



**CONFLICTS OF INTEREST POLICY  
OF  
THE ARIZONA COMMERCE AUTHORITY**

**I. Purpose/Expected Outcome:**

**A.** All directors, officers, appointees, employees, volunteers, and others acting for or on behalf of the Arizona Commerce Authority (“**ACA**”), collectively referenced herein as “**Stakeholders**,” are subject to the laws of the State of Arizona, including, without limitation, A.R.S. §§38-501 *et seq.*, as well as to applicable federal laws, pertaining to conflicts of interest. ACA is committed to compliance with these laws.

**B.** As the public interest makes it of vital importance that ACA business be conducted free from Conflicts of Interest and, whenever practicable, the appearance of any Conflicts of Interest, the purpose of this Policy is to establish supplemental principles to guide ACA and Stakeholders in managing conflicts of interest relating to ACA business. In the event that applicable law imposes requirements more stringent than those set forth herein, the applicable law shall apply.

**C.** The objective of this Policy is to prohibit the personal interests of Stakeholders from influencing ACA business decisions. Failure to comply with any part of this Policy is a serious breach of a Stakeholder’s responsibility, constitutes conduct detrimental to ACA, and will be cause for appropriate action, up to and including termination of employment, appointment, volunteer position or other agency relationship. Further, substantial civil and criminal penalties may result to the Stakeholder from failure to comply with applicable law.

**II. Definitions:**

**A.** “**Conflict of Interest**” or “**Conflict**” means a circumstance in which (i) a Stakeholder or Stakeholder’s relative has a Substantial Interest, or engages in any activity, that is fundamentally at odds with the best interests of ACA or the impartial, objective and effective performance of the Stakeholder’s duties to ACA; (ii) a Stakeholder or Stakeholder’s Relative has a Substantial Interest in any contract, sale, purchase or service to the ACA, or in any decision of the ACA;<sup>1</sup> or (iii) a Stakeholder’s personal interests otherwise materially conflict with the best interests of the ACA.

**B.** “**Pecuniary Interest**” means financial interest. For example, whenever a Stakeholder or a Relative of a Stakeholder stands to benefit financially from an ACA transaction, the Stakeholder or Relative has a pecuniary interest in the transaction.

**C.** “**Policy**” means ACA’s Conflicts of Interest Policy.

**D.** “**Proprietary Interest**” means ownership interest. For example, whenever a

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<sup>1</sup> See A.R.S. § 38–503(A), (B).

Stakeholder or a Relative of a Stakeholder owns all or part of a corporation, partnership, joint venture, limited liability companies, other legal entity that enters into a transaction with ACA, the Stakeholder or Relative has a proprietary interest in the transaction.

**E.** A “**Relative**” of a Stakeholder includes:

1. the Stakeholder’s spouse;
2. the Stakeholder’s children, grandchildren, parents, grandparents, brothers, and sisters (including half brothers and half sisters);
3. the spouses of each of those persons mentioned in No. 2; and
4. the Stakeholder’s spouse’s parents, brothers, sisters, and children.

**F.** “**Remote Interest**” means the following:<sup>2</sup>

1. That of a nonsalaried officer of a nonprofit corporation.
2. That of a landlord or tenant of the contracting party.
3. That of an attorney of a contracting party.
4. That of a member of a nonprofit cooperative marketing association.
5. The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.
6. That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.
7. That of a recipient of public services generally provided by the Authority, on the same terms and conditions as if he or she were not an officer or employee of the Authority.
8. That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:
  - i. Another political subdivision.
  - ii. A public agency of another political subdivision.

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<sup>2</sup> A.R.S. § 38-502(10).

iii. A public agency except if it is the same governmental entity.

9. That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

**G.** “**Stakeholders**” means all directors, officers, appointees, employees, volunteers, and others acting for or on behalf of ACA, regardless of whether they are paid for their service.

**H.** A “**Substantial Interest**” means any Pecuniary or Proprietary Interest, direct or indirect, other than a Remote Interest.

