarily in activities that accomplish one or more of their tax-exempt purposes,
- (v) I agree to report to the CFO **(1) any change in the responses to each of the foregoing questions that may result from changes in circumstances or (2) any further financial interest, situation, activity, interest or conduct that may develop before completion of my next Annual Questionnaire, and**
- (vi) The information contained in this Annual Questionnaire is true and accurate to the best of my knowledge and belief as of the date below.

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_