

SOP #2 Revision: 5-27-15
Effective Date: 7-7-10

Prepared by: Bylaw/Policy & Procedure Comm.
Approved by: Board of Directors

Title: **SANTA ROSA PLATEAU (SRPF) - BOARD ACCOUNTABILITY**

Policy: To protect Directors and the (SRPF) from potential lawsuits related to possible conflict-of-interest situations, contracts or various forms of compensation, and the fiscal integrity of the organization.

Purpose: The fiduciary status of Board members brings with it specific legal liabilities. While it may not be possible for the Board of Directors to manage and direct all phases of the SRPF's business, it must assume responsibility for the final decisions and results.

Scope: The following procedures will apply to all actions taken by the Board or its agents.

Procedure:

1.0 DIRECTOR RESPONSIBILITIES

- A. The Board of Directors will delegate responsibilities to its agents, such as committee chairpersons, officers or the Executive Director, in an orderly, logical manner. However, the Board will reserve the power and authority to make decisions and take actions directly impacting changes in:
 - 1. The by-laws or articles of incorporation
 - 2. Long-range commitments
 - 3. Possible conflict-of-interest situations
 - 4. Structural or the SRPF changes
 - 5. Contracts or various forms of compensation
 - 6. Changes to basic corporate or the SRPF objectives & goals
 - 7. Reasons for formation,
 - 8. The fiscal integrity of the SRPF
 - 9. Recruit, hire and evaluate Executive Director
- B. Written records will be kept of Director's objections to actions taken by the Board. If a director is not present at a meeting, but wishes to have a written record of their dissent, he or she may send by registered mail a written dissenting vote to the Secretary of the Board for inclusion in the minutes.

2.0 DIRECTOR LIABILITY

- A. A director who acts in good faith and in the best interests of the corporation is generally protected from personal liability for any errors in judgment. However, directors guilty of fraud or bad faith are personally, jointly, and severally liable.

This liability extends only to those negligent acts that injure the SRPF or its public. Directors are not liable for a corporation's bankruptcy or to unpaid creditors. Discrepancies between results and planned outcomes of Board decisions will be closely monitored and recorded.

3.0 Duty of Care (CA Corp. Code 5231)

- A. Meeting a director's duty of care generally requires acting in a reasonable and informed manner under the given circumstances. The standard of care is that which "an ordinarily prudent person in a like position would use under similar circumstances."

- B. Keys to meeting a director's duty of care:

1. Regularly attend Board meetings.
2. Assure that the directors receive adequate information before taking appropriate Board action (e.g., by requesting materials and asking questions).
3. Review the materials provided in connection with the Board meetings, particularly those used in reference to any contemplated Board action.
4. Be familiar with the SRPF, its legal structure, governing documents such as articles of incorporation and bylaws, mission, core values, exempt purposes, activities, and key stakeholders.
5. Be familiar with general laws applicable to the SRPF.
6. Exercise independent judgment by considering all views before making a decision.

4.0 RELIANCE - (CA Corp. Code 5231 (b))

- A. Directors may rely upon information, opinions, reports, financial statements and other financial data prepared or presented by (1) corporate officers or employees; (2) counsel, independent accountants and others with professional or expert competence; or (3) Board committees on which the director does not serve; provided however, that: (a) the director acts in good faith, after reasonable inquiry when the need therefore is indicated by the circumstances, and (b) the director reasonably believes that the provider of such information or opinion is competent and reliable

with respect to, and authorized to provide, such information or opinion, and that such reliance is otherwise warranted.

5.0 DELEGATION - (CA Corp. Code Section 5210)

- A. The Board is permitted to delegate management of corporate activities such as the day-to-day operations of a corporation to the corporate officers and Executive Director. However, while the Board may delegate management of the corporation, it may not delegate its oversight responsibility nor its function to govern.
- B. Activities involved in oversight:
 - 1. Prudent selection of officers and Executive Director.
 - 2. Selective and clearly defined delegations of authority.
 - 3. Adoption of monitoring policies and procedures to ensure legal compliance and prudent use of organization resources.
- C. Except as provided in Section 5233 (governing self-dealing transactions), a director who performs his or her duties in accordance with the standard of care as described in Section 5231 (a) and (b) of the Code “shall have no liability based upon any alleged failure to discharge the person’s obligations as a director.” This provision is known as the business judgment rule and is based on the rationale that it would be improper for courts to second-guess corporate management decisions made in good faith and due care.

