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MEMORANDUM

To: USGBC Board of Directors
From: USGBC Chapter Steering Committee
Date: 9/5/07
Subject: Revised Chapter Conflict of Interest Policy

USGBC Chapter Conflict of Interest Policy

All Chapter Board members must sign and agree to abide by this policy when they become elected or appointed and annual thereafter. The Chapter Secretary should collect and file all signed agreements at the first board or committee meeting (as applicable) of the year.

Intent

This policy is designed to ensure that all officers, directors, committee members and other persons serving in a leadership capacity of, for or on behalf of the U.S. Green Building Council (“Leaders”) and its Chapters or provisional chapters exercise good judgment in dealing with conflicts that could undermine the best interests of the Council.

Definition

This policy applies to USGBC Chapters and provisional chapters and their governing boards as well as any committees created by Chapters or provisional chapters.

Policy

Leaders must avoid and minimize activities and situations that actually, potentially or apparently conflict with the Chapter or provisional chapter’s interests or interfere with the leaders’ duty to serve the Chapter or provisional chapter with undivided loyalty (“conflicts”). Conflicts include: (1) having a direct financial or close personal interest in a company, service or product that could be affected (in a positive or negative manner) by a decision of a board, committee or other Chapter or provisional chapter governing body on which the Leader serves, (2) serving as a partner, director, officer or trustee of another entity that has an interest in a transaction with the Chapter or provisional chapter, (3) revealing or misusing confidential information, (4) accepting or offering substantial gifts, excessive entertainment, favors or payments which may reasonably be construed to constitute undue or otherwise improper influence, (5) breaching any fiduciary duty owed to the Chapter or provisional chapter, (6) participating in any private inurement transactions, which include transactions where the Chapter or provisional chapter’s resources are transferred to an individual solely by virtue of the individual’s relationship with the Chapter or provisional chapter and without regard to accomplishing the Chapter or provisional chapter’s purposes, (7) exploiting opportunities for personal or private benefit that could otherwise benefit the Chapter or provisional chapter, (8) taking direct action on behalf of the Chapter or provisional



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chapter that may result in material personal or private benefit or that may result in a material adverse impact to a personal or private competitor, and (9) competing with the Chapter or provisional chapter, and (10) generally includes transactions where an 'insider' receives economic benefits from the Chapter or provisional chapter greater than the value of the consideration received by the Chapter or provisional chapter (*IRS section 4958*).

Leaders shall stand in a fiduciary relation to the Chapter or provisional chapter and their fiduciary responsibilities are to perform their duties, including their duties as members of a committee, in good faith, in a manner reasonably believed to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

Conflicts are not inherently improper. However, Leaders must be conscious of conflicts and act with candor and care in dealing with such situations.

Practice and Procedure

I. Disclosure.

1. Leaders must disclose all conflicts of interest to the entire committee or Chapter or provisional chapter board as described above (if not previously disclosed) and at any other time immediately following discovery of a conflict, including conflicts related to any item included in any meeting agenda. Disclosures must be written and must include sufficient detail so as to allow a complete and objective assessment of the conflict. (Note: disclosures can be separate written documents attached to the official meeting minutes or can be made verbally and included in the official meeting minutes.)
2. The committee chair or Chapter or provisional chapter board (or a conflicts committee) is required to review each disclosure immediately and determine whether the interest disclosed results in an actual conflict within a specified time frame.
3. The Chapter or provisional chapter board, as part of the review process mentioned above, should determine the scope of the conflict and limit the restrictions imposed on the Leader in appropriate circumstances.
4. Chapters and provisional chapters must, as part of their annual reports to USGBC, verify that they have adopted and are enforcing this conflict of interest policy. Verification is a requirement of USGBC policy.



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II. Conduct.

After a Leader discloses a conflict, the Leader may not participate in any voting related to the conflict, but may participate in discussions or answer questions at the discretion of the committee chair or Chapter or provisional chapter board .

Example 1: A Leader serves on a committee addressing indoor air quality standards for the LEED Green Building Rating System and also on the provisional chapter's board. The Leader, in addition to her affiliation with the provisional chapter, is employed by a company that manufactures a product that is designed to improve indoor air quality. Recognizing the potential for a conflict, the Leader discloses her employment and agrees to conduct her activities in accordance with this policy. She should be encouraged to continue serving on the committee and offering her unique insights into indoor air quality standards, whether or not such insights benefit her employer or adversely affect her employer's competitors. However, she should abstain from voting on indoor air quality standards in the committee. She should also abstain from voting on indoor air quality standards in the Board. She should not abstain from voting on matters that do not directly or predominantly involve air quality standards, such as the complete LEED Green Building Rating System.

Example 2: The Chapter oversees a grant that is intended to stimulate environmentally advanced architectural practices. As part of this oversight, the Board is tasked with awarding a portion of the grant funds to a qualified architect to develop model architectural practices. The Board believes that a Leader serving on the Chapter's Board of Directors is the most qualified candidate for the position. Recognizing that its award of grant funds to the Leader is not an actual conflict unless the Leader is provided payment in excess of the value provided. The staff should research a reasonable, fair market value for the work to be performed by the Leader. The Board should then use this research to establish the amount of grant funds to be awarded to the Leader. Upon notification of the award, the Leader should disclose her interest in these funds to the Chapter Chair and thereafter abstain from making motions, voting, executing agreements or taking any other similar direct action on behalf of the Chapter on matters which directly or predominantly involve the grant or any of the Leader's activities that are funded by the grant.

Example 3: A mid-western developer contacts the Board in search of an environmental consultant for her project. Based on the nature of experience sought by the developer, the Board believes that one or more Leaders or members of the Board may be qualified to perform the work. Because of concerns that members will perceive a conflict if the developer is only given the name of a Leader, the Board broadcasts the opportunity to all members by posting the solicitation on the Chapter's Web site. A Leader responds to the solicitation and subsequently enters into a consulting contract with the developer. Immediately after entering into the contract, the Leader should disclose this relationship to the Chapter or Chair.



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III. Documentation.

All conflict disclosures and actions taken by the committee chairs or Chapter or provisional chapter Board of Directors in connection with such disclosures must be noted for record in the minutes of the then-current meeting of such group. The group may summarize and catalog conflict situations from time to time for reference purposes.

IV. Availability.

Copies of this policy are available to all Leaders. As new Leaders are created, they shall be provided copies of this policy.

V. Disciplinary Action

If the Chapter or provisional chapter board receives a complaint about a conflict of interest that has not been appropriately disclosed and handled at the committee or other chapter or provisional chapter governing body level, that group's leader may be asked to speak with the Chapter or provisional chapter board (or a conflicts committee) leader to resolve the issue. If the complaint continues, the issue will be written up and forwarded to the Chapter or provisional chapter governing body designated to determine if organizational guidelines have been breached and how the issue might be resolved. In instances where a breach of this conflict policy has been identified, the person with the conflict may be required to undo the transaction or to return any profits to the Chapter or provisional chapter.