### **III. Policy:**

**A. Disclosure of Conflicts of Interest.** A Stakeholder who has or may have a Conflict of Interest, at present or foreseeably in the future, must disclose it promptly. Disclosure shall be made to the ACA Ethics Officer or, in his/her absence, to the Chief Operating Officer. Disclosure shall be made on an ACA Conflict of Interest disclosure form, or, if an ACA Conflict of Interest disclosure form is not readily available, then in writing in sufficient detail to explain all the facts and circumstances surrounding the Conflict, and kept in the official records of the ACA. The foregoing requirements shall hereinafter be referred to as “**Disclosure.**”

**B. Disqualification.** A Stakeholder who has or may have a Conflict of Interest, at present or foreseeably in the future, must refrain from voting upon or otherwise participating in any manner in any ACA decision or decision-making process relating to the interest that gives rise to the Conflict. This includes refraining from communicating about the decision-making process with anyone involved in the process. Such disqualification is mandatory even if the Stakeholder is confident that he or she can be objective in the matter and that the public interest would not be harmed by his or her participation. The foregoing requirements shall hereinafter be referred to as “**Disqualification.**”

**C. Further Mitigation of Conflicts of Interest.** Upon Disclosure of a Conflict of Interest by a Stakeholder, the ACA shall review the circumstances surrounding the Conflict and, as needed, provide for mitigation of the Conflict beyond Disclosure and Disqualification, as follows:

1. If the ACA determines that the Conflict of Interest has been sufficiently mitigated through Disclosure and Disqualification, no further steps need be taken. Typically, Conflicts of Interest of the Section II(A)(ii) type, above, are sufficiently mitigated through Disclosure and Disqualification.

2. If the ACA determines that the Conflict of Interest has not been sufficiently mitigated through Disclosure and Disqualification, the ACA shall determine whether and how the Conflict can be sufficiently mitigated through further steps, which shall be agreed-upon and implemented by the ACA and Stakeholder.

3. If the ACA determines that the Conflict of Interest cannot be sufficiently

mitigated while the Conflict of Interest exists – whether due to the nature of the Conflict, the inability of the ACA and the Stakeholder to agree on and implement sufficient mitigation steps, or for any other reason – the ACA shall give the Stakeholder the opportunity to eliminate the external interest that gives rise to the Conflict. If the Stakeholder cannot or elects not to eliminate such interest, the ACA shall terminate the Stakeholder relationship.

4. When the Stakeholder with a Conflict of Interest is a director, the determinations required to be made by the ACA in this section III(C) shall be made by the ACA Board of Directors (or a member or committee thereof, as determined by the Board). When the Stakeholder with a Conflict of Interest is not a director or the Ethics Officer, the determinations required to be made by the ACA in this section III(C) shall be made by the Ethics Officer and then approved in writing by Chief Operating Officer (or designee). When the Stakeholder with a Conflict of Interest is the Ethics Officer, the determinations required to be made by the ACA in this section III(C) shall be made by the Chief Operating Officer (or designee). In all cases, the steps involved in the review and, if applicable, mitigation of the Conflict of Interest shall be documented in writing and kept in the files of the ACA.

**D. Clear Conflicts of Interest.** Although it is not possible to provide a list of all conceivable conflicts of interest, the following situations, set forth for illustrative purposes, represent clear Conflicts of Interest:

1. A Stakeholder owning 50% of a business, whether directly or through a Relative or legal entity, that is competing for an ACA contract.

2. A Stakeholder competing with ACA, directly or indirectly, in the development or implementation of a business opportunity that ACA currently has, or that is of a nature that the Stakeholder reasonably should know ACA is or might be interested in pursuing.

3. A Stakeholder engaging in outside activity of any type which is so substantial as to call into question the Stakeholder's ability to devote appropriate time and attention to his or her responsibilities with ACA.

4. A Stakeholder accepting from any person or any organization that has or seeks to have a business relationship with ACA anything of value in violation of ACA's Gift Policy.

