

Conflicts of Interest

Introduction

In the course of business, situations may arise in which a DMS member has a conflict of interest, or in which the process of making a decision may create a potential, real or an appearance of a conflict of interest. Conflicts of interest create a special risk to nonprofits as the organization may lose its tax exempt status for any real or apparent conflicts of interests.

All directors, employees, members, and volunteers have an obligation to:

- Avoid conflicts of interest, or the appearance of conflicts, between their personal interests and those of the Organization in dealing with outside entities or individuals,
- Disclose real and apparent conflicts of interest to the Board of Directors, and
- Refrain from participation in any decisions on matters that involve a real conflict of interest or the appearance of a conflict.

What Constitutes a Conflict of Interest?

All members owe a duty of loyalty to DMS. This duty necessitates that in serving the nonprofit, they act solely in the interests of DMS, not in their personal interests or in the interests of others.

The persons covered under this policy shall hereinafter be referred to as "interested persons." Interested persons include all members (individually, and as members of committees and the Board of Directors), volunteers, employees, as well as persons with the following relationships to directors or employees:

1. Spouses or domestic partners
2. Brothers and sisters
3. Children, grandchildren, and great grandchildren
4. Spouses of individuals listed in 2 and 3.
5. Corporations, partnerships, LLCs, and other forms of businesses in which an employee, member or director, either individually or in combination with individuals listed in 1, 2, 3, or 4, collectively possess a [35%] or more ownership or beneficial interest. (The financial interest threshold of 35% is based on the IRS definition of a disqualified person in IRC section 4958.)

Conflicts of interest arise when the interests of an interested party may be seen as competing with those of DMS. Conflicts of interest may be financial (where an interested party benefits financially directly or indirectly) or nonfinancial (e.g. seeking preferential treatment, using confidential information).

Examples of conflicts of interest include, but are not limited to, situations in which a member, volunteer, or employee:

1. Negotiates or approves a contract, purchase, or lease on behalf of the Organization and has a direct or indirect interest in, or receives personal benefit from, the entity or individual providing the goods or services;
2. Negotiates or approves a contract, sale, or lease on behalf of the Organization and has a direct or indirect interest in, or receives personal benefit from, the entity or individual receiving the goods or services;
3. Employs or approves the employment of, or supervises a person who is an immediate family member of the director or employee;
4. Uses the Organization's facilities, other assets, employees, or other resources for significant personal gain or in such a way that the organization can be negatively impacted;
5. Receives a substantial gift from a vendor, if the director or employee is responsible for initiating or approving purchases from that vendor.

Disclosure Requirements

A member, volunteer, or employee who believes that he/she may be perceived as having a conflict of interest in a discussion or decision must disclose that conflict to the finance committee. Most concerns about conflicts of interest may be resolved and appropriately addressed through prompt and complete disclosure.

Therefore, DMS requires the following:

1. On an annual basis, all members and volunteers with purchasing and/or hiring responsibilities or authority shall inform, in writing, to the Treasurer of all reportable conflicts or confirm that there are no conflicts to report.
2. Prior to the preparation of the disclosure statements, the Treasurer shall distribute a list of all vendors with whom the DMS has transacted business at any time during the preceding year, along with a copy of the disclosure statement;
3. The Treasurer shall review all forms completed by committee and board members, and the Board shall review all forms completed by the Treasurer and Finance Committee and determine appropriate resolution in accordance with the next section of this policy.
4. If a potential conflict of interest arises after disclosures are made and reviewed, the member shall immediately notify the Treasurer who will determine appropriate resolution.

Resolution of Conflicts of Interest

In the event a potential conflict of interest is discovered concerning the Board or Officers of the corporation, all uninterested board members will come together in a meeting and will decide whether a conflict of interest exists and determine the appropriate response and actions to take based on the specific facts and circumstances. The response and actions to be taken must be approved by a majority of a quorum of uninterested board members. However, there must be at least three (3) uninterested board members to form a quorum to render this decision. Where no quorum can be formed as stated here, a conflict of interest is automatically presumed requiring an immediate end to the agreement between Dallas Makerspace and the disclosing person (e.g. resigning from the board, ending contractual arrangements, or relinquishing a management or supervisory position). Minutes will reflect any potential, real, or apparent conflict of interest. All individuals who have potential interests must recuse themselves from discussions or influencing decisions. Actual or apparent conflicts of interest not involving the Board or Officers of the corporation will be reviewed and resolved by the treasurer, who will inform the Board as soon as is practicable of the actions taken and the Board shall have the opportunity to review.

Failure to comply with the standards contained in this policy will result in disciplinary action that may include membership termination, referral for criminal prosecution, and reimbursement to the DMS or to the government, for any loss or damage resulting from the violation. As with all matters involving disciplinary action, principles of fairness will apply. Any individual charged with a violation of this policy will be afforded an opportunity to explain her/his actions before disciplinary action is taken.

Disciplinary action will be taken against

1. Any member who authorizes or participates directly in actions that are a violation of this policy.
2. Any member who has deliberately failed to report a violation or deliberately withheld relevant and material information concerning a violation of this policy.
3. Any director, officer, committee chairman, or vice-chair who attempts to retaliate, directly or indirectly, or encourages others to do so, against any member who reports a violation of this policy.

A board member, officer or committee member who violates this policy will be removed from oversight responsibility.