6.0 DUTY OF LOYALTY (CA Corp. Code 5233)

- A. Meeting a director’s duty of loyalty generally requires acting in good faith and in the best interests of the corporation. The key to meeting this duty is to place the interests of the corporation before the director’s own interests or the interests of another person or entity.

7.0 SELF-DEALING TRANSACTION/CONFLICT OF INTEREST. (Section 5233 (a))

- A. As defined by Code a self-dealing transaction is “a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not meet the requirements of paragraph (1), (2), or (3) of subdivision (d).”

Where a self-dealing transaction has taken place, a court may order the interested directors to take certain actions and pay damages as in the discretion of the court will provide an equitable and fair remedy to the corporation. (Cal. Corp. Code 5233 (h))

8.0 DEFINITIONS

- A. 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 below, is an interested person.
- B. Financial Interest – A person who 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 SRPF has a transaction or arrangement,
 - 2. A compensation arrangement with the SRPF or with any entity or individual with which the SRPF has a transaction or arrangement, or
 - 3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the SRPF is negotiating a transaction or arrangement.
- C. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. 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 appropriate governing Board or committee decides that a conflict of interest exists.

9.0 PROCEDURES

- A. Duty to Disclose – In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest 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.
- B. Determining Whether a Conflict of Interest Exists – After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she will 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 will decide if a conflict of interest exists.
- C. Procedures for Addressing the Conflict of Interest:
 - 1. An interested person may make a presentation at the governing Board or committee meeting, but after the presentation, he/she will leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest or from any other discussion or vote the Board deems appropriate.

2. The chairperson of the governing Board or committee will, 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 will determine whether the Santa Rosa Plateau Foundation 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. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing Board or committee will determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the SRPF'S best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it will make its decision as to whether to enter into the transaction arrangement.

D. Violation of the Conflicts of Interest Policy

1. If the governing B or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it will inform the member of the basis for such belief and afford the 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 will take appropriate disciplinary and corrective action.

10.0 RECORDS OF PROCEEDINGS

- A. The minutes of the governing Board and all committees with Board delegated powers will contain:
 1. 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, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing Board's committee's decision as to whether a conflict of interest in fact existed.
 2. The names of the persons who were present for discussions an votes relating to the 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.

11.0 COMPENSATION

- A. A voting member of the governing Board who receives compensation, directly or indirectly, from the SRPF for services is precluded from voting on matters pertaining to the member's compensation.
- B. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the SRPF for service is precluded from voting on matters pertaining to that member's compensation.

12.0 ANNUAL STATEMENTS

- A. Each director, principal officer and member of a committee with the governing Board delegated powers will annually sign a statement which affirms such person:
 - 1. Has received a copy of the conflicts of interest policy;
 - 2. Has read and understands the policy
 - 3. Has agreed to comply with the policy; and
 - 4. Understands the SRPF is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

13.0 PERIODIC REVIEWS

- A. To ensure the Santa Rosa Plateau Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews will be conducted. The periodic reviews will at a minimum, include the following subjects:
 - 1. Whether compensation arrangements and benefits are reasonable based on competent survey information, and the result of arm's length bargaining.
 - 2. Whether partnerships, joint ventures, and arrangements with management organization conform to the SRPF'S written policies, are properly recorded, reflect reasonable investment or payments for goods and a services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.
- B. When conducting the periodic reviews the SRPF may, but need not, use outside advisors. If outside experts are used, their use will not relieve the governing Board of its responsibility for ensuring periodic reviews are conducted.

14.0 DUTY OF OBEDIENCE

- A. Meeting a director's duty of obedience generally requires adherence to all applicable laws and the governing documents of the SRPF, including acting in furtherance of the SRPF mission.