

# NeahCasa

## Conflict of Interest Policies and Procedures

Conflicts of interest, real or perceived, have the potential to undermine NeahCasa's ability to gain and retain community support for its mission. "Conflict of Interest" as defined in state and federal laws occurs whenever a current or past board member or insider and NeahCasa engage in a transaction involving a common interest. A conflict of interest does not necessarily mean that the person or persons with the conflict is or are gaining personally from the transaction. Board members, employees and others can provide excellent opportunities for advancing the interests of NeahCasa. This is often these people's intent when they enter into transactions with NeahCasa. The transaction may be based on the common shared belief of honesty, fairness and a caring for the good of the community. This Policy is not intended to diminish those opportunities nor inhibit such persons from holding positions of authority with NeahCasa.

This Policy is designed to help board members to:

1. Identify situations that present potential conflicts of interest;
2. Protect NeahCasa's legal interest when it enters into a transaction that might benefit the private interest of a board member and/or any insider of NeahCasa or might result in an excess benefit transaction; and
3. To provide a procedure for validating transactions when they are fair and reasonable and in the best interest of the organization.

### DEFINITIONS

#### **Board Member**

A current member of the board of directors of NeahCasa is a board member.

#### **Insider**

Insiders generally include board members, past board members, members of committees to which the board has delegated power, staff, substantial contributors and those related to these individuals. An insider includes "disqualified persons" as defined by Internal Revenue Code (IRC) section 4958, all staff members of the corporation, and any one connected to the corporation that has access to information not available to the general public. A "disqualified person" is generally any person who currently exercises substantial influence over the corporation or has exercised substantial influence at any time within a five year period ending on the date of the transaction in question, even if they are not currently involved with the corporation, and related parties including this person's family members or others connected to this person through business and/or investment (partnerships, corporations and trusts in which the person has an ownership percentage of 35% or greater). Family members are defined by the IRC to include spouse, siblings, spouses of siblings, ancestors, children, grandchildren and great-grandchildren and spouses of all such children. Examples of those with substantial influence are: board members, senior staff, managers, and funders.

#### **Board Member's Conflict of Interest Defined**

A board member's conflict of interest is a transaction with NeahCasa in which a board member has a direct or indirect interest.

A board member has a direct interest if the transaction might benefit the board member or a family member.

A board member has an indirect interest in a transaction if:

- (a) another entity in which the board member has a material interest or in which the board member is a general partner is a party to the transaction; or

(b) another entity of which the board member is a member of the board of directors, officer or trustee is a party to the transaction, and the transaction is or should be considered by the board.

### **Financial Conflict of Interest**

A board member has a direct or indirect *financial* conflict of interest if the board member, or through the board member's family, business, or investment (as described at "insider") has or is negotiating a financial transaction with NeahCasa.

### **Financial Transaction**

A financial transaction is any agreement or relationship involving the sale or purchase of goods, services, property (real and personal) or rights of any kind, the providing or receipt of a loan or grant, or the establishment of any other type of pecuniary relationship, including employment paying compensation, and gifts or favors that are not insubstantial. Financial transactions include land-related and business transactions. The making of a gift to NeahCasa is not a financial transaction.

### **Excess Benefit Transaction**

An excess benefit transaction is any financial transaction between an insider and NeahCasa where the value of the economic benefit provided to the insider exceeds the value received by NeahCasa (including the performance of services.)

## **BOARD PROCEDURES**

### **BOARD MEMBER'S CONFLICTS OF INTEREST**

#### **1. Raising the Issue**

Anyone can raise a question of possible conflict of interest in writing to the board at any time.

#### **2. Duty to Disclose**

In case of any actual, possible, or perceived conflict of interest, a board member must disclose the existence of the interest and be given the opportunity to disclose all material facts to the board.

#### **3. Determining Whether a Conflict Exists**

After a board member discloses the possible conflict of interest and all material facts, and after any discussion with the board, the remainder of the board will determine if a conflict of interest exists and if it is a financial conflict of interest.

#### **4. Conflict Not Financial**

In the case that a conflict of interest does not result in a financial benefit to the board member or a related party, the board member with a conflict may, under Oregon law, take part in any discussion about the transaction, but shall not vote on such transaction. The transaction may be approved, authorized or ratified by the board if it receives the affirmative vote of a majority of the members on the board who have no direct or indirect interest in the transaction. The quorum requirements are not applicable if this process is followed provided that the transaction is approved by more than one member on the board.

#### **5. Procedures for Addressing a Financial Conflict of Interest**

a. A board member may make a presentation to the board, but after the presentation, he or she should recuse himself or herself and not be present during the discussion of, and the vote on, the transaction involving the financial conflict of interest.

- b. If the conflict of interest involves paying compensation to a board member or a transfer of property between the board member and NeahCasa, the board will follow the procedures described below under Transactions with Insiders and perform any other due diligence that may be necessary to determine if the corporation could obtain with reasonable efforts a more advantageous transaction or arrangement from another person or entity.
- c. The board may appoint a disinterested person or committee to investigate the alternatives to the proposed transaction or arrangement which avoid the possible conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible, the board will determine by majority vote of the disinterested board members whether the transaction is in NeahCasa's best interest and benefit, and whether the transaction is fair and reasonable, with the use of comparable data, where appropriate.
- e. If the board makes the determination in the affirmative, the board may enter into the transaction with the board member.
- f. The quorum requirements are not applicable if this process is followed provided that the transaction is approved by more than one member on the board.

## **TRANSACTIONS WITH INSIDERS**

### **Purpose**

The purpose of this procedure is for the board to avoid an excess benefit transaction which could result in excise taxes and personal liability of board members and senior staff for fines and penalties. This board will follow this procedure whenever it engages in a financial transaction with an insider (which includes a board member).