5. A Stakeholder soliciting or accepting or having any Stakeholder Relative solicit or accept, directly or indirectly, a bribe, kickback, gratuity, or loan<sup>3</sup> from any organization or any person who has or seeks to have a business relationship with ACA.<sup>4</sup> (Stakeholders are advised that such activity may be considered a criminal felony and cause forfeiture of office or employment.<sup>5</sup>)

6. A Stakeholder's spouse being employed by a company which has applied to the ACA for financial assistance.

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<sup>3</sup> This does not prohibit borrowing money on market terms from commercial lending institutions.

<sup>4</sup> A.R.S. § 38-505(A).

<sup>5</sup> A.R.S. §§ 13-2602, 38-444, 38-510.

**E. Representing Others before the ACA.** During the time a Stakeholder is a Stakeholder, and for twelve months after leaving the ACA, a Stakeholder may not represent another person or entity for compensation before the ACA on a matter if: (1) the Stakeholder was directly concerned with the matter while a Stakeholder; (2) the Stakeholder personally participated in the matter while a Stakeholder; and (3) the matter involved a substantial and material exercise of administrative discretion by the Stakeholder.<sup>6</sup>

**F. Avoiding the Appearance of a Conflict of Interest.** Even when a Stakeholder or Stakeholder's Relative does not have an actual Conflict of Interest, the mere appearance of a Conflict can be harmful to ACA. Accordingly, whenever practicable a Stakeholder must avoid activities that have the appearance of a Conflict. When a Stakeholder appears to have a Conflict of Interest but does not, the Stakeholder shall discuss the appearance of the Conflict with the Ethics Officer to determine whether any steps should be taken to mitigate the effect of the appearance.

**G. Stakeholder Uncertainty.** If a Stakeholder has questions about whether he or she has or may have a Conflict of Interest, or about any other provisions of this Policy, it is the Stakeholder's duty, as soon as those questions arise, to consult with the ACA Ethics Officer on the Stakeholder's questions before proceeding with any action that may result in a violation of this Policy. At the Stakeholder's election, the ACA will obtain the opinion of ACA's attorney as to whether the Stakeholder has a Conflict of Interest and, if the opinion is that a Conflict of Interest does not exist, the ACA will direct its attorney to prepare a written opinion to that effect for the benefit of the Stakeholder.

#### **IV. Administrative Provisions:**

**A. Responsibility.** The responsibility of overseeing compliance with ACA's Conflicts of Interest Policy is assigned to the ACA Ethics Officer, and in his/her absence to the ACA Chief Operating Officer (or designee). The Ethics Officer is specifically authorized and directed to bring any concerns, issues, problems or questions to the attention of the ACA Board of Directors.

**B. Forms.** The Ethics Officer is directed to cause to be developed the following forms to be utilized in support of this Policy: (i) a Conflict of Interest disclosure form, (ii) a website anonymous report form, (iii) an intake form for verbal reports, (iv) an incident report form and (v) a Board of Directors ethics quarterly report.

**C. Audits and Reporting.** The Ethics Officer is responsible for tracking all disclosed Conflicts of Interest. Further, the Ethics Officer is responsible for the initial investigation of any reported or discovered violations of this Policy. The Ethics Officer is required to report the following on a quarterly basis to the Board of Directors: (1) all disclosed Conflicts of Interests and the mitigation steps implemented in relation thereto; (2) any withdrawals from official duties by a Stakeholder due to a conflict of interest; and (3) a detailed report regarding all suspected or alleged violations of this Policy and the investigations thereof.

**D. Termination of Contracts.** The substance of the following must be incorporated in

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<sup>6</sup> See A.R.S. § 38-504(A).

all ACA agreements: If a Stakeholder is significantly involved in initiating, negotiating, securing, drafting, or creating a contract, grant, funding, or other agreement on behalf of ACA, then: (1) ACA retains the right to cancel the agreement if the Stakeholder is or becomes an employee or agent of any other party to the contract while the contract or any extension of the contract is in effect; and (2) ACA has the right to cancel the contract if the Stakeholder is or becomes a consultant with respect to the subject matter of the agreement to any other party to the agreement while the agreement or any extension of the agreement is in effect.<sup>7</sup>

#### **E. Dissemination of the Policy.**

1. The Policy will be distributed to every ACA Stakeholder upon its implementation and thereafter to each new Stakeholder who joins the ACA.

2. Every Stakeholder must indicate that he or she has received and read the Policy by signing the most current ACA acknowledgment and returning it to the Ethics Officer (or designee). The acknowledgment shall also require each Stakeholder to confirm that he or she has not previously and is not currently engaging in any activity that would constitute a violation of the Policy, or to immediately disclose any such activity in writing to the Ethics Officer.

3. Periodically and at least annually, the Policy will be redistributed to every ACA Stakeholder and an updated acknowledgment will be required.

4. The ACA will provide prompt written notice to all Stakeholders of any modifications of or additions to the Policy.

5. The Policy will be prominently placed on ACA's website and/or intranet system.

#### **F. Procedures for reporting and investigating suspected violations.**

1. **Reporting.** Stakeholders are expected to report promptly any information they have regarding an actual or potential violation of this Policy to the Ethics Officer or, in his or her absence, to the Chief Operating Officer (or designee). Failure to report such information may itself constitute a violation of this Policy. Non-Stakeholders are also encouraged to report alleged violations of this Policy.

2. **Investigation.** Reports of suspected violations will be investigated under supervision of the Ethics Officer. If the Ethics Officer is suspected of possible violations, the Board of Directors will appoint an investigator, who may either be another Stakeholder or an outside investigator. When a violation is established, the ACA will respond promptly and appropriately to deal with the particular individual(s) involved as well as to prevent similar offenses from occurring again. The ACA's response may include, when necessary, making changes to this Policy in order to better deter and detect the particular type of offense which has occurred.

3. **Confidentiality.** To the extent practical and appropriate under the

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<sup>7</sup> A.R.S. § 38-511.

circumstances to protect the privacy of the individuals involved, ACA will endeavor to not voluntarily disclose the identity of anyone who reports a suspected violation or participates in its investigation. However, Stakeholders should be aware that the Ethics Officer and those assisting the Ethics Officer, the Board of Directors or retained outside investigators are obligated to act in the best interests of the ACA.

**4. Protection against Retaliation.** Retaliation in any form against an individual who reports a violation of this Policy, or who assists in the investigation of a reported violation, is itself a serious violation of this Policy. Acts of retaliation should be reported immediately and will be disciplined appropriately.

**G. Disciplinary Action.** All Stakeholders are expected to adhere to this Policy. Any violation of this Policy is grounds for disciplinary action by the ACA, including reprimand, suspension, or discharge of the individuals involved. The ACA reserves the right to commence civil proceedings or initiate criminal proceedings if, in its sole discretion, it deems such action appropriate. In considering whether and what measures are appropriate, ACA will treat with leniency employees who come forward to provide information regarding their own violations of this Policy.

**V. References:**

- A. A.R.S. §§ 38-501, *et seq.*
- B. Arizona Attorney General's Office, *Arizona Agency Handbook*

**VI. Other Related Policies/Procedures:**

- A. Arizona Commerce Authority's Ethics Policy
- B. Arizona Commerce Authority's Gift Policy

**VII. Cross Index As:**

- A. Conflicts
- B. Ethics

**RECEIPT AND ACKNOWLEDGMENT**

By signing below, I acknowledge and understand the following:

- I have received, read, and understand the Arizona Commerce Authority (ACA) Conflicts of Interest Policy (the "Policy") approved by the ACA Board of Directors on 9-27-11.
- I agree to abide by the Policy as a condition of my employment and my continuing employment at the ACA.
- I have not previously engaged and am not currently engaging in any activity that would constitute a violation of the Policy.
- I understand that if I have any questions regarding this Policy at any time in the future, I will ask my supervisor or management for an explanation.

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Name

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Position

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Date