

Practice 4C: Transactions with Insiders

- When engaging in land and easement transactions with insiders (see definitions), the land trust: follows its conflict of interest policy; documents that the project meets the land trust's mission; follows all transaction policies and procedures; and ensures that there is no private inurement or impermissible private benefit. For purchases and sales of property to insiders, the land trust obtains a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience. When selling property to insiders, the land trust widely markets the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.
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This practice on buying from, selling to and accepting donations of land from board members, employees and other insiders was added to respond to land trusts' requests for guidance relative to these types of transactions. While some land trusts avoid selling to or buying from board and staff members, others want to be able to engage these parties in transactions related to their mission. This practice will help land trusts avoid real and perceived conflicts of interest with regard to these transactions.

In order to ensure that the land trust's interests are being protected, the land trust should verify purchase or sales prices with an independent appraisal provided to the land trust. A land trust should not rely on the seller's appraisal. When a land trust is selling land, and an insider may be interested in purchasing the land, the property should be marketed widely to prospective conservation buyers through web pages, personal contacts, mailings, and listings in newsletters and other publications.

With regard to donations of land, board members or staff may wish to demonstrate their commitment to the land trust's mission by donating or restricting their own land, advancing the land protection goals of the land trust. In these circumstances, the land trust should follow its conflict of interest policy, ensure that the potentially conflicted party is not part of the discussions relative to the acceptance of the donation or future stewardship of the easement, and keep thorough records so that the transaction is transparent and upholds the organization's credibility. All of the land trust's standard practices on reviewing projects against acceptance criteria, doing site inspections and other acquisition procedures should be followed closely.

How Land Trusts Approach Transactions with Board Members

Different organizations approach potential land and easement transactions with board members differently. Some land trusts, like the Vermont Land Trust, enter into transactions with board members only after following a carefully proscribed procedure. The procedure includes the preparation of a disclosure statement that describes the following:

- The nature of the transaction;
- Its public conservation benefit and whether the parcel meets VLT's selection criteria;
- If a conservation easement, any significant variation in the easement's terms from VLT's base documents;
- Any significant variation in the income or expense budget of the project, especially of those expenses typically underwritten by the landowner; and
- If a purchase, substantiation that VLT is not paying more than fair market value for the property interest.

Other land trusts, including the Society for the Protection of New Hampshire Forests, do not as a practice enter into transactions with current board members. Consistent with state law, SPNHF's policy reads as follows:

The Board will assure that SPNHF shall (a) not loan money or property to any officer or trustee and (b) not sell, lease for a term of greater than five (5) years, purchase, or convey any real estate or interest in real estate to or from an officer or trustee without the prior approval of the probate court, except that this prohibition shall not apply to a bona fide gift of real estate or an interest therein to SPNHF by an officer or trustee.

Should an existing board member want to donate land or an easement, SPNHF's conflict of interest policy stipulates that the board member cannot participate in any discussion of the project and cannot be present when it is voted upon. In addition, the policy requires a two-thirds vote of the board to approve the transaction, and the board must document that the project is "fair and benefits SPNHF and its objectives."

Links to Other LTA Resources

- ["Law Update: New Penalties Imposed on Private Inurement Transactions", *Exchange*, Winter 1997 \(Vol. 16 No. 1\)](#)

Sample Land Trust Policies

- [The Nature Conservancy
Sales To Or From Related Parties](#)

[Tax Deductions for Contributions of Land by Members of the Board of Governors](#)

- [Vermont Land Trust – Transactions with “Insiders”](#)

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