### **Compensation**

The board will follow the procedures in Attachment 1, Compensation Checklist, whenever it pays any compensation to an insider.

### **Board Compensation**

Board members serve for the best interest of NeahCasa and do not serve on the board for personal financial interests. Board members are not compensated for being directors except for reimbursement of expenses, as determined by the board. In limited circumstances, a board member may be compensated for professional services if the board follows the procedure outlined in Attachment 1.

### **Property**

The board will follow the procedures in Attachment 2, Property Checklist, whenever the board is engaging in transactions with insiders involving real and personal property. Special rules apply to land and easement transactions with insiders as noted in the checklist.

### **Other Financial Transactions**

If a transaction with an insider involves a financial exchange other than compensation or property, such as a loan between the corporation and an insider, the board may enter into such transaction provided that it documents that the transaction is not an excess benefit by using comparable data and following a process similar to the checklists noted above. The corporation, however, shall not make a loan nor guarantee an obligation to or for the benefit of a board member or officer of the corporation.

## **MINUTES TO RECORD PROCEEDINGS**

The minutes of the board when entering into a transaction with a board member and/or an insider will contain:

1. The name(s) of the board member(s) who disclosed a conflict of interest; the nature of the interest; and discussion and vote by the board as to (1) whether a

- financial conflict of interest existed or (2) the result of the vote of a transaction that was not a financial conflict of interest; or
2. The name of the insider and the nature of the financial interest.
  3. Reference to the appropriate Checklist and Checklist is attached to minutes for the cases involving compensation and/or property; or
  4. Discussion and decision as to whether it is in NeahCasa's best interest and for its own benefit, and whether it is fair and reasonable (including comparable data, if appropriate) and the votes taken in connection with the proceedings.

# **Attachment #1 CONFLICT OF INTEREST POLICY- COMPENSATION CHECKLIST**

**1. Insider (Disqualified person):**

Name:

Title / Position / Description:

**2. Terms of compensation arrangement:**

Salary / Contract Payment:

Bonus:

Deferred compensation:

Fringe benefits (excluding IRC 132 fringes and expense reimbursements under an accountable plan):

Liability insurance premiums:

Foregone interest on loans:

Other:

**3. Name of authorized body:** NeahCasa Board of Directors

**4. Date board approved compensation arrangement:**

**5. Board members and Title/Position on date of approval:**

**6. Board Member(s) with conflict of interest as to compensation arrangement<sup>1</sup>:**

**7. Comparable Data:**

Compensation data paid by 3 comparable organizations in similar communities for similar services<sup>2</sup>:

1.

2.

3.

---

<sup>1</sup> Note, this is another level of a "conflict of interest" required by IRC. A board member has a conflict of interest with the insider if he/she is a family member of insider, employee of insider, receives compensation controlled by insider, or has an arranged *quid pro quo* with insider.

<sup>2</sup> If average gross receipts during 3 prior years exceed 1 million, consult legal counsel.

**8. Documentation:**

Description of records and how obtained:

Date records were prepared:

Date records were approved by board as reasonable, accurate and complete:

**9. Board Discussion/Action:**

Description of Insider's presentation to Board about transaction and, if applicable, comments by a board member with a conflict of interest in #6:

Discussion of other factors relied on by Board in reaching decision such as board knowledge and experience, use of experts:

If value determined differs from comparability data, basis for determination:

Discussion and decision as to whether it is in NeahCasa's best interest and for its own benefit, and whether it is fair and reasonable:

Board members present during debate and who voted on transaction and result of vote<sup>3</sup>:

---

<sup>3</sup> A board member with a conflict and/ or insider can be present to answer questions and then must recuse himself or herself during debate and voting.

## **Attachment #2**

# **CONFLICT OF INTEREST POLICY - PROPERTY CHECKLIST**

### **1: Insider/ Disqualified person:**

Name:

Title / Position Description:

### **2. Property to be transferred or used:**

Description:

Location:

**3. Name of authorized body:** Board of Directors

### **4. Date board approved property transfer:**

Board Members and Titles/Positions on date of approval:

**5. Background** (education, experience, etc. appropriate to transaction):

**6. Board Member(s) with a conflict of interest as to property transfer:**

### **7. Comparable Data – Appraisals**

Appraiser(s) name and address:

Appraiser(s) qualifications:

For purchase and sales of property to insiders, appraiser must be state-licensed or certified and have verifiable conservation easement or real estate experience:

Date(s) of appraisal(s):

Fair market value per appraisal(s):

Appraisal method(s) used (e.g., sales comparisons, income analysis, replacement costs, etc.)

For purchases and sales of property to insiders, appraisal must be prepared in compliance with the Uniform Standards of Professional Appraisal Practice:

### **8. Comparable Data – Offers received from open and competitive bidding :**

When selling property to an insider, the property must be widely marketed to ensure it's sold at or above fair market value and to avoid the perception that the sale inappropriately benefited an insider:

### **9. Documentation:**

Description of records:

Date records were prepared:

Date records were approved by Board as reasonable, accurate and complete:

**10. Board Discussion/Action:**

Description of Insider's presentation to Board about transaction and, if applicable, comments by a director with a conflict of interest in #6:

Discussion of other factors relied on by Board in reaching decision such as board knowledge and experience, use of experts:

If value determined differs from comparability data, basis for determination:

When engaging in land and easement transactions with insiders, the Board will document how property transaction meets NeahCasa's mission:

Discussion and decision as to whether it is in NeahCasa's best interest and for its own benefit, and whether it is fair and reasonable:

Board members present during debate and who voted on transaction and result of vote: